Volume 24
Number 19
June 15, 2007
Pages 1703 - 2490

The Oklahoma Register

Oklahoma
Secretary of State
Office of Administrative Rules

Brad Henry, Governor
M. Susan Savage,
Secretary of State
Peggy Coe, Managing Editor

THE OKLAHOMA REGISTER is an official publication of the State of Oklahoma. It is published semi-monthly on the first working day of the month and on the first working day following the 14th day of the month under the authority of 75 O.S., Sections 250 et seq. and OAC 655:10-15-1. The rules of the State of Oklahoma are codified and published in the *Oklahoma Administrative Code*.

The Oklahoma Register and the documents accepted for publication are **AVAILABLE FOR PUBLIC INSPECTION** at the Office of Administrative Rules pursuant to the Oklahoma Open Records Act. Copies of the *Register* are also available for public inspection at many County Clerks' offices in Oklahoma, the Jan Eric Cartwright Memorial Law Library in the State Capitol, and the following depository libraries:

Ada - East Central University, Linscheid Library
Alva - Northwestern Oklahoma State University, J.W. Martin Library
Bartlesville - Bartlesville Public Library
Clinton - Clinton Public Library
Durant - Southeastern Oklahoma State University, H.G. Bennett Memorial Library
Edmond - University of Central Oklahoma, Chambers Library
Enid - Public Library of Enid and Garfield County
Goodwell - Oklahoma Panhandle State University
Lawton - Lawton Public Library
McAlester - McAlester Public Library
Norman - University of Oklahoma, Bizzell Memorial Library
Oklahoma City - Metropolitan Library System
Oklahoma City - Oklahoma Department of Libraries
Stillwater - Oklahoma State University, Edmon Low Library
Tahlequah - Northeastern State University, John Vaughan Library
Tulsa - Tulsa City-County Library System
Tulsa - University of Tulsa, McFarlin Library
Weatherford - Southwestern Oklahoma State University, Al Harris Library

CITE MATERIAL PUBLISHED IN *THE OKLAHOMA REGISTER* by the volume and the beginning page number of the document in the *Register*. *For example: 24 Ok Reg 256.*

SUBSCRIPTION RATES for the *Register* are $500.00 per year for the printed issues and $300.00 per year for the CD-ROM issues, payable in advance. When available, individual printed issues may be purchased for $20.00 plus the cost of postage, payable in advance. Make checks payable to "Secretary of State." Send subscription requests, change of address notices, and undelivered copies to: Secretary of State, Office of Administrative Rules, P.O. Box 53390, Oklahoma City, OK 73152-3390.

INFORMATION ABOUT THIS PUBLICATION may be obtained by contacting the Oklahoma Secretary of State, Office of Administrative Rules, 2401 North Lincoln Boulevard, Will Rogers Building, Room 220, P.O. Box 53390, Oklahoma City, OK 73152-3390, or by calling (405) 521-4911 or faxing (405) 522-3555. Office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday.

This publication is issued and printed by the Secretary of State as authorized by 75 O.S., Section 255. 75 copies have been prepared and distributed at a cost of $2146.67. Copies have been deposited with the Oklahoma Department of Libraries, Publications Clearinghouse.
ISSN 0030-1728

Table of Contents

Agency/Action/Subject Index iii
Rules Affected Index vi
Agency Index (Title numbers assigned) xxxiii

Notices of Rulemaking Intent
Environmental Quality, Department of (Title 252) 1703

Gubernatorial Approvals
Agriculture, Food, and Forestry, Oklahoma Department of (Title 35) 1705, 1706, 1707, 1708
Attorney General (Title 75) 1708
Benefits Council, Oklahoma State Employees (Title 87) 1709
Chiropractic Examiners, Board of (Title 140) 1709
Consumer Credit, Department of (Title 160) 1709, 1710
Corporation Commission (Title 165) 1710
Corrections, Department of (Title 170) 1711
Human Services, Department of (Title 340) 1711, 1712, 1713, 1714
Insurance Department (Title 365) 1714, 1715
Law Enforcement Education and Training, Council on (Title 390) 1716
Mines, Department of (Title 460) 1716, 1717
Pharmacy, Oklahoma State Board of (Title 535) 1717, 1718
Psychologists, State Board of Examiners of (Title 575) 1718
Central Services, Department of (Title 580) 1718, 1719, 1720
Securities, Department of (Title 660) 1720
Tax Commission, Oklahoma (Title 710) 1720
Treasurer, State (Title 735) 1721
Career and Technology Education, Oklahoma Department of (Title 780) 1721, 1722
Water Resources Board, Oklahoma (Title 785) 1722, 1723

Gubernatorial Disapprovals
Mines, Department of (Title 460) 1725

Emergency Adoptions
Medical Licensure and Supervision, State Board of (Title 435) 1727

Permanent Final Adoptions
Accountancy Board, Oklahoma (Title 10) 1729
Agriculture, Food, and Forestry, Oklahoma Department of (Title 35) 1736, 1738, 1739, 1740, 1742, 1743, 1746, 1752, 1753, 1754, 1755, 1759, 1763, 1766, 1768, 1772, 1773, 1775, 1777, 1778, 1779, 1780
Corporation Commission (Title 165) 1781, 1784, 1814, 1827
Education, State Department of (Title 210) 1833, 1835, 1836, 1839, 1889, 1892
Fire Marshal Commission, State (Title 265) 1893, 1894
Health, Oklahoma State Department of (Title 310) 1896, 1905, 1907, 1908, 1926, 1928, 1940, 1945, 1949, 1955, 1957, 1961, 1965, 1971, 1978, 1981, 1983, 1986, 1987, 1990, 1991, 2004, 2005, 2007, 2018, 2022, 2025, 2030, 2043, 2045
Health Care Authority, Oklahoma (Title 317) 2057, 2059, 2060, 2068, 2069, 2070, 2082, 2083, 2086, 2087, 2088, 2094, 2095, 2104, 2105, 2113, 2115, 2116, 2122, 2134, 2135, 2153, 2159, 2160, 2162
Historical Society, Oklahoma (Title 320) 2164
Human Services, Department of (Title 340) 2171, 2172, 2176, 2181, 2183, 2184, 2187, 2189, 2191, 2196, 2201, 2203
Insurance Department (Title 365) 2204, 2206, 2207, 2209, 2217
Labor, Department of (Title 380) 2229, 2231
Medical Licensure and Supervision, State Board of (Title 435) 2246, 2248, 2250
Personnel Management, Office of (Title 530) 2252
Pharmacy, Oklahoma State Board of (Title 535) 2254, 2256, 2257, 2262, 2265
Central Services, Department of (Title 580) 2266, 2270, 2295, 2315
Real Estate Appraiser Board (Title 600) 2316, 2319
Real Estate Commission, Oklahoma (Title 605) 2320, 2321
Securities, Department of (Title 660) 2329, 2334
Tax Commission, Oklahoma (Title 710) 2343, 2353, 2359, 2375, 2397

Tourism and Recreation Department, Oklahoma (Title 725) 2419
Treasurer, State (Title 735) 2420
Career and Technology Education, Oklahoma Department of (Title 780) 2421, 2422, 2426, 2435
Water Resources Board, Oklahoma (Title 785) 2441, 2442, 2445, 2453
Wildlife Conservation, Department of (Title 800) 2462, 2467, 2469, 2471, 2483
Executive Orders (Title 1) 2487

Agency/Action/Subject Index

ACCOUNTANCY Board, Oklahoma (Title 10)
Permanent Final Adoptions
Licensure and Regulation of Accountancy (Chapter 15) 1729

AGRICULTURE, Food, and Forestry, Oklahoma Department of (Title 35)
Gubernatorial Approvals
Fees (Chapter 2) 1705
Fine Matrices (Chapter 3) 1705
Agricultural Products (Chapter 10) 1705
Fuel Alcohol (Chapter 13) 1705
Animal Industry (Chapter 15) 1706
Water Quality (Chapter 17) 1706
Forestry (Chapter 20) 1707
Plant Industry (Chapter 30) 1707, 1708
Food Safety (Chapter 37) 1708
Agriculture Pollutant Discharge Elimination System (Chapter 44) 1708
Permanent Final Adoptions
Fees (Chapter 2) 1736, 1738, 1739
Fine Matrices (Chapter 3) 1740
Agricultural Products (Chapter 10) 1742
Fuel Alcohol (Chapter 13) 1743
Animal Industry (Chapter 15) 1743, 1746, 1752, 1753, 1754, 1755, 1759
Water Quality (Chapter 17) 1763, 1766
Forestry (Chapter 20) 1768
Plant Industry (Chapter 30) 1772, 1773, 1775, 1777
Food Safety (Chapter 37) 1778, 1779
Agriculture Pollutant Discharge Elimination System (Chapter 44) 1780

ATTORNEY General (Title 75)
Gubernatorial Approvals
Standards and Criteria for Domestic Violence, Sexual Assault and Batterers Intervention Programs (Chapter 15) 1708

BENEFITS Council, Oklahoma State Employees (Title 87)
Gubernatorial Approvals
Administrative Operations (Chapter 1) 1709
Competitive Bidding Criteria and Procedures for Contracts Awarded for Flexible Benefits Plans (Chapter 15) 1709

CHIROPRACTIC Examiners, Board of (Title 140)
Gubernatorial Approvals
Licensure of Chiropractic Physicians (Chapter 10) 1709
Special Certificates and Miscellaneous Provisions (Chapter 15) 1709
Chiropractic Undergraduate Preceptorship Program (Chapter 25) 1709

CONSUMER Credit, Department of (Title 160)
Gubernatorial Approvals
Truth in Lending Rules (Chapter 45) 1709
Mortgage Brokers (Chapter 55) 1710
Deferred Deposit Lenders (Chapter 70) 1710

CORPORATION Commission (Title 165)
Gubernatorial Approvals
Rules of Practice (Chapter 5) 1710
Oil and Gas Conservation (Chapter 10) 1710
Motor Carriers (Chapter 30) 1710
Electric Utility Rules (Chapter 35) 1710
Permanent Final Adoptions
Rules of Practice (Chapter 5) 1781
Oil and Gas Conservation (Chapter 10) 1784
Motor Carriers (Chapter 30) 1814
Electric Utility Rules (Chapter 35) 1827

CORRECTIONS, Department of (Title 170)
Gubernatorial Approvals
Organization (Chapter 1) 1711
Community Work Centers (Chapter 20) 1711
Employee Recruitment Referral Incentive Program (Chapter 35) 1711

EDUCATION, State Department of (Title 210)
Permanent Final Adoptions
School Administration and Instructional Services (Chapter 10) 1833, 1835, 1836
Curriculum and Instruction (Chapter 15) 1839, 1889
Grants and Programs-In-Aid (Chapter 40) 1892

ENVIRONMENTAL Quality, Department of (Title 252)
Notices of Rulemaking Intent
Air Pollution Control (Chapter 100) 1703

FIRE Marshal Commission, State (Title 265)
Permanent Final Adoptions
Smoke Detectors (Chapter 10) 1893
Adopted National Codes and Standards (Chapter 25) 1894

GOVERNOR
Executive Orders
Encouraging all Appointing Authorities to adopt measures that encourage employees to eat better, move more, and be tobacco free (07-23) 2487
Ordering flags at half-staff in observation of Memorial Day (07-24) 2488
Replacing EO96-26; Establishing Governor's Advisory Council on Latin American and Hispanic Affairs (07-25) 2488

HEALTH, Oklahoma State Department of (Title 310)
Permanent Final Adoptions
Procedures of the State Department of Health (Chapter 2) 1896
Vital Statistics (Chapter 105) 1905
Fee and Fine Schedule for Occupational Licensing (Chapter 110) 1907
Alarm and Locksmith Industry (Chapter 205) 1908
Barbers (Chapter 210) 1926
Body Piercing ~~Rules~~ and Tattooing (Chapter 233) 1928
Medical Micropigmentation (Chapter 234) 1940
Hearing Aid Dealers and Fitters (Chapter 265) 1945
Home Inspection Industry (Chapter 276) 1949
Registration of Sanitarians and Environmental Specialists (Chapter 345) 1955
Licensed Marital and Family Therapists (Chapter 400) 1957
Licensed Behavioral Practitioners (Chapter 403) 1961
Licensed Professional Counselors (Chapter 405) 1965
Licensed Genetic Counselors (Chapter 406) 1971
Communicable Disease and Injury Reporting (Chapter 515) 1978
Control and Treatment of Communicable Disease (Chapter 521) 1981
Dental Services (Chapter 526) 1983
Alternatives-to-Abortion Services (Chapter 527) 1986
Immunizations (Chapter 535) 1987
State Central Cancer Registry (Chapter 567) 1990
Emergency Medical Services (Chapter 641) 1991
Hospice (Chapter 661) 2004
Home Care Agencies (Chapter 662) 2005
Continuum of Care and Assisted Living (Chapter 663) 2007
Home Care Administrator Certification (Chapter 664) 2018
Hospital Standards (Chapter 667) 2018

HEALTH, Oklahoma State Department of – *continued*
Permanent Final Adoptions – continued
Uncompensated Care Fund [REVOKED] (Chapter 668) 2022
Trauma Care Assistance Revolving Fund (Chapter 669) 2025
Nursing and Specialized Facilities (Chapter 675) 2030, 2043
Nurse Aide Training and Certification (Chapter 677) 2045

HEALTH Care Authority, Oklahoma (Title 317)
Permanent Final Adoptions
Soonercare Choice (Chapter 25) 2057
Medical Providers-Fee for Service (Chapter 30) 2059, 2060, 2068, 2069, 2070, 2082, 2083, 2086, 2087, 2088, 2094, 2095, 2104, 2105, 2113
Medical Assistance for Adults and Children-Eligibility (Chapter 35) 2115, 2116, 2122, 2134, 2135, 2153
Oklahoma Employer and Employee Partnership for Insurance Coverage (Chapter 45) 2159, 2160, 2162

HISTORICAL Society, Oklahoma (Title 320)
Permanent Final Adoptions
Oklahoma Art in Public Places Division (Chapter 10) ... 2164

HUMAN Services, Department of (Title 340)
Gubernatorial Approvals
Function and Structure of the Department (Chapter 1) ... 1711
Administrative Components (Chapter 2) 1712
Adult Protective Services (Chapter 5) 1712
Temporary Assistance for Needy Families (TANF) (Chapter 10) 1712
Child Care Services (Chapter 40) 1712
Food Stamp Program (Chapter 50) 1713
Public Assistance Procedures (Chapter 65) 1713
Social Services (Chapter 70) 1713
Child Welfare (Chapter 75) 1713
Developmental Disabilities Services Division (Chapter 100) 1713
Licensing Services (Chapter 110) 1714
Permanent Final Adoptions
Function and Structure of the Department (Chapter 1) ... 2171
Administrative Components (Chapter 2) 2172, 2176
Adult Protective Services (Chapter 5) 2181
Temporary Assistance for Needy Families (TANF) (Chapter 10) 2183
Child Care Services (Chapter 40) 2184
Food Stamp Program (Chapter 50) 2187
Public Assistance Procedures (Chapter 65) 2189
Social Services (Chapter 70) 2191
Child Welfare (Chapter 75) 2196
Developmental Disabilities Services Division (Chapter 100) 2201
Licensing Services (Chapter 110) 2203

INSURANCE Department (Title 365)
Gubernatorial Approvals
Administrative Operations (Chapter 1) 1714
Life, Accident and Health (Chapter 10) 1714
Property and Casualty (Chapter 15) 1714
Licensure of Agents, Adjusters, Bail Bondsmen, Companies, Prepaid Funeral Benefits, and Viatical and Life Settlements Providers and Brokers (Chapter 25) 1715
Permanent Final Adoptions
Administrative Operations (Chapter 1) 2204
Life, Accident and Health (Chapter 10) 2206, 2207
Property and Casualty (Chapter 15) 2209
Licensure of ~~Agents~~ Producers, Adjusters, Bail Bondsmen, Companies, Prepaid Funeral Benefits, and Viatical and Life Settlements Providers and Brokers (Chapter 25) 2217

LABOR, Department of (Title 380)
Permanent Final Adoptions
Protection of Labor (Chapter 30) 2229
Elevator Safety Act (Chapter 70) 2231

LAW Enforcement Education and Training, Council on (Title 390)
Gubernatorial Approvals
Peace Officer Certification (Chapter 10) 1716
Basic Peace Officer Certification Training (Chapter 15) 1716
Police Officer Annual Firearms Requalification (Chapter 27) 1716
Regulation of Private Security Industry (Chapter 35) 1716
Facilities Management (Chapter 55) 1716

MEDICAL Licensure and Supervision, State Board of (Title 435)
Emergency Adoptions
Registered Electrologists (Chapter 40) 1727
Permanent Final Adoptions
Physicians and Surgeons (Chapter 10) 2246, 2248
Physical Therapists and Assistants (Chapter 20) 2248
Licensed Orthotists and Prosthetists and Registered Technicians and Assistants (Chapter 55) 2250

MINES, Department of (Title 460)
Gubernatorial Approvals
Non-Coal Rules and Regulations (Chapter 10) 1716
The Permanent Regulations Governing the Coal Reclamation Act of 1979 (Chapter 20) 1717
Gubernatorial Disapprovals
The Permanent Regulations Governing the Coal Reclamation Act of 1979 (Chapter 20) 1725

PERSONNEL Management, Office of (Title 530)
Permanent Final Adoptions
Merit System of Personnel Administration Rules (Chapter 10) 2252

PHARMACY, Oklahoma State Board of (Title 535)
Gubernatorial Approvals
Administrative Operations (Chapter 1) 1717
Pharmacists; Interns, Preceptors and Training Areas (Chapter 10) 1717
Emergency/Disaster Pharmacy Response (Chapter 13) 1717
Pharmacies (Chapter 15) 1717, 1718
Rules Affecting Various Registrants (Chapter 25) 1718
Permanent Final Adoptions
Administrative Operations (Chapter 1) 2254
Pharmacists; Interns, Preceptors and Training Areas (Chapter 10) 2254
Emergency / Disaster Pharmacy Response (Chapter 13) 2256
Pharmacies (Chapter 15) 2257, 2262
Rules Affecting Various Registrants (Chapter 25) 2265

PSYCHOLOGISTS, State Board of Examiners of (Title 575)
Gubernatorial Approvals
Licensure of Psychologists (Chapter 10) 1718

CENTRAL Services, Department of (Title 580)
Gubernatorial Approvals
Facilities Management (Chapter 10) 1718
Central Purchasing (Chapter 15) 1719
Construction and Properties (Chapter 20) 1719

CENTRAL Services, Department of – *continued*
Gubernatorial Approvals – continued
Plan of Operation for Oklahoma State Agency for Surplus Property (Chapter 45) 1720
Permanent Final Adoptions
Facilities Management (Chapter 10) 2266
Central Purchasing (Chapter 15) 2270
Construction and Properties (Chapter 20) 2295
Plan of Operation for Oklahoma State Agency for Surplus Property (Chapter 45) 2315

REAL Estate Appraiser Board (Title 600)
Permanent Final Adoptions
Licensure and Certification Requirements (Chapter 10) 2316
Disciplinary Procedures (Chapter 15) 2319

REAL Estate Commission, Oklahoma (Title 605)
Permanent Final Adoptions
Administrative Operations (Chapter 1) 2320
Requirements, Standards and Procedures (Chapter 10) 2321

SECURITIES, Department of (Title 660)
Gubernatorial Approvals
Organization and Procedures of Department of Securities (Chapter 2) 1720
Oklahoma Uniform Securities Act of 2004 (Chapter 11) 1720
Permanent Final Adoptions
Organization and Procedures of Department of Securities (Chapter 2) 2329
Oklahoma Uniform Securities Act of 2004 (Chapter 11) 2334

TAX Commission, Oklahoma (Title 710)
Gubernatorial Approvals
Gross Production (Chapter 45) 1720
Permanent Final Adoptions
Ad Valorem Tax (Chapter 10) 2343
Boats and Motors (Chapter 22) 2353
Income (Chapter 50) 2359
Motor Vehicles (Chapter 60) 2375
Sales and Use Tax (Chapter 65) 2397

TOURISM and Recreation Department, Oklahoma (Title 725)
Permanent Final Adoptions
Division of State Parks (Chapter 30) 2419

TREASURER, State (Title 735)
Gubernatorial Approvals
Recording and Auditing Investment Transactions (Chapter 15) 1721
Unclaimed Property (Chapter 80) 1721
Permanent Final Adoptions
Recording and Auditing Investment Transactions (Chapter 15) 2420
Unclaimed Property (Chapter 80) 2420

CAREER and Technology Education, Oklahoma Department of (Title 780)
Gubernatorial Approvals
General (Chapter 1) 1721
Administration and Supervision (Chapter 10) 1721
Technology Centers (Chapter 15) 1721
Programs and Services (Chapter 20) 1722
Permanent Final Adoptions
General (Chapter 1) 2421
Administration and Supervision (Chapter 10) 2422
Technology Centers (Chapter 15) 2426
Programs and Services (Chapter 20) 2435

WATER Resources Board, Oklahoma (Title 785)
Gubernatorial Approvals
Fees (Chapter 5) 1722
Oklahoma's Water Quality Standards (Chapter 45) 1722
Implementation of Oklahoma's Water Quality Standards (Chapter 46) 1722
Financial Assistance (Chapter 50) 1723
Permanent Final Adoptions
Fees (Chapter 5) 2441
Oklahoma's Water Quality Standards (Chapter 45) 2442
Implemenation of Oklahoma's Water Quality Standards (Chapter 46) 2445
Financial Assistance (Chapter 50) 2453

WILDLIFE Conservation, Department of (Title 800)
Permanent Final Adoptions
Sport Fishing Rules (Chapter 10) 2462, 2467
Commercial Harvest Rules; Aquatic Species (Chapter 15) 2469
Wildlife Rules (Chapter 25) 2471
Department of Wildlife Lands Management (Chapter 30) 2483

Rules Affected Index

[(E) = Emergency action]

Rule		Register Page
10:15-1-2.	[AMENDED]	1729
10:15-25-3.	[AMENDED]	1732
10:15-30-5.	[AMENDED]	1732
10:15-30-8.	[AMENDED]	1733
10:15-32-5.	[AMENDED]	1733
10:15-33-4.	[AMENDED]	1734
10:15-33-6.	[AMENDED]	1735
10:15-33-7.	[AMENDED] (E)	25
10:15-33-7.	[AMENDED]	1735
10:15-39-1.	[AMENDED]	1736
10:15-39-9.	[AMENDED]	1736
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
35:2-3-2.4.	[AMENDED]	1738
35:2-3-2.6.	[AMENDED]	1738
35:2-3-2.7.	[AMENDED]	1739
35:2-3-2.8.	[AMENDED]	1739
35:2-3-12.	[AMENDED]	1737
35:2-3-29.	[AMENDED]	1740
35:3-1-18.	[AMENDED]	1741
35:10-7-15.	[AMENDED] (E)	7
35:10-7-15.	[AMENDED]	1742
35:13-1-1.	[AMENDED]	1743
35:13-1-2.	[AMENDED]	1743
35:13-1-4.	[AMENDED]	1743
35:15-3-1.	[AMENDED]	1744
35:15-3-2.	[AMENDED]	1744
35:15-3-4.	[AMENDED]	1746
35:15-13-3.	[AMENDED]	1747
35:15-14-1.	[RESERVED] (E)	575
35:15-14-1.	[RESERVED]	1753
35:15-14-2.	[NEW] (E)	575
35:15-14-2.	[NEW]	1753
35:15-15-34.	[AMENDED]	1747
35:15-15-71.	[AMENDED]	1748
35:15-16-1.	[AMENDED]	1753
35:15-17-1.	[AMENDED]	1748
35:15-17-80.	[AMENDED]	1750
35:15-19-4.	[AMENDED]	1750
35:15-19-8.	[AMENDED]	1751
35:15-22-3.	[NEW]	1751
35:15-22-91.	[AMENDED]	1751
35:15-24-3.	[AMENDED]	1751
35:15-36-1.	[AMENDED]	1753
35:15-36-2.	[AMENDED]	1753
35:15-36-3.	[NEW]	1752
35:15-40-71.	[AMENDED]	1754
35:15-42-1.	[AMENDED] (E)	8
35:15-42-1.	[AMENDED]	1755
35:15-42-34.	[AMENDED] (E)	9
35:15-42-34.	[AMENDED]	1757
35:15-42-37.	[AMENDED] (E)	9
35:15-42-37.	[AMENDED]	1757
35:15-42-39.	[AMENDED] (E)	10
35:15-42-39.	[AMENDED]	1757
35:15-42-41.	[AMENDED] (E)	10
35:15-42-41.	[AMENDED]	1757
35:15-42-43.	[AMENDED] (E)	10
35:15-42-43.	[AMENDED]	1758
35:15-42-44.	[AMENDED] (E)	11
35:15-42-44.	[AMENDED]	1758
35:15-42-51.	[AMENDED] (E)	11
35:15-42-51.	[AMENDED]	1759
35:15-44-1.	[NEW] (E)	373
35:15-44-1.	[NEW]	1760
35:15-44-2.	[NEW] (E)	373
35:15-44-2.	[NEW]	1760
35:15-44-3.	[NEW] (E)	373
35:15-44-3.	[NEW]	1760
35:15-44-4.	[NEW] (E)	374
35:15-44-4.	[NEW]	1760
35:15-44-5.	[NEW] (E)	374
35:15-44-5.	[NEW]	1761
35:15-44-6.	[NEW] (E)	374
35:15-44-6.	[NEW]	1761
35:15-44-7.	[NEW] (E)	375
35:15-44-7.	[NEW]	1761
35:15-44-8.	[NEW] (E)	375
35:15-44-8.	[NEW]	1761
35:15-44-9.	[NEW] (E)	375
35:15-44-9.	[NEW]	1762
35:15-44-10.	[NEW] (E)	375
35:15-44-10.	[NEW]	1762
35:15-44-11.	[NEW] (E)	375
35:15-44-11.	[NEW]	1762
35:15-44-12.	[NEW] (E)	375
35:15-44-12.	[NEW]	1762
35:15-44-13.	[NEW] (E)	376
35:15-44-13.	[NEW]	1762
35:15-44-14.	[NEW] (E)	376
35:15-44-14.	[NEW]	1762
35:15-44-15.	[NEW] (E)	376
35:15-44-15.	[NEW]	1762
35:15-44-16.	[NEW] (E)	376
35:15-44-16.	[NEW]	1763
35:15-44-17.	[NEW] (E)	376
35:15-44-17.	[NEW]	1763
35:15-44-18.	[NEW] (E)	376
35:15-44-18.	[NEW]	1763
35:15-44-19.	[NEW] (E)	376
35:15-44-19.	[NEW]	1763
35:15-44-20.	[RESERVED] (E)	377
35:15-44-20.	[RESERVED]	1763
35:15-45-131.	[AMENDED] (E)	809
35:15-45-132.	[AMENDED] (E)	809
35:17-3-2.	[AMENDED]	1763
35:17-3-11.	[AMENDED]	1764
35:17-9-1.	[AMENDED]	1767
35:17-9-3.	[AMENDED]	1767
35:17-9-8.	[AMENDED]	1768
35:20-13-1.	[AMENDED]	1769
35:20-13-2.	[AMENDED]	1769
35:20-13-3.	[REVOKED]	1769
35:20-13-7.	[AMENDED]	1769

35:20-13-8. [AMENDED] 1769
35:20-13-13. [AMENDED] 1769
35:20-13-14. [AMENDED] 1769
35:20-13-15. [AMENDED] 1770
35:20-13-16. [AMENDED] 1770
35:20-13-17. [AMENDED] 1770
35:20-13-18. [AMENDED] 1771
35:20-13-19. [REVOKED] 1771
35:30-14-1. [AMENDED] 1772
35:30-14-2. [AMENDED] 1773
35:30-17-3. [AMENDED] 1773
35:30-17-3.1. [NEW] 1773
35:30-17-3.2. [NEW] 1774
35:30-17-3.3. [NEW] 1774
35:30-17-10. [AMENDED] 1775
35:30-17-13. [AMENDED] 1775
35:30-17-21. [AMENDED] 1774
35:30-17-21. [AMENDED] 1776
35:30-17-89.1. [NEW] 1777
35:30-17-105. [AMENDED] 1776
35:30-37-11. [NEW] 1778
35:37-3-1. [AMENDED] 1778
35:37-3-3. [AMENDED] 1778
35:37-5-1. [AMENDED] 1779
35:37-5-2. [AMENDED] 1779
35:37-13-2. [AMENDED] 1780
35:44-3-3. [AMENDED] 1781
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
165:5-3-1. . . . . [AMENDED] 1781
165:5-7-9. . . . . [AMENDED] 1783
165:5-15-6. . . . . [AMENDED] 1783
165:10-1-2. . . . . [AMENDED] 1785
165:10-3-1. . . . . [AMENDED] 1790
165:10-3-2. . . . . [AMENDED] 1791
165:10-3-16. . . . . [AMENDED] 1791
165:10-3-25. . . . . [AMENDED] 1794
165:10-3-27. . . . . [AMENDED] 1795
165:10-3-36. . . . . [AMENDED] 1795
165:10-3-37. . . . . [AMENDED] 1795
165:10-3-39. . . . . [AMENDED] 1796
165:10-7-16. . . . . [AMENDED] 1796
165:10-7-17. . . . . [AMENDED] 1800
165:10-7-31. . . . . [AMENDED] 1804
165:10-12-1. . . . . [NEW] (E) 183
165:10-12-1. . . . . [NEW] 1806
165:10-12-2. . . . . [NEW] (E) 183
165:10-12-2. . . . . [NEW] 1806
165:10-12-3. . . . . [NEW] (E) 184
165:10-12-3. . . . . [NEW] 1806
165:10-12-4. . . . . [NEW] (E) 184
165:10-12-4. . . . . [NEW] 1806
165:10-12-5. . . . . [NEW] (E) 184
165:10-12-5. . . . . [NEW] 1807
165:10-12-6. . . . . [NEW] (E) 184
165:10-12-6. . . . . [NEW] 1807
165:10-12-7. . . . . [NEW] (E) 184
165:10-12-7. . . . . [NEW] 1807
165:10-12-8. . . . . [NEW] (E) 185
165:10-12-8. . . . . [NEW] 1807
165:10-12-9. . . . . [NEW] (E) 185
165:10-12-9. . . . . [NEW] 1808
165:10-12-10. . . . . [NEW] (E) 185
165:10-12-10. . . . . [NEW] 1808
165:10-17-7. . . . . [AMENDED] 1808
165:10-21-21. . . . . [AMENDED] 1809
165:10-21-22. . . . . [AMENDED] 1809
165:10-21-36. . . . . [AMENDED] 1810
165:10-21-45. . . . . [AMENDED] 1811
165:10-21-55. . . . . [AMENDED] 1811
165:10-21-66. . . . . [AMENDED] 1811
165:10-21-69. . . . . [AMENDED] 1812
165:10-21-76. . . . . [AMENDED] 1812
165:10-21-78. . . . . [AMENDED] 1813
165:10-21-80. . . . . [AMENDED] 1813
165:10-21-82. . . . . [AMENDED] 1813
165:10-21-82.2. . . . . [AMENDED] 1813
165:10-21-82.3. . . . . [AMENDED] 1813
165:26-10-2. . . . . [AMENDED] 1479
165:26-12-1. . . . . [AMENDED] 1480
165:26-12-2. . . . . [AMENDED] 1480
165:30-1-2. . . . . [AMENDED] 1815
165:30-3-12. . . . . [AMENDED] 1816
165:30-3-13. . . . . [AMENDED] 1816
165:30-3-31. . . . . [AMENDED] 1817
165:30-3-76. . . . . [AMENDED] 1817
165:30-10-1. . . . . [NEW] 1819
165:30-10-2. . . . . [RESERVED] 1819
165:30-10-3. . . . . [NEW] 1819
165:30-10-4. . . . . [RESERVED] 1819
165:30-10-5. . . . . [NEW] 1819
165:30-10-6. . . . . [RESERVED] 1819
165:30-10-7. . . . . [NEW] 1819
165:30-10-11. . . . . [NEW] 1819
165:30-10-12. . . . . [RESERVED] 1819

165:30-10-13. [NEW] 1820
165:30-10-14. [RESERVED] 1820
165:30-10-15. [NEW] 1820
165:30-10-16. [RESERVED] 1820
165:30-10-17. [NEW] 1820
165:30-10-18. [RESERVED] 1820
165:30-10-19. [NEW] 1820
165:30-10-31. [AMENDED] 1820
165:30-10-41. [NEW] 1820
165:30-10-42. [RESERVED] 1820
165:30-10-43. [NEW] 1820
165:30-10-44. [RESERVED] 1820
165:30-10-45. [NEW] 1820
165:30-12-1. [AMENDED] 1821
165:30-15-4. [AMENDED] 1821
165:30-15-6. [AMENDED] 1822
165:30-17-12. [AMENDED] 1823
165:30-19-3. [AMENDED] 1824
165:30-19-5. [AMENDED] 1824
165:30-19-8. [AMENDED] 1825
165:30-19-10. [AMENDED] 1825
165:30-21-5. [AMENDED] 1825
165:30-21-7. [AMENDED] 1826
165:30-21-12. [AMENDED] 1826
165:30-23-1. [NEW] 1826
165:30-23-2. [RESERVED] 1826
165:30-23-3. [NEW] 1826
165:35-34-3. [AMENDED] 1827
165:35-37-4. [AMENDED] 1829
165:35-39-1. [NEW] 1830
165:35-39-2. [NEW] 1830
165:35-39-3. [NEW] 1831
165:35-39-4. [NEW] 1831
165:35-39-5. [NEW] 1831
165:35-39-6. [NEW] 1831
165:35-39-7. [NEW] 1831
165:35-39-8. [NEW] 1832
165:35-39-9. [NEW] 1832
165:35-39-10. [NEW] 1832
165:35-39-11. [NEW] 1832
165:35-39-12. [NEW] 1832
165:35-39-13. [NEW] 1833
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
210:10-1-9. [AMENDED] 1833
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
210:10-13-11. [AMENDED] 1835
210:10-13-18. [AMENDED] 1836
210:15-3-5.1. [AMENDED] 1839
210:15-3-5.3. [AMENDED] 1840
210:15-3-11.2. [AMENDED] 1842
210:15-3-12. [AMENDED] 1845
210:15-3-13. [AMENDED] 1847
210:15-3-14. [AMENDED] 1850
210:15-3-15. [AMENDED] 1853
210:15-3-16. [AMENDED] 1856
210:15-3-17. [AMENDED] 1861
210:15-3-18. [AMENDED] 1865
210:15-3-19. [AMENDED] 1869
210:15-3-21. [AMENDED] 1877
210:15-3-23. [AMENDED] 1885
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
210:15-13-1. [AMENDED] 1890
210:15-13-2. [AMENDED] 1890
210:15-13-3. [AMENDED] 1891
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
210:40-29-2. [AMENDED] 1892
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
215:15-3-20. [AMENDED] 1873
215:15-3-22. [AMENDED] 1881
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
265:10-3-3. . . . . [AMENDED] 1893
265:10-3-4. . . . . [AMENDED] 1893
265:25-1-3. . . . . [AMENDED] 1894
270:10-1-5. . . . . [AMENDED] 1560
270:10-1-9. . . . . [AMENDED] 1568
310:2-3-6. . . . . [AMENDED] 1897
310:2-3-7. . . . . [REVOKED] 1897
310:2-5-1. . . . . [REVOKED] 1898
310:2-5-2.1. . . . . [REVOKED] 1898
310:2-5-2.2. . . . . [REVOKED] 1898
310:2-5-2.3. . . . . [REVOKED] 1898
310:2-5-3. . . . . [REVOKED] 1898
310:2-5-4. . . . . [REVOKED] 1898
310:2-5-5. . . . . [REVOKED] 1898
310:2-5-6. . . . . [REVOKED] 1898
310:2-5-7. . . . . [REVOKED] 1898
310:2-5-8. . . . . [REVOKED] 1899
310:2-5-9. . . . . [REVOKED] 1899
310:2-5-10. . . . . [REVOKED] 1899
310:2-5-11. . . . . [REVOKED] 1899

310:2-5-12. [REVOKED] 1899
310:2-5-13. [REVOKED] 1899
310:2-5-14. [REVOKED] 1900
310:2-5-15. [REVOKED] 1900
310:2-5-16. [REVOKED] 1900
310:2-15-3. [AMENDED] 1900
310:2-21-1. [NEW] 1900
310:2-21-2. [NEW] 1900
310:2-21-3. [NEW] 1901
310:2-21-4. [NEW] 1901
310:2-21-5. [NEW] 1901
310:2-21-6. [NEW] 1901
310:2-21-7. [NEW] 1901
310:2-21-8. [NEW] 1901
310:2-21-9. [NEW] 1901
310:2-21-10. [NEW] 1901
310:2-21-11. [NEW] 1902
310:2-21-12. [NEW] 1902
310:2-21-13. [NEW] 1902
310:2-21-14. [NEW] 1902
310:2-21-15. [NEW] 1902
310:2-21-16. [NEW] 1903
310:2-21-17. [NEW] 1903
310:2-21-18. [NEW] 1903
310:2-21-19. [NEW] 1903
310:2-21-20. [NEW] 1904
310:2-21-21. [AMENDED] 1904
310:2-21-22. [NEW] 1904
310:2-21-23. [NEW] 1904
310:2-21-24. [NEW] 1904
310:2-23-1. [RESERVED] 1904
310:2-25-1. [NEW] 1904
310:2-25-2. [NEW] 1904
310:2-25-3. [NEW] 1905
310:2-25-4. [NEW] 1905
310:2-25-5. [NEW] 1905
310:105-3-3. [AMENDED] 1906
310:105-3-4. [AMENDED] 1906
310:105-5-4. [AMENDED] 1907
310:110-5-5. [AMENDED] 1907
310:110-5-7. [AMENDED] 1908
310:205-1-1. [AMENDED] (E) 585
310:205-1-1. [AMENDED] 1909
310:205-1-2. [AMENDED] (E) 585
310:205-1-2. [AMENDED] 1909
310:205-1-3. [AMENDED] (E) 588
310:205-1-3. [AMENDED] 1912
310:205-1-3. [AMENDED] 1913
310:205-1-3.1. [AMENDED] (E) 589
310:205-3-1. [AMENDED] (E) 589
310:205-3-1. [AMENDED] 1913
310:205-3-2. [AMENDED] (E) 589
310:205-3-2. [AMENDED] 1913
310:205-3-3. [AMENDED] (E) 591
310:205-3-3. [AMENDED] 1915
310:205-3-4. [AMENDED] (E) 592
310:205-3-4. [AMENDED] 1916
310:205-3-5. [AMENDED] (E) 594
310:205-3-5. [AMENDED] 1919
310:205-3-7. [AMENDED] (E) 595
310:205-3-7. [AMENDED] 1919
310:205-3-8. [NEW] (E) 596
310:205-3-8. [NEW] 1921
310:205-3-9. [NEW] (E) 597
310:205-3-9. [NEW] 1922
310:205-3-10. [NEW] (E) 598
310:205-3-10. [NEW] 1923
310:205-3-11. [NEW] (E) 598
310:205-3-11. [NEW] 1923
310:205-5-1. [AMENDED] (E) 599
310:205-5-1. [AMENDED] 1924
310:205-7-1. [AMENDED] (E) 600
310:205-7-1. [AMENDED] 1925
310:205-7-2. [AMENDED] (E) 601
310:205-7-2. [AMENDED] 1926
310:210-1-2. [AMENDED] 1926
310:210-5-1. [AMENDED] 1927
310:210-5-4. [AMENDED] 1927
310:210-7-15. [NEW] 1927
310:210-7-16. [NEW] 1927
310:210-11-13. [AMENDED] 1928
310:233-1-1. [AMENDED] (E) 187
310:233-1-1. [AMENDED] 1929
310:233-1-2. [AMENDED] (E) 187
310:233-1-2. [AMENDED] 1929
310:233-3-1. [AMENDED] (E) 189
310:233-3-1. [AMENDED] 1931
310:233-3-2. [AMENDED] (E) 189
310:233-3-2. [AMENDED] 1931
310:233-3-3. [AMENDED] (E) 189
310:233-3-3. [AMENDED] 1932
310:233-3-4. [AMENDED] (E) 190
310:233-3-4. [AMENDED] 1932
310:233-3-5. [AMENDED] (E) 190
310:233-3-5. [AMENDED] 1932
310:233-3-6. [AMENDED] (E) 190
310:233-3-6. [AMENDED] 1933
310:233-3-7. [AMENDED] (E) 191
310:233-3-7. [AMENDED] 1933
310:233-5-1. [AMENDED] (E) 191
310:233-5-1. [AMENDED] 1933
310:233-5-2. [AMENDED] (E) 192
310:233-5-2. [AMENDED] 1934
310:233-7-1. [AMENDED] (E) 192
310:233-7-1. [AMENDED] 1934
310:233-7-2. [NEW] (E) 193
310:233-7-2. [NEW] 1935
310:233-9-1. [AMENDED] (E) 193
310:233-9-1. [AMENDED] 1935
310:233-9-2. [AMENDED] (E) 193
310:233-9-2. [AMENDED] 1936
310:233-9-3. [AMENDED] (E) 195
310:233-9-3. [NEW] 1937
310:233-9-4. [NEW] (E) 195
310:233-9-4. [NEW] 1937
310:233-9-5. [NEW] (E) 195
310:233-9-5. [NEW] 1937
310:233-9-6. [NEW] (E) 195
310:233-9-6. [NEW] 1938
310:233-9-7. [NEW] (E) 195
310:233-9-7. [NEW] 1938
310:233-9-8. [NEW] (E) 196
310:233-9-8. [NEW] 1938
310:233-11-1. [AMENDED] (E) 196
310:233-11-1. [AMENDED] 1938
310:233-11-2. [AMENDED] (E) 196
310:233-11-2. [AMENDED] 1939
310:233-11-3. [AMENDED] (E) 197
310:233-11-3. [AMENDED] 1939
310:233-11-4. [AMENDED] (E) 197
310:233-11-4. [NEW] 1940
310:234-1-2. [AMENDED] (E) 1178
310:234-1-2. [AMENDED] 1940
310:234-3-2. [AMENDED] (E) 1179

310:234-3-2. . . . . [AMENDED] 1942
310:234-3-3. . . . . [AMENDED] (E) 1180
310:234-3-3. . . . . [AMENDED] 1942
310:234-3-3.1. . . . . [AMENDED] (E) 1180
310:234-3-3.1. . . . . [AMENDED] 1942
310:234-3-4. . . . . [AMENDED] (E) 1180
310:234-3-4. . . . . [AMENDED] 1942
310:234-3-5. . . . . [AMENDED] (E) 1181
310:234-3-5. . . . . [AMENDED] 1943
310:234-7-1. . . . . [AMENDED] (E) 1182
310:234-7-1. . . . . [AMENDED] 1945
310:234-7-2. . . . . [AMENDED] (E) 1182
310:234-7-2. . . . . [AMENDED] 1945
310:234-11-4. . . . . [NEW] (E) 1183
310:234-11-4. . . . . [NEW] 1945
310:265-1-2. . . . . [AMENDED] 1946
310:265-3-2. . . . . [AMENDED] 1947
310:265-3-3. . . . . [AMENDED] 1947
310:265-5-1. . . . . [AMENDED] 1947
310:265-5-2. . . . . [AMENDED] 1947
310:265-5-3. . . . . [AMENDED] 1947
310:265-5-4. . . . . [AMENDED] 1948
310:265-5-5. . . . . [AMENDED] 1949
310:265-5-6. . . . . [AMENDED] 1949
310:265-5-8. . . . . [NEW] 1949
310:276-1-3. . . . . [AMENDED] 1950
310:276-3-1. . . . . [AMENDED] 1952
310:276-9-3. . . . . [AMENDED] 1953
310:276-9-5. . . . . [AMENDED] 1953
310:276-11-1. . . . . [AMENDED] 1954
310:276-11-2. . . . . [AMENDED] 1954
310:345-1-1.1. . . . . [AMENDED] 1955
310:345-9-1. . . . . [NEW] 1956
310:345-9-2. . . . . [NEW] 1956
310:400-1-1. . . . . [AMENDED] 1957
310:400-1-3. . . . . [NEW] 1957
310:400-1-4. . . . . [NEW] 1957
310:400-5-2. . . . . [AMENDED] 1957
310:400-5-8.1. . . . . [NEW] 1958
310:400-7-2.2. . . . . [NEW] 1958
310:400-9-1. . . . . [AMENDED] 1958
310:400-9-4. . . . . [AMENDED] 1958
310:400-11-2. . . . . [AMENDED] 1958
310:400-11-5. . . . . [AMENDED] 1959
310:400-13-2. . . . . [AMENDED] 1959
310:400-15-4. . . . . [AMENDED] 1959
310:400-15-8. . . . . [AMENDED] 1960
310:403-1-2. . . . . [AMENDED] 1961
310:403-1-4. . . . . [NEW] 1962
310:403-7-2. . . . . [AMENDED] 1962
310:403-7-3. . . . . [AMENDED] 1963
310:403-7-4. . . . . [AMENDED] 1963
310:403-7-6. . . . . [AMENDED] 1964
310:403-7-7. . . . . [AMENDED] 1964
310:403-11-12. . . . . [NEW] 1965
310:403-13-1. . . . . [AMENDED] 1965
310:405-1-2.1. . . . . [AMENDED] 1966
310:405-1-2.2. . . . . [NEW] 1966
310:405-3-2. . . . . [AMENDED] 1966
310:405-3-3. . . . . [AMENDED] 1967
310:405-3-3.1. . . . . [AMENDED] 1968
310:405-3-4. . . . . [AMENDED] 1968
310:405-3-5. . . . . [AMENDED] 1968
310:405-7-9. . . . . [NEW] 1969
310:405-9-1. . . . . [AMENDED] 1969
310:405-9-2. . . . . [AMENDED] 1969
310:405-11-5. . . . . [AMENDED] 1970
310:405-17-2. . . . . [AMENDED] 1970
310:405-17-4.1. . . . . [NEW] 1971
310:405-19-1.1. . . . . [NEW] 1971
310:406-1-1. . . . . [NEW] (E) 198
310:406-1-1. . . . . [NEW] 1972
310:406-1-2. . . . . [NEW] (E) 198
310:406-1-2. . . . . [NEW] 1972
310:406-3-1. . . . . [NEW] (E) 198
310:406-3-1. . . . . [NEW] 1972
310:406-3-2. . . . . [NEW] (E) 198
310:406-3-2. . . . . [NEW] 1972
310:406-3-3. . . . . [NEW] (E) 199
310:406-3-3. . . . . [NEW] 1972
310:406-3-4. . . . . [NEW] (E) 199
310:406-3-4. . . . . [NEW] 1972
310:406-3-5. . . . . [NEW] (E) 199
310:406-3-5. . . . . [NEW] 1973
310:406-5-1. . . . . [NEW] (E) 199
310:406-5-1. . . . . [NEW] 1973
310:406-5-2. . . . . [NEW] (E) 199
310:406-5-2. . . . . [NEW] 1973
310:406-5-3. . . . . [NEW] (E) 199
310:406-5-3. . . . . [NEW] 1973
310:406-5-4. . . . . [NEW] (E) 200
310:406-5-4. . . . . [NEW] 1974
310:406-7-1. . . . . [NEW] (E) 200
310:406-7-1. . . . . [NEW] 1974
310:406-7-2. . . . . [NEW] (E) 200
310:406-7-2. . . . . [NEW] 1974
310:406-7-3. . . . . [NEW] (E) 200
310:406-7-3. . . . . [NEW] 1974
310:406-9-1. . . . . [NEW] (E) 201
310:406-9-1. . . . . [NEW] 1974
310:406-11-1. . . . . [NEW] (E) 201
310:406-11-1. . . . . [NEW] 1974
310:406-13-1. . . . . [NEW] (E) 201
310:406-13-1. . . . . [NEW] 1975
310:406-13-2. . . . . [NEW] (E) 201
310:406-13-2. . . . . [NEW] 1975
310:406-13-3. . . . . [NEW] (E) 201
310:406-13-3. . . . . [NEW] 1975
310:406-13-4. . . . . [NEW] (E) 201
310:406-13-4. . . . . [NEW] 1975
310:406-13-5. . . . . [NEW] (E) 201
310:406-13-5. . . . . [NEW] 1975
310:406-15-1. . . . . [NEW] 1975
310:406-15-2. . . . . [NEW] 1975
310:406-15-3. . . . . [NEW] 1975
310:406-15-4. . . . . [NEW] 1975
310:406-17-1. . . . . [NEW] (E) 201
310:406-17-1. . . . . [NEW] 1975
310:406-17-2. . . . . [NEW] (E) 201
310:406-17-2. . . . . [NEW] 1975
310:406-17-3. . . . . [NEW] (E) 201
310:406-17-3. . . . . [NEW] 1975
310:406-17-4. . . . . [NEW] (E) 201
310:406-17-4. . . . . [NEW] 1975
310:406-17-5. . . . . [NEW] (E) 201
310:406-17-5. . . . . [NEW] 1976
310:406-17-6. . . . . [NEW] (E) 201
310:406-17-6. . . . . [NEW] 1976
310:406-19-1. . . . . [NEW] (E) 202
310:406-19-1. . . . . [NEW] 1976
310:406-19-2. . . . . [NEW] (E) 202
310:406-19-2. . . . . [NEW] 1976
310:406-19-3. . . . . [NEW] (E) 202
310:406-19-3. . . . . [NEW] 1976

310:406-19-4. . . . . [NEW] (E) 202
310:406-19-4. . . . . [NEW] 1976
310:406-19-5. . . . . [NEW] (E) 202
310:406-19-5. . . . . [NEW] 1976
310:406-19-6. . . . . [NEW] (E) 202
310:406-19-6. . . . . [NEW] 1976
310:406-21-1. . . . . [NEW] (E) 202
310:406-21-1. . . . . [NEW] 1976
310:406-21-2. . . . . [NEW] (E) 202
310:406-21-2. . . . . [NEW] 1976
310:406-21-3. . . . . [NEW] (E) 202
310:406-21-3. . . . . [NEW] 1976
310:406-21-4. . . . . [NEW] (E) 202
310:406-21-4. . . . . [NEW] 1976
310:406-21-5. . . . . [NEW] (E) 202
310:406-21-5. . . . . [NEW] 1976
310:406-21-6. . . . . [NEW] (E) 202
310:406-21-6. . . . . [NEW] 1976
310:406-21-7. . . . . [NEW] (E) 202
310:406-21-7. . . . . [NEW] 1977
310:406-21-8. . . . . [NEW] (E) 202
310:406-21-8. . . . . [NEW] 1977
310:406-21-9. . . . . [NEW] (E) 203
310:406-21-9. . . . . [NEW] 1977
310:406-21-10. . . . . [NEW] (E) 203
310:406-21-10. . . . . [NEW] 1977
310:406-23-1. . . . . [NEW] (E) 203
310:406-23-1. . . . . [NEW] 1977
310:406-23-2. . . . . [NEW] (E) 203
310:406-23-2. . . . . [NEW] 1977
310:406-23-3. . . . . [NEW] (E) 203
310:406-23-3. . . . . [NEW] 1977
310:406-23-4. . . . . [NEW] (E) 203
310:406-23-4. . . . . [NEW] 1977
310:406-23-5. . . . . [NEW] (E) 203
310:406-23-5. . . . . [NEW] 1977
310:406-23-6. . . . . [NEW] (E) 203
310:406-23-6. . . . . [NEW] 1977
310:406-23-7. . . . . [NEW] (E) 203
310:406-23-7. . . . . [NEW] 1977
310:406-23-8. . . . . [NEW] (E) 203
310:406-23-8. . . . . [NEW] 1978
310:515-1-1.1. . . . . [NEW] 1978
310:515-1-2. . . . . [AMENDED] 1979
310:515-1-3. . . . . [AMENDED] 1979
310:515-1-4. . . . . [AMENDED] 1979
310:515-1-7. . . . . [AMENDED] 1980
310:515-1-8. . . . . [AMENDED] 1980
310:515-3-1. . . . . [NEW] 1981
310:515-3-2. . . . . [NEW] 1981
310:515-3-3. . . . . [NEW] 1981
310:515-3-4. . . . . [NEW] 1981
310:521-1-2. . . . . [AMENDED] 1982
310:521-3-2. . . . . [AMENDED] 1982
310:521-5-1. . . . . [NEW] 1982
310:521-5-2. . . . . [NEW] 1982
310:521-5-3. . . . . [NEW] 1983
310:526-1-1. . . . . [NEW] (E) 204
310:526-1-1. . . . . [NEW] 1984
310:526-1-2. . . . . [NEW] (E) 204
310:526-1-2. . . . . [NEW] 1984
310:526-1-3. . . . . [NEW] (E) 204
310:526-1-3. . . . . [NEW] 1984
310:526-3-1. . . . . [NEW] (E) 205
310:526-3-1. . . . . [NEW] 1985
310:526-3-2. . . . . [NEW] (E) 205
310:526-3-2. . . . . [NEW] 1985
310:526-3-3. . . . . [NEW] (E) 205
310:526-3-3. . . . . [NEW] 1985
310:526-3-4. . . . . [NEW] (E) 206
310:526-3-4. . . . . [NEW] 1986
310:526-3-5. . . . . [NEW] (E) 206
310:526-3-5. . . . . [NEW] 1986
310:526-3-6. . . . . [NEW] (E) 206
310:526-3-6. . . . . [NEW] 1986
310:527-1-1. . . . . [NEW] (E) 206
310:527-1-1. . . . . [NEW] 1987
310:527-1-2. . . . . [NEW] (E) 206
310:527-1-2. . . . . [NEW] 1987
310:527-1-3. . . . . [NEW] (E) 207
310:527-1-3. . . . . [NEW] 1987
310:527-1-4. . . . . [NEW] (E) 207
310:527-1-4. . . . . [NEW] 1987
310:527-1-5. . . . . [NEW] (E) 207
310:527-1-5. . . . . [NEW] 1987
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
310:535-1-2. . . . . [AMENDED] 1988
310:535-1-3. . . . . [AMENDED] 1989
310:567-3-2. . . . . [AMENDED] 1991
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
310:641-3-2. . . . . [AMENDED] 1991
310:641-3-11. . . . . [AMENDED] 1993
310:641-3-14. . . . . [AMENDED] 1993
310:641-3-15. . . . . [AMENDED] 1994
310:641-3-20. . . . . [AMENDED] 1994
310:641-3-38. . . . . [AMENDED] 1995
310:641-3-48. . . . . [AMENDED] 1995
310:641-3-48.1. . . . . [AMENDED] 1995
310:641-3-48.2. . . . . [AMENDED] 1996
310:641-3-50. . . . . [AMENDED] 1996
310:641-3-80. . . . . [AMENDED] 1997
310:641-3-91. . . . . [AMENDED] 1997
310:641-3-120. . . . . [AMENDED] 1997
310:641-3-150. . . . . [AMENDED] 1998
310:641-3-160. . . . . [AMENDED] 1998
310:641-3-190. . . . . [AMENDED] 1999
310:641-5-11. . . . . [AMENDED] 2000
310:641-5-50. . . . . [AMENDED] 2001
310:641-5-61. . . . . [AMENDED] 2002
310:641-5-70. . . . . [REVOKED] 2003
310:641-7-15. . . . . [AMENDED] 2003
310:641-7-20. . . . . [AMENDED] 2004

310:661-2-6. . . . . [AMENDED] 2005
310:661-6-4. . . . . [AMENDED] 2005
310:662-1-2. . . . . [AMENDED] 2006
310:663-1-2. . . . . [AMENDED] 2008
310:663-1-4. . . . . [NEW] 2009
310:663-3-5. . . . . [AMENDED] 2009
310:663-3-8. . . . . [NEW] 2010
310:663-7-2. . . . . [AMENDED] 2011
310:663-9-6. . . . . [AMENDED] 2011
310:663-13-1. . . . . [AMENDED] 2011
310:663-15-1. . . . . [AMENDED] 2011
310:663-15-2. . . . . [AMENDED] 2011
310:663-15-3. . . . . [NEW] 2012
310:663-19-1. . . . . [AMENDED] 2012
310:663-19-2. . . . . [AMENDED] 2013
310:663-19-3. . . . . [NEW] 2013
310:663-25-3. . . . . [AMENDED] 2014
310:663-25-4. . . . . [AMENDED] 2014
310:663-29-2. . . . . [AMENDED] 2015
310:663, App. B. . . . . [AMENDED] 2016
310:664-5-2. . . . . [AMENDED] 2018
310:667-1-3. . . . . [AMENDED] 2019
310:667-15-6. . . . . [AMENDED] (E) 1190
310:667-17-4. . . . . [AMENDED] 2020
310:667-17-5. . . . . [AMENDED] 2021
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
310:667-33-2. . . . . [AMENDED] 2021
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
310:668-1-1. . . . . [REVOKED] 2022
310:668-1-2. . . . . [REVOKED] 2022
310:668-1-3. . . . . [REVOKED] 2023
310:668-3-1. . . . . [REVOKED] 2023
310:668-3-2. . . . . [REVOKED] 2023
310:668-3-3. . . . . [REVOKED] 2023
310:668-3-4. . . . . [REVOKED] 2024
310:668-5-1. . . . . [REVOKED] 2024
310:668-5-2. . . . . [REVOKED] 2024
310:668-5-3. . . . . [REVOKED] 2024
310:668-5-4. . . . . [REVOKED] 2024
310:668-7-1. . . . . [REVOKED] 2024
310:668-7-2. . . . . [REVOKED] 2024
310:668-9-1. . . . . [REVOKED] 2025
310:668-9-2. . . . . [REVOKED] 2025
310:669-1-2. . . . . [AMENDED] 2026
310:669-5-1. . . . . [AMENDED] 2026
310:669-5-2. . . . . [AMENDED] 2028
310:669-5-4. . . . . [AMENDED] 2030
310:669-7-1. . . . . [AMENDED] 2030
310:675-1-2. . . . . [AMENDED] 2031
310:675-3-1.1. . . . . [AMENDED] 2043
310:675-3-4.1. . . . . [AMENDED] 2044
310:675-3-5.1. . . . . [AMENDED] 2044
310:675-3-8. . . . . [AMENDED] 2045
310:675-7-5.1. . . . . [AMENDED] 2033
310:675-7-12.1. . . . . [AMENDED] 2034
310:675-7-17.1. . . . . [AMENDED] 2034
310:675-7-18.1. . . . . [AMENDED] 2035
310:675-7-21. . . . . [NEW] 2035
310:675-9-13.1. . . . . [AMENDED] 2036
310:675-13-7. . . . . [AMENDED] 2036
310:675-21-1. . . . . [NEW] 2037
310:675-21-2. . . . . [NEW] 2037
310:675-21-3. . . . . [NEW] 2037
310:675-21-4. . . . . [NEW] 2037
310:675-21-5. . . . . [NEW] 2037
310:675, App. B. . . . . [REVOKED] 2038
310:675, App. B. . . . . [NEW] 2038
310:677-1-3. . . . . [AMENDED] 2046
310:677-1-4. . . . . [AMENDED] 2048
310:677-1-5. . . . . [REVOKED] 2048
310:677-3-2. . . . . [AMENDED] 2048
310:677-3-3. . . . . [AMENDED] 2049
310:677-3-4. . . . . [AMENDED] 2050
310:677-3-5. . . . . [AMENDED] 2050
310:677-5-2. . . . . [AMENDED] 2051
310:677-5-5. . . . . [NEW] 2051
310:677-9-3. . . . . [AMENDED] 2052
310:677-13-1. . . . . [AMENDED] 2052
310:677-13-4. . . . . [AMENDED] 2052
310:677-13-5. . . . . [AMENDED] 2055
310:677-13-8. . . . . [AMENDED] 2055
310:677-13-9. . . . . [AMENDED] 2056
310:677-13-12. . . . . [NEW] 2056
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
317:25-7-2. . . . . [AMENDED] 2057
317:25-7-5. . . . . [AMENDED] 2058
317:25-7-10. . . . . [AMENDED] (E) 74
317:25-7-10. . . . . [AMENDED] 2059
317:25-7-13. . . . . [AMENDED] (E) 76
317:25-7-13. . . . . [AMENDED] 879
317:30-3-5.1. . . . . [NEW] 2060
317:30-3-40. . . . . [AMENDED] 880
317:30-3-57. . . . . [AMENDED] (E) 303
317:30-3-57. . . . . [AMENDED] (E) 655
317:30-3-57. . . . . [AMENDED] 2061
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
317:30-3-85. . . . . [AMENDED] 2068
317:30-5-2. . . . . [AMENDED] (E) 144
317:30-5-2. . . . . [AMENDED] (E) 312
317:30-5-2. . . . . [AMENDED] (E) 661

317:30-5-2. . . . . [AMENDED] 2063
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
317:30-5-23. . . . . [AMENDED] 2069
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
317:30-5-41.2. . . . . [NEW] 2068
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
317:30-5-96.2. . . . . [AMENDED] 2114
317:30-5-133.1. . . . . [AMENDED] 2095
317:30-5-134. . . . . [AMENDED] (E) 676
317:30-5-134. . . . . [AMENDED] 2104
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
317:30-5-175. . . . . [REVOKED] 2070
317:30-5-176. . . . . [REVOKED] 2070
317:30-5-178. . . . . [REVOKED] 2072
317:30-5-180. . . . . [NEW] (E) 677
317:30-5-180. . . . . [NEW] 2082
317:30-5-180.1. . . . . [NEW] (E) 677
317:30-5-180.1. . . . . [NEW] 2082
317:30-5-180.2. . . . . [NEW] (E) 677
317:30-5-180.2. . . . . [NEW] 2083
317:30-5-180.3. . . . . [NEW] (E) 677
317:30-5-180.3. . . . . [NEW] 2083
317:30-5-180.4. . . . . [NEW] (E) 677
317:30-5-180.4. . . . . [NEW] 2083
317:30-5-180.5. . . . . [NEW] (E) 678
317:30-5-180.5. . . . . [NEW] 2083
317:30-5-185. . . . . [REVOKED] 2072
317:30-5-186. . . . . [REVOKED] 2073
317:30-5-187. . . . . [REVOKED] 2073
317:30-5-188. . . . . [REVOKED] 2073
317:30-5-190. . . . . [REVOKED] 2074
317:30-5-191. . . . . [REVOKED] 2075
317:30-5-192. . . . . [REVOKED] 2075
317:30-5-193. . . . . [REVOKED] 2075
317:30-5-195. . . . . [REVOKED] 2076
317:30-5-196. . . . . [REVOKED] 2076
317:30-5-197. . . . . [REVOKED] 2076
317:30-5-198. . . . . [REVOKED] 2076
317:30-5-199. . . . . [REVOKED] 2077
317:30-5-201. . . . . [REVOKED] 2077
317:30-5-211. . . . . [AMENDED] (E) 658
317:30-5-211. . . . . [AMENDED] 2084
317:30-5-226. . . . . [AMENDED] (E) 307
317:30-5-226. . . . . [AMENDED] 898
317:30-5-321. . . . . [AMENDED] 2087
317:30-5-322. . . . . [REVOKED] 2087

317:30-5-323. . . . . [REVOKED] 2087
317:30-5-326. . . . . [NEW] 2098
317:30-5-326.1. . . . . [NEW] 2098
317:30-5-327. . . . . [AMENDED] 2098
317:30-5-327.1. . . . . [NEW] 2101
317:30-5-327.2. . . . . [NEW] 2101
317:30-5-327.3. . . . . [NEW] 2102
317:30-5-327.4. . . . . [NEW] 2102
317:30-5-327.5. . . . . [NEW] 2103
317:30-5-327.6. . . . . [NEW] 2103
317:30-5-327.7. . . . . [NEW] 2103
317:30-5-327.8. . . . . [NEW] 2103
317:30-5-327.9. . . . . [NEW] 2103
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
317:30-5-375. . . . . [AMENDED] 2088
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
317:30-5-660. . . . . [AMENDED] 2106
317:30-5-660.1. . . . . [NEW] 2106
317:30-5-660.2. . . . . [NEW] 2106
317:30-5-660.3. . . . . [NEW] 2106
317:30-5-660.4. . . . . [NEW] 2107
317:30-5-660.5. . . . . [NEW] 2107
317:30-5-661. . . . . [AMENDED] 2107
317:30-5-661.1. . . . . [NEW] 2108
317:30-5-661.2. . . . . [NEW] 2108
317:30-5-661.3. . . . . [NEW] 2108
317:30-5-661.4. . . . . [NEW] 2108
317:30-5-661.5. . . . . [NEW] 2108
317:30-5-661.6. . . . . [NEW] 2109
317:30-5-661.7. . . . . [NEW] 2109
317:30-5-662. . . . . [REVOKED] 2109
317:30-5-663. . . . . [REVOKED] 2109
317:30-5-664. . . . . [REVOKED] 2110
317:30-5-664.1. . . . . [NEW] 2110
317:30-5-664.2. . . . . [NEW] 2110
317:30-5-664.3. . . . . [NEW] 2110
317:30-5-664.4. . . . . [NEW] 2110
317:30-5-664.5. . . . . [NEW] 2111
317:30-5-664.6. . . . . [NEW] 2111
317:30-5-664.7. . . . . [NEW] 2112
317:30-5-664.8. . . . . [NEW] 2112
317:30-5-664.9. . . . . [NEW] 2112
317:30-5-664.10. . . . . [NEW] 2112
317:30-5-664.11. . . . . [NEW] 2112
317:30-5-664.12. . . . . [NEW] 2113
317:30-5-664.13. . . . . [NEW] 2113
317:30-5-664.14. . . . . [NEW] 2113
317:30-5-664.15. . . . . [NEW] 2113
317:30-5-676. . . . . [AMENDED] (E) 83
317:30-5-676. . . . . [AMENDED] 932
317:30-5-695. . . . . [AMENDED] (E) 665
317:30-5-695. . . . . [AMENDED] 2088
317:30-5-696. . . . . [AMENDED] (E) 666
317:30-5-696. . . . . [AMENDED] 2089
317:30-5-696.1. . . . . [NEW] (E) 669
317:30-5-696.1. . . . . [NEW] 2092
317:30-5-698. . . . . [AMENDED] (E) 669
317:30-5-698. . . . . [AMENDED] 2092
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

317:30-5-910. . . . . [REVOKED] 2077
317:30-5-911. . . . . [REVOKED] 2077
317:30-5-913. . . . . [REVOKED] 2078
317:30-5-920. . . . . [REVOKED] 2078
317:30-5-921. . . . . [REVOKED] 2078
317:30-5-923. . . . . [REVOKED] 2078
317:30-5-924. . . . . [REVOKED] 2079
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
317:30-5-1076. . . . . [AMENDED] 2094
317:30-5-1150. . . . . [NEW] 2079
317:30-5-1151. . . . . [NEW] 2079
317:30-5-1152. . . . . [NEW] 2079
317:30-5-1153. . . . . [NEW] 2079
317:30-5-1154. . . . . [NEW] 2079
317:30-5-1155. . . . . [NEW] 2079
317:30-5-1156. . . . . [NEW] 2079
317:30-5-1157. . . . . [NEW] 2079
317:30-5-1158. . . . . [NEW] 2080
317:30-5-1159. . . . . [NEW] 2080
317:30-5-1160. . . . . [NEW] 2081
317:30-5-1161. . . . . [NEW] 2081
317:35-3-2. . . . . [AMENDED] (E) 94
317:35-3-2. . . . . [AMENDED] 943
317:35-3-2. . . . . [AMENDED] 2115
317:35-5-25. . . . . [AMENDED] 2117
317:35-5-41. . . . . [AMENDED] (E) 681
317:35-5-41. . . . . [AMENDED] 2122
317:35-7-41. . . . . [AMENDED] 2120
317:35-7-48. . . . . [AMENDED] (E) 693
317:35-7-48. . . . . [AMENDED] 2135
317:35-9-15. . . . . [AMENDED] 2136
317:35-9-67. . . . . [AMENDED] 2138
317:35-10-26. . . . . [AMENDED] (E) 694
317:35-10-26. . . . . [AMENDED] 2153
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
317:35-17-10. . . . . [AMENDED] 2142
317:35-19-4. . . . . [AMENDED] 2146
317:35-19-20. . . . . [AMENDED] 2148
317:35-21-1. . . . . [AMENDED] 2121
317:35-21-7. . . . . [AMENDED] 2121
317:35-21-11. . . . . [AMENDED] 2121
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
317:45-7-1. . . . . [AMENDED] 2159
317:45-7-2. . . . . [AMENDED] (E) 104
317:45-7-2. . . . . [AMENDED] (E) 701
317:45-7-2. . . . . [AMENDED] 2160
317:45-7-8. . . . . [AMENDED] (E) 104
317:45-7-8. . . . . [AMENDED] (E) 701
317:45-7-8. . . . . [AMENDED] 2160
317:45-9-1. . . . . [AMENDED] (E) 104
317:45-9-1. . . . . [AMENDED] (E) 703
317:45-9-1. . . . . [AMENDED] 2160
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
317:45-11-10. . . . . [NEW] 2162
317:45-11-11. . . . . [NEW] (E) 107
317:45-11-11. . . . . [NEW] (E) 702
317:45-11-11. . . . . [NEW] (E) 813
317:45-11-11. . . . . [NEW] 2164
317:45-11-20. . . . . [NEW] (E) 107
317:45-11-20. . . . . [NEW] (E) 704
317:45-11-20. . . . . [NEW] 2161
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
320:10-1-1. . . . . [NEW] 2165
320:10-1-2. . . . . [NEW] (E) 336
320:10-1-2. . . . . [NEW] 2165
320:10-3-1. . . . . [NEW] (E) 337
320:10-3-1. . . . . [NEW] 2167
320:10-3-2. . . . . [NEW] (E) 337
320:10-3-2. . . . . [NEW] 2167
320:10-3-3. . . . . [NEW] (E) 337
320:10-3-3. . . . . [NEW] 2167
320:10-3-4. . . . . [NEW] (E) 337
320:10-3-4. . . . . [NEW] 2167
320:10-3-5. . . . . [NEW] (E) 338

320:10-3-5. [NEW] 2167
320:10-3-6. [NEW] (E) 338
320:10-3-6. [NEW] 2167
320:10-3-7. [NEW] (E) 338
320:10-3-7. [NEW] 2167
320:10-3-8. [NEW] (E) 338
320:10-3-8. [NEW] 2167
320:10-3-9. [NEW] (E) 338
320:10-3-9. [NEW] 2167
320:10-3-10. [NEW] (E) 338
320:10-3-10. [NEW] 2168
320:10-3-11. [NEW] (E) 338
320:10-3-11. [NEW] 2168
320:10-3-12. [NEW] (E) 338
320:10-3-12. [NEW] 2168
320:10-3-13. [NEW] (E) 339
320:10-3-13. [NEW] 2168
320:10-3-14. [NEW] (E) 339
320:10-3-14. [NEW] 2168
320:10-3-15. [NEW] (E) 339
320:10-3-15. [NEW] 2168
320:10-3-16. [NEW] (E) 339
320:10-3-16. [NEW] 2169
320:10-3-17. [NEW] (E) 339
320:10-3-17. [NEW] 2169
320:10-3-18. [NEW] (E) 339
320:10-3-18. [NEW] 2169
320:10-3-19. [NEW] (E) 340
320:10-3-19. [NEW] 2169
320:10-3-20. [NEW] (E) 340
320:10-3-20. [NEW] 2169
320:10-3-21. [NEW] (E) 340
320:10-3-21. [NEW] 2169
320:10-5-1. [NEW] (E) 340
320:10-5-1. [NEW] 2169
320:10-5-2. [NEW] (E) 340
320:10-5-2. [NEW] 2169
320:10-5-3. [NEW] (E) 340
320:10-5-3. [NEW] 2170
320:10-5-4. [NEW] (E) 340
320:10-5-4. [NEW] 2170
320:10-5-5. [NEW] (E) 340
320:10-5-5. [NEW] 2170
320:10-5-6. [NEW] (E) 340
320:10-5-6. [NEW] 2170
320:10-5-7. [NEW] (E) 340
320:10-5-7. [NEW] 2170
320:10-7-1. [NEW] (E) 340
320:10-7-1. [NEW] 2170
320:10-7-2. [NEW] (E) 341
320:10-7-2. [NEW] 2170
320:10-7-3. [NEW] (E) 341
320:10-7-3. [NEW] 2170
320:10-7-4. [NEW] (E) 341
320:10-7-4. [NEW] 2170
320:10-7-5. [NEW] (E) 341
320:10-7-5. [NEW] 2171
320:10-7-6. [NEW] (E) 341
320:10-7-6. [NEW] 2171
320:10-7-7. [NEW] (E) 341
320:10-7-7. [NEW] 2171
320:10-7-8. [NEW] (E) 341
320:10-7-8. [NEW] 2171
320:10-7-9. [NEW] (E) 341
320:10-7-9. [NEW] 2171
320:10-7-10. [NEW] (E) 342
320:10-7-10. [NEW] 2171
320:10-9-1. [NEW] (E) 342
320:10-9-1. [NEW] 2171
320:10-9-2. [NEW] (E) 342
320:10-9-2. [NEW] 2171
320:10-9-3. [NEW] (E) 342
320:10-9-3. [NEW] 2171
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
340:1-11-21. [AMENDED] 2172
340:1-11-22. [AMENDED] 2172
340:2-1-32. [AMENDED] (E) 342
340:2-1-32. [AMENDED] 977
340:2-1-42. [AMENDED] 2173
340:2-1-43. [AMENDED] 2174
340:2-1-45. [REVOKED] 2174
340:2-1-47. [REVOKED] 2175
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
340:2-15-42. [AMENDED] 2175
340:2-28-1. [AMENDED] 2176
340:2-28-2. [AMENDED] 2177
340:2-28-4.2. [AMENDED] 2177
340:2-28-4.3. [AMENDED] 2177
340:2-28-4.4. [NEW] 2178
340:2-28-16.1. [AMENDED] 2178
340:2-28-16.2. [AMENDED] 2178
340:2-28-17.2. [AMENDED] 2178
340:2-28-19. [AMENDED] 2180
340:2-28-20. [AMENDED] 2180
340:2-28-24. [AMENDED] 2180
340:2-28-25. [AMENDED] 2181
340:2-28-26. [AMENDED] 2181
340:2-28-29. [AMENDED] 2181
340:2-28-30. [AMENDED] 2181
340:2-28-31. [AMENDED] 2181
340:2-28-33. [AMENDED] 2181

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
340:5-5-4. . . . . [AMENDED] 2182
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
340:10-3-32. . . . . [AMENDED] 2184
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
340:40-7-11. . . . . [AMENDED] 2185
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
340:50-7-30. . . . . [AMENDED] 2187
340:50-9-5. . . . . [AMENDED] 1040
340:65-3-2. . . . . [AMENDED] 2190
340:65-3-4. . . . . [AMENDED] 1042
340:65-3-8. . . . . [AMENDED] 1043
340:65-5-6. . . . . [AMENDED] 1044
340:70-8-1. . . . . [AMENDED] 2191
340:70-9-1. . . . . [REVOKED] 2193
340:70-9-2. . . . . [AMENDED] 2193
340:70-9-5. . . . . [AMENDED] 2193
340:70-9-7. . . . . [REVOKED] 2194
340:70-9-9. . . . . [AMENDED] 2195
340:70-9-10. . . . . [REVOKED] 2195
340:70-9-15. . . . . [REVOKED] 2195
340:70-9-17. . . . . [AMENDED] 2195
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
340:75-3-8.4. . . . . [AMENDED] 2197
340:75-3-8.5. . . . . [AMENDED] 2198
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
340:75-4-14. . . . . [AMENDED] 2199
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
340:75-13-28. . . . . [AMENDED] 2199
340:75-13-29. . . . . [AMENDED] 2200
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. . . . . [AMENDED] 2202
340:100-5-22.6. . . . . [AMENDED] 1068
340:100-5-25. . . . . [REVOKED] 2203
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
340:110-3-130. . . . . [REVOKED] 2203
340:110-3-131. . . . . [REVOKED] 2203
340:110-3-132. . . . . [REVOKED] 2203
340:110-3-133. . . . . [REVOKED] 2203
340:110-3-134. . . . . [REVOKED] 2203
340:110-3-135. . . . . [REVOKED] 2203
340:110-3-136. . . . . [REVOKED] 2203
340:110-3-137. . . . . [REVOKED] 2203
340:110-3-138. . . . . [REVOKED] 2203
340:110-3-139. . . . . [REVOKED] 2203
340:110-3-140. . . . . [REVOKED] 2203
340:110-3-141. . . . . [REVOKED] 2203
340:110-3-142. . . . . [REVOKED] 2203
340:110-3-143. . . . . [REVOKED] 2203
340:110-3-144. . . . . [REVOKED] 2203
340:110-3-180. . . . . [REVOKED] 2203
340:110-3-181. . . . . [REVOKED] 2203
340:110-3-182. . . . . [REVOKED] 2203
340:110-3-183. . . . . [REVOKED] 2203
340:110-3-184. . . . . [REVOKED] 2203
340:110-3-185. . . . . [REVOKED] 2203
340:110-3-186. . . . . [REVOKED] 2203
340:110-3-187. . . . . [REVOKED] 2203
340:110-3-188. . . . . [REVOKED] 2203
340:110-3-189. . . . . [REVOKED] 2203
340:110-3-190. . . . . [REVOKED] 2203
340:110-3-191. . . . . [REVOKED] 2203
340:110-3-192. . . . . [REVOKED] 2203
340:110-3-193. . . . . [REVOKED] 2203
340:110-3-193.1. . . . . [REVOKED] 2203
340:110-3-194. . . . . [REVOKED] 2203
340:110-3-195. . . . . [REVOKED] 2203
340:110-5-80. . . . . [REVOKED] 2203
340:110-5-81. . . . . [REVOKED] 2203
340:110-5-82. . . . . [REVOKED] 2203
340:110-5-83. . . . . [REVOKED] 2203
340:110-5-84. . . . . [REVOKED] 2203
340:110-5-85. . . . . [REVOKED] 2203
340:110-5-86. . . . . [REVOKED] 2203
340:110-5-87. . . . . [REVOKED] 2203
340:110-5-88. . . . . [REVOKED] 2203
340:110-5-89. . . . . [REVOKED] 2203
340:110-5-90. . . . . [REVOKED] 2203
340:110-5-91. . . . . [REVOKED] 2203
340:110-5-92. . . . . [REVOKED] 2203
340:110-5-93. . . . . [REVOKED] 2203
340:110-5-94. . . . . [REVOKED] 2203
340:110-5-95. . . . . [REVOKED] 2203
340:110-5-96. . . . . [REVOKED] 2203
340:110-5-97. . . . . [REVOKED] 2203
340:110-5-98. . . . . [REVOKED] 2203
340:110-5-99. . . . . [REVOKED] 2203
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
365:1-9-5. . . . . [AMENDED] 2204
365:1-9-11. . . . . [AMENDED] 2205
365:1-9-12.1. . . . . [REVOKED] 2205
365:1-9-14. . . . . [AMENDED] 2205
365:1-9-15.1. . . . . [AMENDED] 2206
365:10-5-101. . . . . [AMENDED] 2206
365:10-23-3. . . . . [NEW] 2207
365:10-23-4. . . . . [NEW] 2207
365:10-25-1. . . . . [NEW] 2207
365:10-25-2. . . . . [NEW] 2207
365:10-25-3. . . . . [NEW] 2207
365:10-25-4. . . . . [NEW] 2208
365:10-25-5. . . . . [NEW] 2208
365:10-25-6. . . . . [NEW] 2209
365:10-25-7. . . . . [NEW] 2209
365:15-1-3. . . . . [AMENDED] 2210
365:15-1-3.1. . . . . [AMENDED] 2212
365:15-1-18. . . . . [AMENDED] 2212
365:15-1-20. . . . . [AMENDED] 2212
365:15-1-21. . . . . [NEW] 2212
365:15-1-22. . . . . [NEW] 2212
365:15-1-23. . . . . [NEW] 2213
365:15-7-3. . . . . [AMENDED] 2213
365:15-7-7. . . . . [REVOKED] 2214
365:15-7-9. . . . . [AMENDED] 2214
365:15-7-13. . . . . [REVOKED] 2214
365:15-7-15. . . . . [REVOKED] 2214
365:15-7-20. . . . . [REVOKED] 2214
365:15-7-24. . . . . [AMENDED] 2214
365:15-7-26. . . . . [AMENDED] 2214
365:15-7-27. . . . . [AMENDED] 2214
365:15-7-30. . . . . [NEW] 2214
365:15-7-31. . . . . [NEW] 2214
365:15-9-10. . . . . [NEW] 2215
365:15-9-11. . . . . [NEW] 2216
365:15-9-12. . . . . [NEW] 2216
365:15-9-13. . . . . [NEW] 2216
365:15-9-14. . . . . [NEW] 2216
365:15-9-15. . . . . [NEW] 2216
365:15-9-16. . . . . [NEW] 2216
365:15-9-17. . . . . [NEW] 2217
365:15-9-18. . . . . [NEW] 2217
365:15-9-19. . . . . [NEW] 2217
365:15-9-20. . . . . [NEW] 2217
365:15-9-21. . . . . [NEW] 2217
365:25-3-1. . . . . [AMENDED] 2218
365:25-3-3. . . . . [AMENDED] 2221
365:25-3-4. . . . . [AMENDED] 2221
365:25-3-6. . . . . [REVOKED] 2222
365:25-3-8. . . . . [AMENDED] 2222
365:25-3-9. . . . . [AMENDED] 2222
365:25-3-10. . . . . [AMENDED] 2223
365:25-3-11. . . . . [REVOKED] 2223
365:25-3-12. . . . . [AMENDED] 2223
365:25-3-13. . . . . [AMENDED] 2224
365:25-3-14. . . . . [AMENDED] 2226
365:25-3-16. . . . . [AMENDED] 2229
365:25-5-40. . . . . [AMENDED] 2229
365:25-17-8. . . . . [AMENDED] 2229
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
380:30-1-2. . . . . [AMENDED] 2230
380:30-3-2. . . . . [AMENDED] 2231
380:70-1-1. . . . . [NEW] (E) 30
380:70-1-1. . . . . [NEW] 2232
380:70-1-2. . . . . [NEW] (E) 30
380:70-1-2. . . . . [NEW] 2232
380:70-3-1. . . . . [NEW] (E) 31
380:70-3-1. . . . . [NEW] 2233
380:70-3-2. . . . . [NEW] (E) 32
380:70-3-2. . . . . [NEW] 2234
380:70-3-3. . . . . [NEW] (E) 32
380:70-3-3. . . . . [NEW] 2234
380:70-3-4. . . . . [NEW] (E) 32
380:70-3-4. . . . . [NEW] 2234
380:70-3-5. . . . . [NEW] (E) 32
380:70-3-5. . . . . [NEW] 2234
380:70-3-6. . . . . [NEW] (E) 33
380:70-3-6. . . . . [NEW] 2235
380:70-3-7. . . . . [NEW] (E) 33
380:70-3-7. . . . . [NEW] 2235
380:70-3-8. . . . . [NEW] (E) 33
380:70-3-8. . . . . [NEW] 2235
380:70-3-9. . . . . [NEW] (E) 33
380:70-3-9. . . . . [NEW] 2236
380:70-3-10. . . . . [NEW] (E) 34
380:70-3-10. . . . . [NEW] 2236
380:70-3-11. . . . . [NEW] (E) 34
380:70-3-11. . . . . [NEW] 2236
380:70-3-12. . . . . [NEW] (E) 34
380:70-3-12. . . . . [NEW] 2236
380:70-3-13. . . . . [NEW] (E) 34
380:70-3-13. . . . . [NEW] 2237
380:70-3-14. . . . . [NEW] (E) 35
380:70-3-14. . . . . [NEW] 2237
380:70-3-15. . . . . [NEW] (E) 35
380:70-3-15. . . . . [NEW] 2237
380:70-5-1. . . . . [NEW] (E) 35
380:70-5-1. . . . . [NEW] 2237
380:70-5-2. . . . . [NEW] (E) 36
380:70-5-2. . . . . [NEW] 2238
380:70-5-3. . . . . [NEW] (E) 36
380:70-5-3. . . . . [NEW] 2239
380:70-5-4. . . . . [NEW] (E) 37
380:70-5-4. . . . . [NEW] 2239
380:70-5-5. . . . . [NEW] (E) 37
380:70-5-5. . . . . [NEW] 2240
380:70-5-6. . . . . [NEW] (E) 37
380:70-5-6. . . . . [NEW] 2240
380:70-5-7. . . . . [NEW] (E) 37

380:70-5-7. . . . . [NEW] 2240
380:70-5-8. . . . . [NEW] (E) 38
380:70-5-8. . . . . [NEW] 2240
380:70-5-9. . . . . [NEW] (E) 38
380:70-5-9. . . . . [NEW] 2240
380:70-7-1. . . . . [NEW] (E) 38
380:70-7-1. . . . . [NEW] 2240
380:70-7-2. . . . . [NEW] (E) 38
380:70-7-2. . . . . [NEW] 2240
380:70-7-3. . . . . [NEW] (E) 39
380:70-7-3. . . . . [NEW] 2241
380:70-9-1. . . . . [NEW] (E) 39
380:70-9-1. . . . . [NEW] 2241
380:70-9-2. . . . . [NEW] (E) 39
380:70-9-2. . . . . [NEW] 2241
380:70-9-3. . . . . [NEW] (E) 40
380:70-9-3. . . . . [NEW] 2242
380:70-9-4. . . . . [NEW] (E) 40
380:70-9-4. . . . . [NEW] 2242
380:70-11-1. . . . . [NEW] (E) 40
380:70-11-1. . . . . [NEW] 2242
380:70-11-2. . . . . [NEW] (E) 40
380:70-11-2. . . . . [NEW] 2242
380:70-11-3. . . . . [NEW] (E) 40
380:70-11-3. . . . . [NEW] 2243
380:70-11-4. . . . . [NEW] (E) 40
380:70-11-4. . . . . [NEW] 2243
380:70-11-5. . . . . [NEW] (E) 41
380:70-11-5. . . . . [NEW] 2243
380:70-11-6. . . . . [NEW] (E) 41
380:70-11-6. . . . . [NEW] 2243
380:70-11-7. . . . . [NEW] (E) 41
380:70-11-7. . . . . [NEW] 2243
380:70-11-8. . . . . [NEW] (E) 41
380:70-11-8. . . . . [NEW] 2243
380:70-11-9. . . . . [NEW] (E) 41
380:70-11-9. . . . . [NEW] 2244
380:70-11-10. . . . . [NEW] (E) 42
380:70-11-10. . . . . [NEW] 2244
380:70-11-11. . . . . [NEW] (E) 42
380:70-11-11. . . . . [NEW] 2244
380:70-11-12. . . . . [NEW] (E) 42
380:70-11-12. . . . . [NEW] 2244
380:70-11-13. . . . . [NEW] (E) 42
380:70-11-13. . . . . [NEW] 2244
380:70-11-14. . . . . [NEW] (E) 42
380:70-11-14. . . . . [NEW] 2244
380:70, App. A. . . . . [NEW] (E) 43
380:70, App. A. . . . . [NEW] 2245
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
435:10-1-4. . . . . [AMENDED] 2246
435:10-4-6. . . . . [AMENDED] (E) 213
435:10-4-6. . . . . [AMENDED] 2247
435:10-4-7. . . . . [AMENDED] (E) 214
435:10-4-7. . . . . [AMENDED] 2247
435:10-21-1. . . . . [NEW] (E) 214
435:10-21-1. . . . . [NEW] 2248
435:15-3-1. . . . . [AMENDED] 1103
435:15-3-18. . . . . [AMENDED] 1103
435:15-11-1. . . . . [AMENDED] 1103
435:20-3-1.1. . . . . [AMENDED] 2249
435:30-1-4. . . . . [AMENDED] 1104
435:30-1-5. . . . . [AMENDED] 1105
435:40-1-6. . . . . [AMENDED] (E) 1727
435:40-1-7. . . . . [AMENDED] (E) 1728
435:45-5-1. . . . . [AMENDED] 1107
435:55-5-2. . . . . [AMENDED] 2251
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
530:10, App. A. [REVOKED] 2253
530:10, App. A. [NEW] 2253
530:15-3-15. [NEW] 1135
535:1-5-5.1. [AMENDED] 2254
535:1-7-4. [AMENDED] 2254
535:10-5-4. [AMENDED] 2255
535:10-7-6. [AMENDED] 2255
535:10-7-8. [AMENDED] 2255
535:10-11-3. [AMENDED] 2256
535:10-11-4. [AMENDED] 2256
535:10-11-5. [AMENDED] 2256
535:10-11-6. [AMENDED] 2256
535:13-1-1. [NEW] 2257
535:13-1-2. [RESERVED] 2257
535:13-1-3. [NEW] 2257
535:13-1-4. [NEW] 2257
535:15-3-2. [AMENDED] 2258
535:15-3-4.1. [AMENDED] 2259
535:15-3-6. [AMENDED] 2259
535:15-3-12. [AMENDED] 2259
535:15-3-18. [NEW] 2260
535:15-3-21. [AMENDED] 2260
535:15-5-7.6. [AMENDED] 2261
535:15-6-9. [AMENDED] 2261
535:15-13-5. [AMENDED] 2261
535:15-13-8. [AMENDED] 2261
535:15-17-3. [AMENDED] 2262
535:15-17-5. [AMENDED] 2263
535:15-17-7. [AMENDED] 2264
535:25-3-3. [AMENDED] 2265
535:25-3-7. [AMENDED] 2266
535:25-5-5. [NEW] 2266
580:10-2-1. [AMENDED] 2267
580:10-2-2. [AMENDED] 2267
580:10-5-6. [AMENDED] 2267
580:10-7-3. [AMENDED] 2268
580:10-9-3. [AMENDED] 2269
580:10-9-16. [AMENDED] 2269
580:10-9-21. [AMENDED] 2270
580:10-9-24. [NEW] 2270
580:15-2-1. [AMENDED] 2271
580:15-2-2. [AMENDED] 2271
580:15-2-6. [AMENDED] 2273
580:15-2-7. [AMENDED] 2274
580:15-4-2. [AMENDED] 2274
580:15-4-4. [AMENDED] 2275
580:15-4-5. [AMENDED] 2275
580:15-4-6. [AMENDED] 2276
580:15-4-7. [AMENDED] 2278
580:15-4-8. [AMENDED] 2279
580:15-4-10. [AMENDED] 2279
580:15-4-11. [AMENDED] 2279
580:15-4-12. [AMENDED] 2280
580:15-4-13. [AMENDED] 2280
580:15-4-14. [AMENDED] 2282
580:15-4-16. [AMENDED] 2282
580:15-4-17. [AMENDED] 2283
580:15-4-18. [AMENDED] 2283
580:15-4-19. [AMENDED] 2284
580:15-4-20. [REVOKED] 2285
580:15-6-2. [AMENDED] 2285
580:15-6-4. [AMENDED] 2286
580:15-6-5. [AMENDED] 2286
580:15-6-6. [AMENDED] 2287
580:15-6-7. [REVOKED] 2290
580:15-6-8. [REVOKED] 2290
580:15-6-9. [REVOKED] 2290
580:15-6-10. [AMENDED] 2291
580:15-6-11. [REVOKED] 2292
580:15-6-13. [REVOKED] 2292
580:15-6-14. [AMENDED] 2292
580:15-6-15. [AMENDED] 2293
580:15-6-21. [AMENDED] 2293
580:15-6-22. [REVOKED] 2294
580:15-6-23. [REVOKED] 2294
580:15-6-24. [REVOKED] 2295
580:20-1-1. [AMENDED] 2296
580:20-1-2. [AMENDED] 2296
580:20-1-3. [AMENDED] 2297
580:20-1-6. [AMENDED] 2297
580:20-1-8.1. [AMENDED] 2297
580:20-1-8.2. [AMENDED] 2298
580:20-1-10. [AMENDED] 2299
580:20-1-10.1. [NEW] 2299
580:20-1-13. [AMENDED] 2300
580:20-1-14. [AMENDED] 2301
580:20-1-19. [AMENDED] 2301
580:20-1-21. [REVOKED] 2301
580:20-1-22. [AMENDED] 2301
580:20-1-23. [AMENDED] 2302
580:20-1-24. [NEW] 2303
580:20-3-1. [AMENDED] 2303
580:20-3-2. [AMENDED] 2303
580:20-3-3. [AMENDED] 2303
580:20-3-4. [AMENDED] 2303
580:20-3-5. [AMENDED] 2305
580:20-3-6. [AMENDED] 2305
580:20-3-7. [AMENDED] 2306
580:20-3-8. [NEW] 2306
580:20-5-2. [AMENDED] 2306
580:20-5-3. [AMENDED] 2306

580:20-5-4. [AMENDED] 2307
580:20-5-6. [AMENDED] 2307
580:20-7-2. [AMENDED] 2307
580:20-7-7. [NEW] 2308
580:20-9-2. [AMENDED] 2308
580:20-15-2. [AMENDED] 2308
580:20-15-13. [NEW] 2308
580:20-17-2. [AMENDED] 2308
580:20-17-3. [AMENDED] 2309
580:20-17-4. [AMENDED] 2309
580:20-17-5. [AMENDED] 2310
580:20-17-9. [AMENDED] 2310
580:20-17-10. [NEW] 2312
580:20-19-2. [AMENDED] 2312
580:20-19-14. [NEW] 2312
580:20-21-2. [AMENDED] 2312
580:20-21-3. [AMENDED] 2313
580:20-21-9. [NEW] 2313
580:20-23-1. [AMENDED] 2313
580:20-23-2. [AMENDED] 2313
580:20-23-4. [NEW] 2314
580:20-25-1. [NEW] 2314
580:20-25-2. [NEW] 2314
580:20-25-3. [AMENDED] 2314
580:20-25-4. [NEW] 2314
580:20-25-5. [NEW] 2314
580:20-25-6. [NEW] 2315
580:20-25-7. [NEW] 2315
580:45-1-10. [REVOKED] 2315
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
600:10-1-4. [AMENDED] 2316
600:10-1-6. [AMENDED] (E) 215
600:10-1-6. [AMENDED] 2316
600:10-1-8. [AMENDED] (E) 215
600:10-1-8. [AMENDED] 2317
600:10-1-16. [AMENDED] (E) 216
600:10-1-16. [AMENDED] 2318
600:15-1-14. [AMENDED] (E) 218
600:15-1-14. [AMENDED] 2319
605:1-1-4. [AMENDED] 2320
605:10-3-1. [AMENDED] (E) 219
605:10-3-1. [AMENDED] 2322
605:10-3-5. [AMENDED] 2323
605:10-5-1.1. [AMENDED] 2323
605:10-5-2. [AMENDED] 2325
605:10-7-1. [AMENDED] 2326
605:10-7-2. [AMENDED] 2326
605:10-9-4. [AMENDED] 2329
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
660:2-9-1. . . . . [AMENDED] 2330
660:2-9-2. . . . . [AMENDED] 2330
660:2-9-3. . . . . [AMENDED] 2331
660:2-9-4. . . . . [AMENDED] 2333
660:2-9-6. . . . . [AMENDED] 2333
660:2-9-7. . . . . [AMENDED] 2334
660:2-9-8. . . . . [AMENDED] 2334
660:11-7-41. . . . . [AMENDED] 2335
660:11-7-48. . . . . [NEW] 2340
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
710:10-3-1. . . . . [AMENDED] 2344
710:10-3-10. . . . . [AMENDED] 2344
710:10-3-18. . . . . [AMENDED] 2344
710:10-3-20. . . . . [AMENDED] 2345
710:10-3-24. . . . . [AMENDED] 2345
710:10-3-30. . . . . [AMENDED] 2346
710:10-3-33. . . . . [AMENDED] 2346
710:10-3-61. . . . . [AMENDED] 2346
710:10-3-63. . . . . [AMENDED] 2347
710:10-4-2. . . . . [AMENDED] 2347
710:10-4-3. . . . . [AMENDED] 2347
710:10-4-6. . . . . [AMENDED] 2348
710:10-4-7. . . . . [AMENDED] 2348
710:10-4-8. . . . . [AMENDED] 2348
710:10-4-9. . . . . [AMENDED] 2349
710:10-7-2. . . . . [REVOKED] 2349
710:10-7-2.1. . . . . [REVOKED] 2350
710:10-7-2.2. . . . . [NEW] 2352
710:10-7-4. . . . . [AMENDED] 2353
710:10-7-6. . . . . [AMENDED] 2353
710:10-7-8. . . . . [AMENDED] 2353
710:22-1-6. . . . . [AMENDED] 2354
710:22-1-7. . . . . [AMENDED] 2354
710:22-1-8. . . . . [AMENDED] 2354
710:22-1-10. . . . . [AMENDED] 2354
710:22-1-11. . . . . [REVOKED] 2354
710:22-1-18. . . . . [REVOKED] 2355
710:22-1-19. . . . . [REVOKED] 2355
710:22-1-20. . . . . [AMENDED] 2355
710:22-1-21. . . . . [AMENDED] 2355
710:22-5-1. . . . . [AMENDED AND RENUMBERED TO 710:22-7-4] 2355
710:22-5-2. . . . . [AMENDED AND RENUMBERED TO 710:22-7-5] 2355
710:22-5-3. . . . . [AMENDED AND RENUMBERED TO 710:22-7-6] 2355
710:22-5-4. . . . . [AMENDED AND RENUMBERED TO 710:22-7-7] 2355
710:22-5-5. . . . . [AMENDED AND RENUMBERED TO 710:22-7-8] 2355
710:22-5-6. . . . . [AMENDED AND RENUMBERED TO 710:22-7-10] 2356
710:22-5-7. . . . . [REVOKED] 2356
710:22-5-8. . . . . [AMENDED] 2356
710:22-5-9. . . . . [AMENDED] 2356
710:22-7-1. . . . . [AMENDED AND RENUMBERED TO 710:22-7-11] 2356
710:22-7-2. . . . . [AMENDED AND RENUMBERED TO 710:22-7-12] 2357
710:22-7-3. . . . . [AMENDED AND RENUMBERED TO 710:22-7-13] 2357
710:22-7-4. . . . . [NEW] 2357
710:22-7-5. . . . . [NEW] 2357
710:22-7-6. . . . . [NEW] 2357
710:22-7-7. . . . . [NEW] 2357
710:22-7-8. . . . . [NEW] 2357
710:22-7-9. . . . . [NEW] 2357
710:22-7-10. . . . . [NEW] 2358
710:22-7-11. . . . . [NEW] 2358
710:22-7-12. . . . . [NEW] 2358
710:22-7-13. . . . . [NEW] 2358
710:22-9-1. . . . . [AMENDED] 2358
710:22-13-1. . . . . [REVOKED] 2359
710:25-1-9. . . . . [AMENDED] 1692
710:50-3-53. . . . . [AMENDED] 2360
710:50-15-48. . . . . [AMENDED] 2361
710:50-15-49. . . . . [AMENDED] 2361
710:50-15-50. . . . . [AMENDED] 2363
710:50-15-55. . . . . [AMENDED] 2363
710:50-15-66. . . . . [AMENDED] 2363
710:50-15-76. . . . . [AMENDED] 2364
710:50-15-86. . . . . [AMENDED] 2365
710:50-15-86.1. . . . . [NEW] 2366
710:50-15-87. . . . . [AMENDED] 2367
710:50-15-87.1. . . . . [NEW] 2368
710:50-15-92. . . . . [AMENDED] 2368
710:50-15-101. . . . . [AMENDED] 2369
710:50-15-103. . . . . [AMENDED] 2370
710:50-15-104. . . . . [AMENDED] 2370
710:50-15-108. . . . . [NEW] 2371
710:50-17-51. . . . . [AMENDED] 2372
710:50-19-1. . . . . [AMENDED] 2374
710:60-1-3. . . . . [AMENDED] 2377
710:60-3-14. . . . . [AMENDED] 2378
710:60-3-17. . . . . [AMENDED] 2378
710:60-3-70. . . . . [AMENDED] 2379
710:60-3-93. . . . . [AMENDED] 2379
710:60-3-96. . . . . [AMENDED] 2379
710:60-3-111. . . . . [AMENDED] 2380
710:60-3-140. . . . . [AMENDED] 2380
710:60-3-141. . . . . [AMENDED] 2380
710:60-3-142. . . . . [AMENDED] 2381

710:60-3-203. [AMENDED] 2381
710:60-3-204. [AMENDED] 2381
710:60-5-2. [AMENDED] 2382
710:60-5-3. [AMENDED] 2382
710:60-5-4. [AMENDED] 2382
710:60-5-30. [AMENDED] 2382
710:60-5-51. [AMENDED] 2384
710:60-5-53. [AMENDED] 2384
710:60-5-57. [AMENDED] 2385
710:60-5-71. [AMENDED] 2385
710:60-5-73. [AMENDED] 2386
710:60-5-77. [AMENDED] 2386
710:60-5-91. [AMENDED] 2386
710:60-5-92. [AMENDED] 2387
710:60-5-96. [AMENDED] 2388
710:60-5-111. [AMENDED] 2388
710:60-5-113. [AMENDED] 2388
710:60-5-116. [AMENDED] 2389
710:60-5-117. [NEW] 2390
710:60-5-130. [AMENDED] 2390
710:60-7-5. [AMENDED] 2391
710:60-7-7. [AMENDED] 2391
710:60-9-53. [AMENDED] 2391
710:60-9-54. [AMENDED] 2391
710:60-9-56. [NEW] 2392
710:60-9-73. [AMENDED] 2392
710:60-9-90. [AMENDED] 2393
710:60-9-91. [AMENDED] 2393
710:60-9-92. [AMENDED] 2393
710:60-9-93. [AMENDED] 2394
710:60-9-94. [AMENDED] 2394
710:60-9-96. [AMENDED] 2395
710:60-9-97. [AMENDED] 2395
710:60-9-98. [AMENDED] 2395
710:60-9-111. [AMENDED] 2396
710:60-9-120. [AMENDED] 2396
710:60-9-137. [AMENDED] 2397
710:65-1-7. [AMENDED] 2398
710:65-3-1. [AMENDED] 2399
710:65-7-13. [AMENDED] 2400
710:65-13-40. [AMENDED] 2401
710:65-13-51. [AMENDED] 2402
710:65-13-52. [AMENDED] 2404
710:65-13-124. [NEW] 2406
710:65-13-153. [AMENDED] 2406
710:65-13-155. [AMENDED] 2408
710:65-13-156. [AMENDED] 2410
710:65-13-157. [NEW] 2412
710:65-13-170. [AMENDED] 2412
710:65-13-172. [AMENDED] 2413
710:65-13-195. [NEW] 2414
710:65-13-275. [AMENDED] 2414
710:65-13-349. [NEW] 2414
710:65-13-350. [NEW] 2414
710:65-13-351. [NEW] 2415
710:65-13-352. [NEW] 2415
710:65-13-353. [NEW] 2416
710:65-13-650. [NEW] 2416
710:65-19-56. [AMENDED] 2417
710:65-19-143. [AMENDED] 2418
710:65-21-20. [AMENDED] 2418
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
725:30-26-14. [AMENDED] 2419
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
735:15-5-1. [AMENDED] 2420
735:80-3-15. [AMENDED] 2421
735:80-7-3. [AMENDED] 2421
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
780:1-17-1. [AMENDED] 2422
780:10-3-4. [AMENDED] 2422
780:10-3-11. [AMENDED] 2423
780:10-5-4. [AMENDED] 2423
780:10-7-3. [AMENDED] 2424
780:10-9-2. [AMENDED] 2425
780:15-3-2. [AMENDED] 2427
780:15-3-6. [AMENDED] 2431
780:15-3-7. [AMENDED] 2433
780:20-3-2. [AMENDED] 2435
780:20-5-1. [AMENDED] 2441
785:5-1-11. [AMENDED] 2442
785:45-1-2. [AMENDED] 2442
785:45-3-2. [AMENDED] 2442
785:45-5-4. [AMENDED] 2442

785:45-5-9. . . . . [AMENDED] 2442
785:45-5-10. . . . . [AMENDED] 2442
785:45-5-12. . . . . [AMENDED] 2442
785:45-5-13. . . . . [AMENDED] 2442
785:45-5-14. . . . . [REVOKED] 2442
785:45-5-15. . . . . [REVOKED] 2442
785:45-5-25. . . . . [AMENDED] 2442
785:45-5-29. . . . . [AMENDED] 2442
785:45, App. A. . . . . [REVOKED] 2442
785:45, App. A. . . . . [NEW] 2442
785:45, App. B. . . . . [REVOKED] 2442
785:45, App. B. . . . . [NEW] 2442
785:45, App. E. . . . . [REVOKED] 2442
785:45, App. E. . . . . [NEW] 2442
785:45, App. G. . . . . [REVOKED] 2442
785:45, App. G. . . . . [NEW] 2442
785:45, App. H. . . . . [REVOKED] 2442
785:45, App. H. . . . . [NEW] 2442
785:46-1-2. . . . . [AMENDED] 2446
785:46-3-3. . . . . [AMENDED] 2447
785:46-9-1. . . . . [AMENDED] 2448
785:46-9-2. . . . . [AMENDED] 2448
785:46-9-3. . . . . [AMENDED] 2448
785:46-9-5. . . . . [AMENDED] 2448
785:46-15-5. . . . . [AMENDED] 2449
785:46-15-8. . . . . [AMENDED] 2452
785:46-15-11. . . . . [REVOKED] 2452
785:46-15-12. . . . . [REVOKED] 2452
785:46-15-13. . . . . [REVOKED] 2453
785:50-7-3. . . . . [AMENDED] 2453
785:50-7-5. . . . . [AMENDED] 2454
785:50-8-5. . . . . [AMENDED] 2459
800:10-1-3. . . . . [AMENDED] (E) 226
800:10-1-3. . . . . [AMENDED] 2463
800:10-1-4. . . . . [AMENDED] (E) 610
800:10-1-4. . . . . [AMENDED] 2463
800:10-1-5. . . . . [AMENDED] (E) 611
800:10-1-5. . . . . [AMENDED] 2464
800:10-1-7. . . . . [AMENDED] 2465
800:10-3-3. . . . . [AMENDED] 2465
800:10-3-4. . . . . [AMENDED] 2466
800:10-5-2. . . . . [AMENDED] (E) 226
800:10-5-2. . . . . [AMENDED] 2467
800:10-5-3. . . . . [AMENDED] (E) 612
800:10-5-3. . . . . [AMENDED] 2466
800:15-7-3. . . . . [AMENDED] (E) 110
800:15-7-3. . . . . [AMENDED] 2470
800:25-3-3. . . . . [AMENDED] 2472
800:25-7-50. . . . . [AMENDED] 2473
800:25-7-55. . . . . [AMENDED] 2473
800:25-7-60. . . . . [AMENDED] 2473
800:25-7-61. . . . . [AMENDED] 2473
800:25-7-62. . . . . [AMENDED] 2474
800:25-7-63. . . . . [AMENDED] 2474
800:25-7-64. . . . . [AMENDED] 2474
800:25-7-81. . . . . [AMENDED] 2474
800:25-7-81.3. . . . . [NEW] 2475
800:25-7-91. . . . . [AMENDED] 2475
800:25-7-93. . . . . [AMENDED] 2475
800:25-7-94.7. . . . . [NEW] 2476
800:25-7-120.1. . . . . [NEW] 2476
800:25-7-120.3. . . . . [NEW] (E) 228
800:25-7-126. . . . . [AMENDED] 2476
800:25-7-131. . . . . [AMENDED] 2477
800:25-7-131.2. . . . . [AMENDED] 2477
800:25-7-133.2. . . . . [NEW] 2477
800:25-7-133.3. . . . . [NEW] 2478
800:25-7-145. . . . . [AMENDED] 2478
800:25-7-153. . . . . [AMENDED] 2478
800:25-7-154. . . . . [AMENDED] 2479
800:25-7-165. . . . . [REVOKED] 2479
800:25-7-166. . . . . [REVOKED] 2479
800:25-9-3. . . . . [AMENDED] 2479
800:25-9-5. . . . . [AMENDED] 2480
800:25-9-7. . . . . [AMENDED] 2480
800:25-19-6. . . . . [AMENDED] 2480
800:25-29-2. . . . . [AMENDED] 2481
800:25-38-1. . . . . [NEW] 2482
800:25-38-2. . . . . [NEW] 2482
800:25-38-3. . . . . [NEW] 2482
800:25-38-4. . . . . [NEW] 2482
800:25-38-5. . . . . [NEW] 2482
800:25-38-6. . . . . [NEW] 2482
800:25-38-7. . . . . [NEW] 2482
800:25-38-8. . . . . [NEW] 2482
800:25-38-9. . . . . [NEW] 2482
800:25-38-10. . . . . [NEW] 2482
800:25-38-11. . . . . [NEW] 2482
800:25-38-12. . . . . [NEW] 2483
800:30-1-2. . . . . [AMENDED] 2483
800:30-1-4. . . . . [AMENDED] 2484
800:30-1-8. . . . . [AMENDED] 2485
800:30-1-12. . . . . [REVOKED] 2485
800:30-1-20. . . . . [AMENDED] 2485
35:15-3-3. . . . . [REVOKED] 1745

Agency/Title Index

[Assigned as of 6-15-07]

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

Notices of Rulemaking Intent

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

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

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

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

[OAR Docket #07-1218]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

RULES:

Subchapter 1. General Provisions
252:100-1-3. Definitions [AMENDED]
Subchapter 5. Registration, Emission Inventory and Annual Operating Fees
252:100-5-2.2. Annual operating fees [AMENDED]
Subchapter 7. Permits for Minor Facilities
Part 1. General Provisions
252:100-7-2. Requirement for permits for minor facilities [AMENDED]
Part 3. Construction Permits
252:100-7-15. Construction permit [AMENDED]
Part 4. Operating Permits
252:100-7-18. Operating permit [AMENDED]
Subchapter 8. Permits for Part 70 Sources
Part 1. General Provisions
252:100-8-1.1. Definitions [AMENDED]
Subchapter 17. Incinerators
Part 5. Municipal Waste Combustors
252:100-17-14.1. Definitions [AMENDED]
252:100-17-16. Standards for particulate matter and opacity [AMENDED]
252:100-17-17. Standards for municipal waste combustor metals [AMENDED]
252:100-17-19. Standards for municipal waste combustor organics expressed as total mass dioxins/furans [AMENDED]
252:100-17-20. Standards for nitrogen oxides [AMENDED]
252:100-17-21. Standards for municipal waste combustor operating practices [AMENDED]
252:100-17-24. Standards for municipal waste combustor operator training and certification [AMENDED]
252:100-17-25. Compliance and performance testing [AMENDED]
252:100-17-26. Reporting and recordkeeping requirements [AMENDED]
Subchapter 37. Control of Emission of Volatile Organic Compounds (VOCs)
Part 1. General Provisions
252:100-37-2. Definitions [AMENDED]
Subchapter 39. Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas
Part 1. General Provisions
252:100-39-2. Definitions [AMENDED]
Subchapter 44. Control of Mercury Emissions from Coal-Fired Electric Steam Generating Units [NEW]
252:100-44-1. Purpose [NEW]
252:100-44-2. [RESERVED]
252:100-44-3. Reference to 40 CFR [NEW]

SUMMARY:

The Department is proposing to amend OAC 252:100-1-3, 252:100-8-1.1, 252:100-37-2 and 252:100-39-2 to clarify definitions.

The Department is considering increases in fees found in OAC 252:100-5-2.2(b)(2)for both minor facilities and Part 70 sources. Additional income resulting from a fee increase is needed to cover current and anticipated staffing requirements in administering the Department=s programs.

The Department is proposing to amend OAC 252:100-7-2, 252:100-7-15 and 252:100-7-18. The proposed revision will provide consistency with state statutes and other Air Pollution Control rules; remove reference to Subchapter 41, which has been revoked; delete the emissions calculation methods for determining if a permit is required; clarify when construction permits are required; and provide for administrative amendments to operating permits for minor facilities.

The Department proposes to amend OAC 252:100-17, Part 5, to meet federal requirements for state plans under section 111(d) of the federal Clean Air Act applicable to existing sources. The proposed changes would incorporate standards (40 CFR 60, Subpart Cb) published on May 5, 2006, in the Federal Register that apply to Municipal Waste Combustor (MWC) units with the capacity to combust more that 250 tons per day of municipal solid waste. The proposed changes to Subchapter 17 are accompanied by a 111(d) plan. Staff intends that the July 18, 2007, Council meeting serve as a public hearing for both the rule and the plan.

The Department is proposing a new Subchapter 44, Control of Mercury Emissions from Coal- Fired Electric Steam Generating Units. The proposed new subchapter will incorporate by reference the federal Clean Air Mercury Rule (CAMR) issued in March 2005 with proposed allocations and set-asides. Prior to and at the July 18, 2007, public hearing, the Department will accept public comments regarding the proposed rule and the 111(d) plan. Staff intends this Council

meeting to serve as a public hearing for both the rule and the 111(d) plan.

AUTHORITY:

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

COMMENT PERIOD:

Written comments on the proposed rulemakings will be accepted prior to and at the hearing on July 18, 2007. For comments received at least 5 business days prior to the Council meeting, staff will post written responses on the Department's web page at least 1 day prior to the Council meeting and provide hard copy written responses to these comments to the Council and the public at that Council meeting. Oral comments may be made at the July 18, 2007, hearing and at the appropriate Environmental Quality Board meeting.

PUBLIC HEARING:

Before the Air Quality Advisory Council at 9:00 a.m. on Wednesday, July 18, 2007, in Ponca City, Oklahoma. Before the Environmental Quality Board on August 21, 2007, in Guthrie, Oklahoma.

The Council hearing shall also serve as the public hearing to receive comments on the proposed revisions to the SIP under the requirements of 40 CFR § 51.102 of the EPA regulations concerning the SIPs and 27A O.S. § 2-5-107(6)(c).

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPIES OF PROPOSED RULES:

The proposed rules are available for review 30 days prior to the hearing at the Air Quality Division of the Department at http://www.deq.state.ok.us/AQDnew/council_mtgs/index.htm. Copies may also be obtained from the Department by calling Cheryl Bradley, Environmental Programs Manager, at (405) 702-4100.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained by contacting Cheryl Bradley at (405) 702-4100.

CONTACT PERSON:

Please send written comments on the proposed rule changes to Cheryl Bradley at cheryl.bradley@deq.state.ok.us. Mail should be addressed to Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, ATTN: Cheryl Bradley. The Air Quality Division FAX is (405)702-4101.

ADDITIONAL INFORMATION:

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

[OAR Docket #07-1218; filed 5-25-07]

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

[OAR Docket #07-997]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Fee Schedules
35:2-3-2.4 [AMENDED]
35:2-3-2.6 [AMENDED]
35:2-3-2.7 [AMENDED]
35:2-3-2.8 [AMENDED]
GUBERNATORIAL APPROVAL:
April 26, 2007

[OAR Docket #07-997; filed 5-14-07]

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

[OAR Docket #07-998]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Fee Schedules
35:2-3-12 [AMENDED]
GUBERNATORIAL APPROVAL:
April 26, 2007

[OAR Docket #07-998; filed 5-14-07]

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

[OAR Docket #07-999]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Fee Schedules
35:2-3-29 [AMENDED]
GUBERNATORIAL APPROVAL:
April 26, 2007

[OAR Docket #07-999; filed 5-14-07]

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

[OAR Docket #07-1000]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Fine Schedules
Part 15. ~~Plant and~~ Consumer Protection Services Violations
35:3-1-18 [AMENDED]
GUBERNATORIAL APPROVAL:
April 26, 2007

[OAR Docket #07-1000; filed 5-14-07]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 10. AGRICULTURAL PRODUCTS

[OAR Docket #07-1001]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 7. Public Warehouses
35:10-7-15 [AMENDED]
GUBERNATORIAL APPROVAL:
April 26, 2007

[OAR Docket #07-1001; filed 5-14-07]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 13. FUEL ALCOHOL

[OAR Docket #07-1002]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 13. Fuel Alcohol
35:13-1-1 [AMENDED]

35:13-1-2 [AMENDED]
35:13-1-4 [AMENDED]
GUBERNATORIAL APPROVAL:
April 26, 2007

[OAR Docket #07-1002; filed 5-14-07]

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

[OAR Docket #07-1003]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Animal Health Reportable Diseases
35:15-3-1 [AMENDED]
35:15-3-2 [AMENDED]
35:15-3-3 [REVOKED]
35:15-3-4 [AMENDED]
GUBERNATORIAL APPROVAL:
April 26, 2007

[OAR Docket #07-1003; filed 5-14-07]

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

[OAR Docket #07-1004]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 13. Testing and Inspection for Disease and Release of Livestock at Auction Markets
35:15-13-3 [AMENDED]
Subchapter 15. Equine Infectious Anemia (EIA)
Part 3. Procedures
35:15-15-34 [AMENDED]
Part 7. Requirements for Approved Markets
35:15-15-71 [AMENDED]
Subchapter 17. Bovine and Bison Brucellosis
Part 1. Definitions
35:15-17-1 [AMENDED]
Part 11. Entry Permit and Retest Requirements
35:15-17-80 [AMENDED]
Subchapter 19. Poultry Regulations
35:15-19-4 [AMENDED]
35:15-19-8 [AMENDED]
Subchapter 22. Swine Pseudorabies
Part 1. General Provisions
35:15-22-3 [NEW]
Part 9. Requirements for Approved Markets
35:15-22-91 [AMENDED]
Subchapter 24. Swine Brucellosis
Part 1. General Provisions
35:15-24-3 [AMENDED]
Subchapter 36. Scrapie
35:15-36-3 [NEW]
GUBERNATORIAL APPROVAL:
April 26, 2007

[OAR Docket #07-1004; filed 5-14-07]

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

[OAR Docket #07-1005]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 16. Contagious Equine Metritis
35:15-16-1 [AMENDED]
Subchapter 36. Scrapie
35:15-36-1 [AMENDED]
35:15-36-2 [AMENDED]
GUBERNATORIAL APPROVAL:
April 26, 2007

[OAR Docket #07-1005; filed 5-14-07]

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

[OAR Docket #07-1006]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Concentrated Animal Feeding Operations
35:17-3-2 [AMENDED]
35:17-3-11 [AMENDED]
GUBERNATORIAL APPROVAL:
April 26, 2007

[OAR Docket #07-1006; filed 5-14-07]

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

[OAR Docket #07-1007]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 9. Agricultural Compost Facilities
35:17-9-1 [AMENDED]
35:17-9-3 [AMENDED]
35:17-9-8 [AMENDED]
GUBERNATORIAL APPROVAL:
April 26, 2007

[OAR Docket #07-1007; filed 5-14-07]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 20. FORESTRY

[OAR Docket #07-1008]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 13. Governor's Ban on Outdoor Burning
Part 1. General Provisions
35:20-13-1 [AMENDED]
35:20-13-2 [AMENDED]
35:20-13-3 [REVOKED]
Part 3. Overview of Governor's Ban on Burning
35:20-13-7 [AMENDED]
35:20-13-8 [AMENDED]
Part 5. Burning Ban Guidelines
35:20-13-13 through 35:20-13-18 [AMENDED]
35:20-13-19 [REVOKED]
GUBERNATORIAL APPROVAL:
April 26, 2007

[OAR Docket #07-1008; filed 5-14-07]

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

[OAR Docket #07-1009]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 14. Oklahoma Boll Weevil
35:30-14-1 [AMENDED]
35:30-14-2 [AMENDED]
GUBERNATORIAL APPROVAL:
April 26, 2007

[OAR Docket #07-1009; filed 5-14-07]

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

[OAR Docket #07-1010]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 17. Combined Pesticide
Part 1. Commercial and Non-Commercial Categories of Pesticide Application
35:30-17-3 [AMENDED]
35:30-17-3.1 [NEW]
35:30-17-3.2 [NEW]
35:30-17-3.3 [NEW]
Part 9. Minimum Standards for Contracts and Keeping of Records
35:30-17-21 [AMENDED]
GUBERNATORIAL APPROVAL:
April 26, 2007

[OAR Docket #07-1010; filed 5-14-07]

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

[OAR Docket #07-1011]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 17. Combined Pesticide
Part 5. Prerequisites for Licensing
35:30-17-10 [AMENDED]
Part 6. Pesticidal Product Producing Establishments
35:30-17-13 [AMENDED]
Part 9. Minimum Standards for Contracts and Keeping of Records
35:30-17-21 [AMENDED]
Part 22. Wood Infestation Reports
35:30-17-105 [AMENDED]
GUBERNATORIAL APPROVAL:
April 26, 2007

[OAR Docket #07-1011; filed 5-14-07]

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

[OAR Docket #07-1012]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 17. Combined Pesticide
Part 21. Standards for Disposal of Pesticide and Pesticide Containers
35:30-17-89.1 [NEW]
GUBERNATORIAL APPROVAL:
April 26, 2007

[OAR Docket #07-1012; filed 5-14-07]

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

[OAR Docket #07-1013]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 37. Nursery Stock Sales
35:30-37-11 [NEW]
GUBERNATORIAL APPROVAL:
April 26, 2007

[OAR Docket #07-1013; filed 5-14-07]

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

[OAR Docket #07-1014]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Meat Inspection
35:37-3-1 [AMENDED]
35:37-3-3 [AMENDED]
Subchapter 5. Poultry Products Inspection
35:37-5-1 [AMENDED]
35:37-5-2 [AMENDED]
GUBERNATORIAL APPROVAL:
April 26, 2007

[OAR Docket #07-1014; filed 5-14-07]

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

[OAR Docket #07-1015]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 13. Milk and Milk Products
35:37-13-2 [AMENDED]
GUBERNATORIAL APPROVAL:
April 26, 2007

[OAR Docket #07-1015; filed 5-14-07]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 44. AGRICULTURE POLLUTANT DISCHARGE ELIMINATION SYSTEM

[OAR Docket #07-1016]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Concentrated Animal Feeding Operations
35:44-3-3 [AMENDED]
GUBERNATORIAL APPROVAL:
April 26, 2007

[OAR Docket #07-1016; filed 5-14-07]

TITLE 75. ATTORNEY GENERAL CHAPTER 15. STANDARDS AND CRITERIA FOR DOMESTIC VIOLENCE, SEXUAL ASSAULT AND BATTERERS INTERVENTION PROGRAMS

[OAR Docket #07-1102]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 15. Standards and Criteria For Domestic Violence and Sexual Assault Programs [AMENDED]
GUBERNATORIAL APPROVAL:
May 7, 2007

[OAR Docket #07-1102; filed 5-21-07]

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

[OAR Docket #07-1017]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Organization and Administration
87:1-3-12. Location for information and for filing [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1017; filed 5-14-07]

TITLE 87. OKLAHOMA STATE EMPLOYEES BENEFITS COUNCIL CHAPTER 15. COMPETITIVE BIDDING CRITERIA AND PROCEDURES FOR CONTRACTS AWARDED FOR FLEXIBLE BENEFITS PLANS

[OAR Docket #07-1018]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
87:15-1-4. Bidder registration [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1018; filed 5-14-07]

TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS CHAPTER 10. LICENSURE OF CHIROPRACTIC PHYSICIANS

[OAR Docket #07-1115]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
140:10-1-1 [AMENDED]
140:10-1-2 [AMENDED]
Subchapter 5. Procedures For Renewal License
140:10-5-5 [AMENDED]
140:10-5-6 [NEW]
GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1115; filed 5-21-07]

TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS CHAPTER 15. SPECIAL CERTIFICATES AND MISCELLANEOUS PROVISIONS

[OAR Docket #07-1115A]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 7. Safety and Public Welfare Provisions
140:15-7-5. [AMENDED]
Subchapter 9. Chiropractic Specialties
140:15-9-6. [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1115A; filed 5-21-07]

TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS CHAPTER 25. CHIROPRACTIC UNDERGRADUATE PRECEPTORSHIP PROGRAM

[OAR Docket #07-1115B]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Responsibilities of Preceptor
140:25-3-5. [AMENDED]
140:25-3-6. [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1115B; filed 5-21-07]

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

[OAR Docket #07-1164]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 9. Special Rules for Certain Home Mortgage Transactions
160:45-9-2 [AMENDED]

GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1164; filed 5-22-07]

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

[OAR Docket #07-1165]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Licensing
160:55-3-1.4 [AMENDED]
Subchapter 7. Records
160:55-7-1 [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1165; filed 5-22-07]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 70. DEFERRED DEPOSIT LENDERS

[OAR Docket #07-1166]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
160:70-1-3 [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1166; filed 5-22-07]

TITLE 165. CORPORATION COMMISSION
CHAPTER 5. RULES OF PRACTICE

[OAR Docket #07-1173]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Fees
Part 1. General
165:5-3-1. Fees [AMENDED]
Subchapter 7. Commencement of Cause
Part 3. Oil and Gas
165:5-7-9. Well location exception [AMENDED]
Subchapter 15. Orders
165:5-15-6. Location exception orders [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1173; filed 5-23-07]

TITLE 165. CORPORATION COMMISSION
CHAPTER 10. OIL AND GAS CONSERVATION

[OAR Docket #07-1174]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 10 [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1174; filed 5-23-07]

TITLE 165. CORPORATION COMMISSION
CHAPTER 30. MOTOR CARRIERS

[OAR Docket #07-1175]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 30 [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1175; filed 5-23-07]

TITLE 165. CORPORATION COMMISSION
CHAPTER 35. ELECTRIC UTILITY RULES

[OAR Docket #07-1176]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 34. Competitive Procurement
165:35-34-3. RFP Competitive Bidding Procurement Process [AMENDED]
Subchapter 37. Integrated Resource Planning
165:35-37-4. Integrated Resource Plan Reviews [AMENDED]
Subchapter 39. Minimum Filing Requirements [NEW]
165:35-39-1. Purpose and Scope of this Subchapter [NEW]
165:35-39-2. Definitions and Acronyms [NEW]
165:35-39-3. Confidential Information [NEW]

165:35-39-4. Initiation of Fuel Audit or Prudence Review [NEW]
165:35-39-5. Actual Fuel and Purchased Power Expenses [NEW]
165:35-39-6. Fuel Purchase and Power Procurement Practices [NEW]
165:35-39-7. Fuel, Purchased Power and Fuel-Related Contracts [NEW]
165:35-39-8. Fuel Transportation Agreements [NEW]
165:35-39-9. Disclosure of all Fuel Related and Purchased Power Affiliate Transactions [NEW]
165:35-39-10. Material Public Filings and Disclosures [NEW]
165:35-39-11. Generator Availability and Dispatch [NEW]
165:35-39-12. Eligible Fuel Costs [NEW]
165:35-39-13. Sunset Provisions [NEW]

GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1176; filed 5-23-07]

TITLE 170. DEPARTMENT OF CORRECTIONS
CHAPTER 1. ORGANIZATION

[OAR Docket #07-1097]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
170:1-1-2 [AMENDED]
170:1-1-3 [AMENDED]
170:1-1-4 [AMENDED]
170:1-1-6 [AMENDED]
170:1-1-7 [AMENDED]
170:1-1-8 [AMENDED]
170:1-1-9 [AMENDED]
170:1-1-10 [AMENDED]
170:1-1-11 [AMENDED]
170:1-1-12 [AMENDED]
170:1-1-13 [AMENDED]
170:1-1-14 [AMENDED]
170:1-1-15 [AMENDED]

GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1097; filed 5-18-07]

TITLE 170. DEPARTMENT OF CORRECTIONS
CHAPTER 20. COMMUNITY WORK CENTERS

[OAR Docket #07-1098]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. General Provisions
170:20-1-3 [AMENDED]
Subchapter 3. Application and Approval
170:20-3-1 [AMENDED]
170:20-3-2 [AMENDED]

GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1098; filed 5-18-07]

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

[OAR Docket #07-1099]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
170:35-1-2 [AMENDED]
170:35-1-3 [AMENDED]
170:35-1-4 [AMENDED]
170:35-1-5 [AMENDED]
170:35-1-6 [AMENDED]

GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1099; filed 5-18-07]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 1. FUNCTION AND STRUCTURE OF THE DEPARTMENT

[OAR Docket #07-1137]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 11. Civil Rights and Nondiscrimination on Basis of Race, Color, National Origin, Sex, Age, Religion, or Disability
Part 2. Food Stamp Program Discrimination Complaint~~,~~ and Non-Compliance~~, and Rude Treatment~~ System

340:1-11-21 through 340:1-11-22 [AMENDED]
(Reference APA WF 07-06)
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-1137; filed 5-22-07]

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

[OAR Docket #07-1138]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Human Resources Management Division (HRMD)
Part 4. Alcohol and Drug Testing ~~Policy~~ Applicable to OKDHS Employees and Applicants
340:2-1-42 through 340:2-1-43 [AMENDED]
340:2-1-45 [REVOKED]
340:2-1-47 [REVOKED]
Subchapter 15. Risk and Safety Management
Part 5. Alcohol and Drug Testing ~~Policy~~ for Drivers of Commercial Vehicles
340:2-15-42 [AMENDED]
(Reference APA WF 06-28)
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-1138; filed 5-22-07]

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

[OAR Docket #07-1139]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 28 Office of Administrative Hearings: Child Support
340:2-28-1 through 340:2-28-2 [AMENDED]
340:2-28-4.2 through 340:2-28-4.3 [AMENDED]
340:2-28-4.4 [NEW]
340:2-28-16.1 through 340:2-28-16.2 [AMENDED]
340:2-28-17.2 [AMENDED]
340:2-28-19 through 340:2-28-20 [AMENDED]
340:2-28-24 through 340:2-28-26 [AMENDED]
340:2-28-29 through 340:2-28-31 [AMENDED]
340:2-28-33 [AMENDED]
(Reference APA WF 07-02)
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-1139; filed 5-22-07]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 5. ADULT PROTECTIVE SERVICES

[OAR Docket #07-1140]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Investigation of Adult Protective Services
340:5-5-4 [AMENDED]
(Reference APA WF 07-03)
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-1140; filed 5-22-07]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 10. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)

[OAR Docket #07-1141]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Conditions of Eligibility - Need
Part 3. Income
340:10-3-32 [AMENDED]
REFERENCE APA WF 07-07)
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-1141; filed 5-22-07]

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

[OAR Docket #07-1142]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 7. Eligibility
340:40-7-11 [AMENDED]
(Reference APA WF 07-08)

GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-1142; filed 5-22-07]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 50. FOOD STAMP PROGRAM

[OAR Docket #07-1143]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 7. Financial Eligibility Criteria
Part 3. Income
340:50-7-30 [AMENDED]
(Reference APA WF 07-09)
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-1143; filed 5-22-07]

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

[OAR Docket #07-1144]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Eligibility for Benefits
340:65-3-1 through 340:65-3-2 [AMENDED]
(Reference APA WF 07-04)
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-1144; filed 5-22-07]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 70. SOCIAL SERVICES

[OAR Docket #07-1145]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 8. Supplemental Security Income-Disabled Children's Program (SSI-DCP)
340:70-8-1 [AMENDED]
Subchapter 9. Health Related Services
340:70-9-1 [REVOKED]
340:70-9-2 [AMENDED]
340:70-9-5 [AMENDED]
340:70-9-7 [REVOKED]
340:70-9-9 [AMENDED]
340:70-9-10 [REVOKED]
340:70-9-15 [REVOKED]
340:70-9-17 [AMENDED]
(Reference APA WF 06-26)
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-1145; filed 5-22-07]

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

[OAR Docket #07-1157]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Child Protective Services
340:75-3-8.4 through 340:75-3-8.5 [AMENDED]
Subchapter 4. Family-Centered and Community Services
Part 1. Voluntary Family-Centered Services
340:75-4-14 [AMENDED]
Subchapter 13. Other Child Welfare Services and Medical Services for Children in Out-of-Home Care
Part 3. Income and Resources of the Child
340:75-13-28 through 340:75-13-29 [AMENDED]
(Reference APA WF 07-01)
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-1157; filed 5-22-07]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 100. DEVELOPMENTAL DISABILITIES SERVICES DIVISION

[OAR Docket #07-1146]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Client Services
Part 3. Service Provisions
340:100-5-22 [AMENDED]
340:100-5-25 [REVOKED]
(Reference APA WF 07-05)

GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-1146; filed 5-22-07]

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

[OAR Docket #07-1158]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Licensing Standards for Child Care Facilities
Part 8. Requirements for Children's Shelters [REVOKED]
340:110-3-130 through 340:110-3-144 [REVOKED]
Part 11. Requirements for Therapeutic Camps [REVOKED]
340:110-3-180 through 340:110-3-195 [REVOKED]
Subchapter 5. Requirements for Child-Placing Agencies
Part 7. Requirements for Group Homes [REVOKED]
340:110-5-80 through 340:110-5-99 [REVOKED]
(Reference APA WF 07-10)
GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-1158; filed 5-22-07]

TITLE 365. INSURANCE DEPARTMENT
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #07-1105]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 9. Description of Forms and Instructions
365:1-9-5. Surplus lines forms [AMENDED]
365:1-9-11. ~~Agents' applications~~ Applications [AMENDED]
365:1-9-12.1. Required appointment [REVOKED]
365:1-9-14. ~~Agents~~ Producer and adjuster continuing education forms [AMENDED]
365:1-9-15.1 License renewals and reinstatements [AMENDED]
GUBERNATORIAL APPROVAL:
April 23, 2007

[OAR Docket #07-1105; filed 5-21-07]

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

[OAR Docket #07-1106]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Minimum Standards; Contract Guidelines
Part 11. Accelerated Benefits
365:10-5-101. Definitions [AMENDED]
Subchapter 23. Discount Medical Plan Organizations
365:10-23-3. Audited Financial Statements [NEW]
365:10-23-4. Marketers of Discount Medical Plan Organizations [NEW]
GUBERNATORIAL APPROVAL:
April 23, 2007

[OAR Docket #07-1106; filed 5-21-07]

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

[OAR Docket #07-1109]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 25. Regulation Permitting the Recognition of Preferred Mortality Tables For Use in Determining Minimum Reserve Liabilities [NEW]
365:10-25-1. Authority [NEW]
365:10-25-2. Purpose [NEW]
365:10-25-3. Definitions [NEW]
365:10-25-4. 2001 CSO Preferred Class Structure Table [NEW]
365:10-25-5. Conditions [NEW]
365:10-25-6. Separability [NEW]
365:10-25-7. Effective Date [NEW]
GUBERNATORIAL APPROVAL
April 23, 2007

[OAR Docket #07-1109; filed 5-21-07]

TITLE 365. INSURANCE DEPARTMENT
CHAPTER 15. PROPERTY AND CASUALTY

[OAR Docket #07-1107]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions

365:15-1-3. Property and casualty form filings [AMENDED]
365:15-1-3.1. Workers' Compensation medical claims small deductible form [AMENDED]
365:15-1-18. Withdrawal or discontinue writing [AMENDED]
365:15-1-20. Oklahoma Risk Retention Act [AMENDED]
365:15-1-21. Article 36 of the Insurance Code [NEW]
365:15-1-22. Processing Fee for Affidavit of Exempt Status [NEW]
365:15-1-23. Exclusion from Ocean Marine Definitions [NEW]
Subchapter 7. Property and Casualty Competitive Loss Cost Rating Regulation
365:15-7-3. Property and casualty rate, loss cost and manual rule filings [AMENDED]
365:15-7-7. Forms Governed by Article 36 [REVOKED]
365:15-7-9. Independent filings~~; not a member or subscriber of a Bureau for the kind and line of insurance involved~~ [NEW]
365:15-7-13. Retroactive filings [REVOKED]
365:15-7-15. Persons requesting notice of filings [REVOKED]
365:15-7-20. Uniform application of deviations [REVOKED]
365:15-7-24. Oklahoma Risk Retention Act [AMENDED]
365:15-7-26. Weather related claims [AMENDED]
365:15-7-27. Credit related policies [AMENDED]
365:15-7-30. Special Commercial Risks [NEW]
365:15-7-31. Withdrawal or Discontinue Writing [NEW]
Subchapter 9. Medical Professional Liability Rate Setting
365:15-9-10. Property and casualty rate, loss cost and manual rule filings [NEW]
365:15-9-11. Duration of filings [NEW]
365:15-9-12. Forms governed by Article 36 [NEW]
365:15-9-13. Group filings [NEW]
365:15-9-14. Independent filings [NEW]
365:15-9-15. Reference filings [NEW]
365:15-9-16. Members of or subscribers to a licensed advisory organization [NEW]
365:15-9-17. Resubmittal of disapproved or rejected filings [NEW]
365:15-9-18. Statistical plans [NEW]
365:15-9-19. Outside Review [NEW]
365:15-9-20. Individual risk rating plans [NEW]
365:15-9-21. Waiver of Premium [NEW]

GUBERNATORIAL APPROVAL:

April 23, 2007

[OAR Docket #07-1107; filed 5-21-07]

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

[OAR Docket #07-1108]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 3. ~~Agents~~ Producers, Brokers and Limited ~~Representatives~~ Lines Producers [AMENDED]
365:25-3-1. Insurance ~~agents~~ producers continuing education [AMENDED]
365:25-3-3. Licensing of incorporated insurance agency [AMENDED]
365:25-3-4. Knowledge of ~~agent~~ producer imputed to the insurer [AMENDED]
365:25-3-6. Management and commission contracts; approval by Insurance Commissioner [REVOKED]
365:25-3-8. Inducement of lapse, surrender or cancellation of existing permanent life insurance coverages prohibited [AMENDED]
365:25-3-9. "Twisting" defined and prohibited [AMENDED]
365:25-3-10. Participating contracts of life insurance [AMENDED]
365:25-3-11. Motor service club agent's license [REVOKED]
365:25-3-12. Insurance consultants and surplus lines insurance brokers [AMENDED]
365:25-3-13. Surplus line insurance with non-admitted insurer; approval prior to issuance; collection and remittance of taxes; claims for tax adjustments; procedures; forms [AMENDED]
365:25-3-14. Insurance adjusters continuing education [AMENDED]
365:25-3-16. Examination exemptions ~~for limited representatives~~ [AMENDED]
Subchapter 5. Bail Bondsmen
Part 5. General Provisions Pertaining to Bail Bondsmen
365:25-5-40. Computation of time in 59 O.S. § 1332 [AMENDED]
Subchapter 17. Consumer Protection in Annuity Transactions Regulation
365:25-17-8. Mitigation of responsibility [AMENDED]

GUBERNATORIAL APPROVAL:

April 23, 2007

[OAR Docket #07-1108; filed 5-21-07]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 10. PEACE OFFICER CERTIFICATION

[OAR Docket #07-1063]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
390:10-1-2 [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1063; filed 5-18-07]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 15. BASIC PEACE OFFICER CERTIFICATION TRAINING

[OAR Docket #07-1064]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Basic Academy Programs
390:15-1-12 [AMENDED]
390:15-1-13 [AMENDED]
390:15-1-15 [AMENDED]
390:15-1-18 [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1064; filed 5-18-07]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 27. POLICE OFFICER ANNUAL FIREARMS REQUALIFICATION

[OAR Docket #07-1065]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 27. Police Officer Annual Firearms Requalification [NEW]
GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1065; filed 5-18-07]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 35. REGULATION OF PRIVATE SECURITY INDUSTRY

[OAR Docket #07-1066]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. License Requirements
390:35-5-2 [AMENDED]
390:35-5-9 [AMENDED]
Subchapter 15. Training Standards and Requirements
390:35-15-2 [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1066; filed 5-18-07]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 55. FACILITIES MANAGEMENT

[OAR Docket #07-1067]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 55. Facilities Management [NEW]
GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1067; filed 5-18-07]

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

[OAR Docket #07-1211]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 11. Non-Coal Surface Mining Permit Applications
460:10-11-5 [AMENDED]
GUBERNATORIAL APPROVAL:
May 11, 2007

[OAR Docket #07-1211; filed 5-24-07]

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

[OAR Docket #07-1212]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Financial Interests of State Employees
460:20-5-13 [REVOKED]
460:20-5-14 [REVOKED]
Subchapter 59. State Enforcement
460:20-59-4 [AMENDED]
GUBERNATORIAL APPROVAL:
May 11, 2007

[OAR Docket #07-1212; filed 5-24-07]

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

[OAR Docket #07-1181]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. General Course in Method of Operations
535:1-5-5.1. Complaint confidentiality [AMENDED]
Subchapter 7. Individual Proceedings
535:1-7-4.Failure to appear and/or failure to comply [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1181; filed 5-24-07]

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

[OAR Docket #07-1182]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Interns, Preceptors and Training Areas
535:10-5-4. Intern Practice requirements [AMENDED]
Subchapter 7. Pharmacist Licensure
535:10-7-6. Reciprocity licensure applicants [AMENDED]
535:10-7-8. Foreign pharmacy graduates licensure applicants [AMENDED]
Subchapter 11. Pharmacist Administration of Immunizations
535:10-11-3. D.Ph. administering of immunization requirements [AMENDED]
535:10-11-4. Immunization registration ~~of D.Ph.~~ [AMENDED]
535:10-11-5. D.Ph. training requirements for administration of immunizations [AMENDED]
535:10-11-6. Records [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1182; filed 5-24-07]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY CHAPTER 13. EMERGENCY/DISASTER PHARMACY RESPONSE

[OAR Docket #07-1183]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
535:13-1-1. Purpose [NEW]
535:13-1-2. Reserved [NEW]
535:13-1.3. Declaration of Emergency [NEW]
535:13-1-4. Pharmacy Emergency / Disaster Response [NEW]
GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1183; filed 5-24-07]

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

[OAR Docket #07-1184]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Pharmacies
535:15-3-2. Pharmacy responsibilities [AMENDED]
535:15-3-4-1. Pharmacy licensing requirement [AMENDED]
535:15-3-6. Required library reference books or computer sources [AMENDED]
535:15-3-12. Transfer of prescription refill information [AMENDED]
535:15-3-18. Pharmacy prescription drug purchases records [NEW]

535:15-3-21. Prescription fill, refill and partial fill records and reports [AMENDED]
Subchapter 5. Hospital Pharmacies
535:15-5-7.6. Pharmacy technician annual permit requirement [AMENDED]
Subchapter 6. Hospital Drug Room ~~Rules~~
535:15-6-9. Emergency room pre-packaged medications formulary [AMENDED]
Subchapter 13. Pharmacy Supportive Personnel
535:15-13-5. Supervision of pharmacy technicians [AMENDED]
535:15-13-8. Technician annual permit requirement [AMENDED]

GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1184; filed 5-24-07]

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

[OAR Docket #07-1185]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 17. Nuclear Pharmacy
535:15-17-3. Definitions [AMENDED]
535:15-17-5. General requirements [AMENDED]
535:15-17-7. Minimum Equipment [AMENDED]

GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1185; filed 5-24-07]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 25. RULES AFFECTING VARIOUS REGISTRANTS

[OAR Docket #07-1186]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 3. Applicants, Registrants, and Applications
535:25-3-3. Qualifications and requirements for registrant applicants [AMENDED]
535:25-3-7. Change requirements and notification [AMENDED]
Subchapter 5. General Requirements or Procedures
535:25-5-5. Prescription drug (Rx Only) purchase and record requirements [NEW]

GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1186; filed 5-24-07]

TITLE 575. STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS
CHAPTER 10. LICENSURE OF PSYCHOLOGISTS

[OAR Docket #07-1034]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
575:10-1-3 [AMENDED]
575:10-1-8 [AMENDED]
575:10-1-10 [AMENDED]

GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1034; filed 5-15-07]

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

[OAR Docket #07-1221]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 2. General Provisions
580:10-2-1 [AMENDED]
580:10-2-2 [AMENDED]
Subchapter 5. use of Public Areas of Capitol and Plazas
580:10-5-6 [AMENDED]
Subchapter 7. Use of State Capitol Park
580:10-7-3 [AMENDED]
Subchapter 9. Operation of Buildings Owned, Used Or Occupied By Or On Behalf of the State
Part 1. Smoking
580:10-9-3 [AMENDED]
Part 4. Access to the J. Howard Edmondson and Robert S. Kerr Office Buildings
580:10-9-16 [AMENDED]
Part 5. General Operations of public Buildings Managed by the Department of Central Services
580:10-9-21 [AMENDED]
580:10-9-24 [NEW]

GUBERNATORIAL APPROVAL:
March 4, 2007

[OAR Docket #07-1221; filed 5-25-07]

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

[OAR Docket #07-1222]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 2. General Provisions
580:15-2-1 [AMENDED]
580:15-2-2 [AMENDED]
580:15-2-6 [AMENDED]
580:15-2-7 [AMENDED]
Subchapter 4. Supplier Provisions
580:15-4-2 [AMENDED]
580:15-4-4 [AMENDED]
580:15-4-5 [AMENDED]
580:15-4-6 [AMENDED]
580:15-4-7 [AMENDED]
580:15-4-8 [AMENDED]
580:15-4-10 [AMENDED]
580:15-4-11 [AMENDED]
580:15-4-12 [AMENDED]
580:15-4-13 [AMENDED]
580:15-4-14 [AMENDED]
580:15-4-16 [AMENDED]
580:15-4-17 [AMENDED]
580:15-4-18 [AMENDED]
580:15-4-19 [AMENDED]
580:15-4-20 [REVOKED]
Subchapter 6. State Agency Provisions
580:15-6-2 [AMENDED]
580:15-6-4 [AMENDED]
580:15-6-5 [AMENDED]
580:15-6-6 [AMENDED]
580:15-6-7 [AMENDED]
580:15-6-8]REVOKED]
580:15-6-9 [REVOKED]
580:15-6-10 [AMENDED]
580:15-6-11 [REVOKED]
580:15-6-13 [REVOKED]
580:15-6-14 [AMENDED]
580:15-6-15 [AMENDED]
580:15-6-21 [AMENDED]
580:15-6-22 [REVOKED]
580:15-6-23 [REVOKED]
580:15-6-24 [REVOKED]
GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1222; filed 5-25-07]

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

[OAR Docket #07-1223]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Construction Contracting
580:20-1-1 [AMENDED]
580:20-1-2 [AMENDED]
580:20-1-3. [AMENDED]
580:20-1-6 [AMENDED]
580:20-1-8.1 [AMENDED]
580:20-1-8.2 [AMENDED]
580:20-1-10 [AMENDED]
580:20-1-10.1 [NEW]
580:20-1-13 [AMENDED]
580:20-1-14 [AMENDED]
580:20-1-19 [AMENDED]
580:20-1-21 [REVOKED]
580:20-1-22 [AMENDED]
580:20-1-23 [AMENDED]
580:20-1-24 [NEW]
Subchapter 3. Selection of Architects, Engineers, and Other Design Consultants
580:20-3-1 [AMENDED]
580:20-3-2 [AMENDED]
580:20-3-3 [AMENDED]
580:20-3-4 [AMENDED]
580:20-3-5 [AMENDED]
580:20-3-6 [AMENDED]
580:20-3-7 [AMENDED]
580:20-3-8 [NEW]
Subchapter 5. Minimum Codes for State Construction
580:20-5-2 [AMENDED]
580:20-5-3 [AMENDED]
580:20-5-4 [AMENDED]
580:20-5-6 [AMENDED]
Subchapter 7. Procedures for Agencies to Perform Responsibilities Exercised by the Construction and Properties Division
580:20-7-2 [AMENDED]
580:20-7-7 [NEW]
Subchapter 9. Full-time Employment by Agencies for Minor Construction Projects
580:20-9-2 [AMENDED]
Subchapter 15. Energy Services Contracts
580:20-15-2 [AMENDED]
580:20-15-13 [NEW]
Subchapter 17. Construction Management Procedures and Requirements
580:20-17-2 [AMENDED]
580:20-17-3 [AMENDED]

580:20-17-4 [AMENDED]
580:20-17-5 [AMENDED]
580:20-17-9 [AMENDED]
580:20-17-10 [NEW]
Subchapter 19. Design-Build Procedures and Requirements
580:20-19-2 [AMENDED]
580:20-19-14 [NEW]
Subchapter 21. Selection of Construction Management and Design-Build Firms
580:20-21-2 [AMENDED]
580:20-21-3 [AMENDED]
580:20-21-9 [NEW]
Subchapter 23. Fees for Services
580:20-23-1 [AMENDED]
580:20-23-2 [AMENDED]
580:20-23-4 [NEW]
Subchapter 25. Pre-Construction Planning [NEW]
580:20-25-1 through 580:20-25-7 [NEW]

GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1223; filed 5-25-07]

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

[OAR Docket #07-1219]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
580:45-1-10 [REVOKED]

GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1219; filed 5-25-07]

TITLE 660. DEPARTMENT OF SECURITIES
CHAPTER 2. ORGANIZATION AND PROCEDURES OF DEPARTMENT OF SECURITIES

[OAR Docket #07-1061]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 9. Individual Proceeding Practices and Procedures
660:2-9-1. Hearings in general [AMENDED]
660:2-9-2. Initiation of individual proceedings [AMENDED]
660:2-9-3. Prehearing proceedings and processes [AMENDED]
660:2-9-4. Authority to subpoena witnesses [AMENDED]
660:2-9-6. Conduct of ~~hearings~~ individual proceeding [AMENDED]
660:2-9-7. Record of hearing [AMENDED]
660:2-9-8. Final orders [AMENDED]

GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1061; filed 5-17-07]

TITLE 660. DEPARTMENT OF SECURITIES
CHAPTER 11. OKLAHOMA UNIFORM SECURITIES ACT OF 2004

[OAR Docket #07-1062]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 7. Investment Advisers and Investment Adviser Representatives
Part 7. Record Keeping and Ethical Standards
660:11-7-41. Record keeping requirements [AMENDED]
660:11-7-48. Custody requirements [NEW]

GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1062; filed 5-17-07]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 45. GROSS PRODUCTION

[OAR Docket #07-1163]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 9. Exemptions and Exclusions
Part 5. Horizontally Drilled Production Wells
710:45-9-21 [AMENDED]
710:45-9-24 [AMENDED]
Part 7. Incremental Production from Enhanced Recovery Projects or Properties
710:45-9-31 [AMENDED]
710:45-9-32 [AMENDED]
710:45-9-32.1 [AMENDED]
710:45-9-34 [AMENDED]
710:45-9-35 [AMENDED]
Part 9. Production Enhancement Projects
710:45-9-40 [AMENDED]

710:45-9-41 [AMENDED]
Part 11. Reestablishment of Production from an Inactive Well
710:45-9-51 [AMENDED]
Part 13. Deep Wells
710:45-9-60 [AMENDED]
Part 15. New Discovery Wells
710:45-9-70 [AMENDED]
710:45-9-71 [AMENDED]
710:45-9-73 [AMENDED]
Part 19. Production Using Three Dimensional Seismic Shoots
710:45-9-90 [AMENDED]
710:45-9-92 [AMENDED]
710:45-9-93 [AMENDED]

GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1163; filed 5-22-07]

TITLE 735. STATE TREASURER CHAPTER 15. RECORDING AND AUDITING INVESTMENT TRANSACTIONS

[OAR Docket #07-1025]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 5. Auditing Investment Transactions
735:15-5-1. [AMENDED]

GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-1025; filed 5-15-07]

TITLE 735. STATE TREASURER CHAPTER 80. UNCLAIMED PROPERTY

[OAR Docket #07-1024]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 7. Claims Process
735:80-7-3. [AMENDED]
Subchapter 3. Reporting Requirements
Part 5. Business Associations
735:80-3-15 [AMENDED]

GUBERNATORIAL APPROVAL:
May 1, 2007

[OAR Docket #07-1024; filed 5-15-07]

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

[OAR Docket #07-1197]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 17. Travel
780:1-17-1. [AMENDED]

GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1197; filed 5-25-07]

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

[OAR Docket #07-1198]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 3. State Technical Assistance, Supervision, and Services
780:10-3-4 [AMENDED]
780:10-3-11 [AMENDED]
Subchapter 5. Finance
780:10-5-4 [AMENDED]
Subchapter 7. Local Programs: Application; Student Accounting; Evaluation
780:10-7-3 [AMENDED]
Subchapter 9. Service Contracts and Equipment Guidelines
780:10-9-2 [AMENDED]

GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1198; filed 5-25-07]

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 15. TECHNOLOGY CENTERS

[OAR Docket #07-1199]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 3. Technology Centers Education
780:15-3-2 [AMENDED]
780:15-3-6 [AMENDED]
780:15-3-7 [AMENDED]

GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1199; filed 5-25-07]

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

[OAR Docket #07-1200]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Secondary, Full-Time and Short-Term Adult *Career*Tech Programs
780:20-3-2 [AMENDED]
Subchapter 5. Programs, Services, and Activities Funded Through P.L 105-332 Carl D. Perkins Vocational and Technical Education Act of 1998
780:20-5-1 [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2007

[OAR Docket #07-1200; filed 5-25-07]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 5. FEES

[OAR Docket #07-989]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
785:5-1-11. Well driller and pump installer licensing fees [AMENDED]
GUBERNATORIAL APPROVAL:
April 6, 2007

[OAR Docket #07-989; filed 5-11-07]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 45. OKLAHOMA'S WATER QUALITY STANDARDS

[OAR Docket #07-990]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
785:45-1-2. Definitions [AMENDED]
Subchapter 3. Antidegradation Requirements
785:45-3-2. Applications of antidegradation policy [AMENDED]
Subchapter 5. Surface Water Quality Standards
Part 1. General Provisions
785:45-5-4. Applicability of narrative and numerical criteria [AMENDED]
Part 3. Beneficial Uses and Criteria to Protect Uses
785:45-5-9. General narrative criteria [AMENDED]
785:45-5-12. Fish and wildlife propagation [AMENDED]
785:45-5-13. Agriculture: livestock and irrigation [AMENDED]
785:45-5-14. Hydroelectric power generation [REVOKED]
785:45-5-15. Industrial and municipal process and cooling water [REVOKED]
Part 5. Special Provisions
785:45-5-25. Implementation Policies for the Antidegradation Policy Statement [AMENDED]
785:45-5-29. Delineation of NLW areas [AMENDED]
Appendix A. Designated Beneficial Uses for Surface Waters [REVOKED]
Appendix A. Designated Beneficial Uses for Surface Waters [NEW]
Appendix B. Areas with Waters of Recreational and/or Ecological Significance [REVOKED]
Appendix B. Areas with Waters of Recreational and/or Ecological Significance [NEW]
Appendix E. Requirements for Development of Site-Specific Criteria for Metals [REVOKED]
Appendix E. Requirements for Development of Site-Specific Criteria for Certain Parameters [NEW]
Appendix G. Numerical Criteria to Protect Beneficial Uses [REVOKED]
Appendix G. Numerical Criteria to Protect Beneficial Uses [NEW]
Appendix H. Beneficial Use Designations for Certain Groundwater [REVOKED]
Appendix H. Beneficial Use Designations for Certain Limited Areas of Groundwater [NEW]
GUBERNATORIAL APPROVAL:
April 6, 2007

[OAR Docket #07-990; filed 5-11-07]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 46. IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS

[OAR Docket #07-991]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:

Subchapter 1. General Provisions

785:46-1-2. Definitions [AMENDED]

Subchapter 3. Implementation of Narrative Toxics Criteria to Protect Aquatic Life Using Whole Effluent Toxicity (WET) Testing

785:46-3-3. Sampling for whole effluent toxicity testing [AMENDED]

Subchapter 9. Implementation of Criteria to Protect the Agriculture Beneficial Use

785:46-9-1. Applicability and scope [AMENDED]

785:46-9-2. Applicable mineral criteria [AMENDED]

785:46-9-3. Regulatory flows [AMENDED]

785:46-9-5. Reasonable potential [AMENDED]

Subchapter 15. Use Support Assessment Protocols

785:46-15-5. Assessment of Fish and Wildlife Propagation support [AMENDED]

785:46-15-8. Assessment of Agriculture Support [AMENDED]

785:46-15-11. Assessment of Hydroelectric Power Generation support [REVOKED]

785:46-15-12. Assessment of Industrial and Municipal Process and Cooling Water support [REVOKED]

785:46-15-13. Assessment of Navigation support [REVOKED]

GUBERNATORIAL APPROVAL:

April 6, 2007

[OAR Docket #07-991; filed 5-11-07]

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

[OAR Docket #07-992]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

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

785:50-7-3. Evaluation procedures for grant applications [AMENDED]

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

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

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

GUBERNATORIAL APPROVAL:

April 6, 2007

[OAR Docket #07-992; filed 5-11-07]

Gubernatorial Disapprovals

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

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

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

[OAR Docket #07-1213]

RULEMAKING ACTION:

Gubernatorial disapproval of permanent rules

RULES:

Subchapter 61. Civil Penalties

460:20-61-6 [AMENDED]

GUBERNATORIAL DISAPPROVAL

Written disapproval received May 11, 2007

[OAR Docket #07-1213; filed 5-24-07]

Emergency Adoptions

An agency may adopt new rules, or amendments to or revocations of existing rules, on an emergency basis if the agency determines that "an imminent peril exists to the preservation of the public health, safety, or welfare, or that a compelling public interest requires an emergency rule[s] . . . . [A]n agency may promulgate, at any time, any such [emergency] rule[s], provided the Governor first approves such rule[s]" [75 O.S., Section 253(A)].

An emergency action is effective immediately upon approval by the Governor or on a later date specified by the agency in the preamble of the emergency rule document. An emergency rule expires on July 15 after the next regular legislative session following promulgation, or on an earlier date specified by the agency, if not already superseded by a permanent rule or terminated through legislative action as described in 75 O.S., Section 253(H)(2).

Emergency rules are not published in the *Oklahoma Administrative Code*; however, a source note entry, which references the *Register* publication of the emergency action, is added to the *Code* upon promulgation of a superseding permanent rule or expiration/termination of the emergency action.

For additional information on the emergency rulemaking process, see 75 O.S., Section 253.

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

[OAR Docket #07-1026]

RULEMAKING ACTION:
EMERGENCY adoption.
RULES:
435:40-1-6. Curriculum of study and internship requirements [AMENDED]
435:40-1-7. Application procedures [AMENDED]
AUTHORITY:
Title 59 O.S., Section 536.24, Board of Medical Licensure and Supervision
DATES:
Adoption:
March 22, 2007
Approved by Governor:
May 4, 2007
Effective:
Immediately upon Governor's approval
Expiration:
Effective through July 14, 2008 unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
FINDING OF EMERGENCY:
The Board found compelling extraordinary circumstances exist for applicants trained out of state and wish to apply for an Oklahoma license.
ANALYSIS:
These rules are being amended to allow individuals trained outside of Oklahoma the opportunity to apply for a license. Under the current requirements, everyone must be trained under an Oklahoma licensed electrologist. The education standards will remain the same and applicants will still be required to take the Oklahoma State Examination. Rule 435:40-1-9 is being amended to accept Journal of Electrology articles and other courses approved by the American Electrology Association to count toward the continuing education requirements.
CONTACT PERSON:
Jan Ewing, Deputy Director, 405-848-6841, ext. 104

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

435:40-1-6. Curriculum of study and internship requirements

(a) **Preceptorship.**

(1) Applicants for licensure as registered electrologists shall successfully complete a minimum of ~~one year~~ six months curriculum of study and internship established by the Board.

(2) The preceptorship shall include successful completion of a minimum of 600 hours of study and clinical practice under the direct supervision of a preceptor.

(A) At least 50 of the 600 hours shall be spent in each modality (multi-needle Galvanic, Thermolysis, and the Blend).

(B) At least 300 hours of the training (including the minimum of 150 clinical hours required in (A) of this subsection) must be conducted on-site and in-person at the training facility.

(b) **Preceptors.** Except at provided in (c) below:

(1) Preceptors shall be registered electrologists approved by the Board.

(2) The preceptor must be licensed to practice electrolysis in the state of Oklahoma and must have actively practiced in the state for at least four years (at least two years immediately prior to beginning as a preceptor).

(3) Preceptors shall make training facilities available for inspection upon request by members of the Board, the Committee or their representative.

(4) Preceptors shall teach on modern equipment, in good working condition, as verified by submission of the equipment manufacturer's recommended maintenance schedule and proof of continued compliance with that schedule. Submittals shall be on forms approved by the Board and reviewed by the Committee for acceptability.

(5) Hygienic practices must conform to the Oklahoma Infection Control Standards for Electrologists.

(c) **Out-of-State Applicants for Licensure.** An applicant for licensure who holds a current license in good standing from another state, and who has received electrolysis study and internship of at least 600 hours may receive credit for the preceptorship requirement by providing sufficient proof of training and apprenticeship or internship program from the licensing state, based on the Committee's recommendation to the Board of the program's equivalency to the requirements for

licensure in Oklahoma and the Board's approval of the program. An out-of-state preceptorship, apprenticeship or internship program may be approved by the Board under the following conditions:

(1) The applicant must provide a copy of the Curriculum of Study to the Board and the Curriculum of Study must be the equivalent of that required in Oklahoma, as recommended by the Committee and approved by the Board.

(2) The preceptor must be licensed or registered in electrolysis in the State where the preceptorship was completed by applicant and have been actively practicing in the field for at least four years, with at least two of those years coming immediately prior to becoming the preceptor. Any exceptions to this requirement must be approved by the Board.

(3) All other requirements for licensure must be met by the applicant.

435:40-1-7. Application procedures

(a) The purpose of this section is to set out the application procedures for examination and licensure as a registered electrologist.

(1) Unless otherwise indicated, the applicant shall submit all required information of credentials on forms provided by the office of the Board.

(2) The Board will not consider an application as officially submitted until the applicant pays appropriate fees established by the Board. The Board assumes no responsibility for cash remittances which are not forwarded by registered mail. Application fees, processing fees and annual renewal fees are not refundable.

(3) The applicant for licensure shall obtain and complete the application form providing evidence of age and academic requirements to be reviewed by the Committee and approved by the Board.

(4) Approved applicants will fulfill the curriculum of study and internship requirements under the direct supervision of a registered electrologist, except as provided in 40-1-6(c) above.

(5) Upon completion of the curriculum of study and internship requirements, the supervising registered electrologist shall submit to the Board a notarized completion report, except as provided in 40-1-7(b) below.

(6) Upon completion of the academic, curriculum and internship requirements, the applicant shall be eligible for the licensure examination in electrology. The applicant shall complete the remaining portions of the application and submit the application to the Board not later than forty-five (45) days before the date of the examination. Applications for the examination may be submitted after completion of at least ten and one-half months of the internship with verification from the supervising registered electrologist that the applicant is expected to satisfactorily complete the remaining one and one-half months of training. This does not waive the requirement for a notarized completion report as required in this section.

(7) The Board shall notify an applicant of his/her eligibility for examination at least 10 days prior to the next scheduled examination.

(b) Applicants currently licensed in another state.

(1) An applicant from another state who has met the requirements of the Registered Electrologists Act, may be issued a license by the Board under the following circumstances:

(A) The applicant must furnish an affidavit from the state regulatory agency verifying that the applicant holds a current license and is in good standing with that state;

(B) Any out-of-state preceptorship, apprenticeship or internship program must be approved by the Board. An out-of-state preceptor must provide a notarized affidavit on forms approved by the t he Board, attesting to the preceptor's credentials and the applicant's successful completion of the preceptorship, as described in 40-1-6(c). If the out-of-state preceptor is not available to provide these affidavits, notarized letters of recommendations from at least three (3) persons acceptable to the Board who can sufficiently attest to the proficiency of the applicant, as recommended by the Committee and approved by the Board, must be provided by the applicant. Acceptable reference sources may include, but are not limited to:

(I) Referring physicians

(II) Other licensed electrologists

(III) Professional electrology associations

(IV) Electrology instructors

(V) Electrology preceptors

(2) Applicants trained out-of-state must take and successfully complete the Oklahoma licensing examination, except that applicants may not be required to take the International Board of Electrologist Certification (IBEC) portion of the licensing exam if they have passed the American Electrology Association/IBEC examination and are currently certified as a Certified Professional Electrologist (CPE).

(3) Applicants trained out-of-state may also be required to meet one or more of the following:

(A) Personal appearance.

(B) Additional continuing education units (CEUs).

(C) Practice under the direct supervision of a Registered Electrologist licensed in the state of Oklahoma, with the exact number of hours to be established by the Committee. The supervising Registered electrologist will provide reports to the Committee on the applicant's progress.

[OAR Docket #07-1026; filed 5-15-07]

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

[OAR Docket #07-1167]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Oklahoma Accountancy Board, 59 O.S. Section 15.5.B.6
DATES:
Comment Period:
February 15, 2007 through March 20, 2007
Public Hearing:
March 20, 2007
Adoption:
March 23, 2007
Submitted to Governor:
March 27, 2007
Submitted to House:
March 27, 2007
Submitted to Senate:
March 27, 2007
Gubernatorial Approval:
May 1, 2007
Legislative Approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 22, 2007
Final Adoption:
May 22, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 33. Peer Review
10:15-33-7 [AMENDED]
Gubernatorial approval:
August 24, 2006
Register publication:
24 Ok Reg 25
Docket number:
06-1283
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Amendments to the general provisions rules clarify the definition of "retired" status and add a definition for a rolling three-year period for continuing professional education (CPE). In accordance with Section 15.14A of the Oklahoma Accountancy Act (Act), Amendments to the permit rules provide that any individual engaged in the practice of public accounting must hold a permit to practice, whether or not the individual holds out as a CPA or PA. An additional amendment clarifies that individuals who meet the definition of retired or inactive status are not considered to be in the practice of public accounting. Section 15.35.C of the Oklahoma Accountancy Act provides for a 3-year for the completion of CPE. An amendment to the CPE rules clarifies that the 3-year period for completing CPE is a rolling 3-year period. Additional amendments to the CPE rules clarify eligibility for exception to the CPE requirement. The amendment to the Standards for CPE rules clarifies that the annual limit to publication credit for CPE purposes is 10 hours of credit, just as it was before the change to the rolling 3-year period. Section 15.30 of the Act provides for Peer Review. One amendment to the Peer Review rules provides that a firm having a permit revoked, suspended, surrendered, or cancelled must submit a peer review report or enroll in a peer review program if the firm held a permit at the time it provided audit or review services. Another amendment corrects the name of the PCAOB (Public Company Accounting Oversight Board). Final amendments make permanent the change made in emergency rules to remove language stating that a Peer Review Committee member could not be reappointed for three years after his/her previous appointment and simplify language prohibiting a committee member to serve concurrently as a member of the AICPA's or any state's CPA society's ethics or peer review committee, removing the 12-month waiting period limitation. Amendments to the Rules of Professional Conduct, amendments add back in language inadvertently deleted in a previous rules change and clarify language regarding repeated offenses
CONTACT PERSON:
Edith Steele (405) 521-2397

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.8(A), WITH AN EFFECTIVE DATE OF JULY 1, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

10:15-1-2. Definitions

In addition to the terms defined in the Oklahoma Accountancy Act, the following words or terms shall be applied when implementing that Act and, when used in this Chapter shall have the following meaning, unless the context clearly indicates otherwise:

"Accounting information system (AIS)" means a subsystem of the management information system within an

organization. The accounting information system collects and records financial and related information used to support management decision making and to meet both internal and external financial reporting requirements. An AIS system includes, but is not limited to, the accounting for transactions cycles such as revenues and receivables, purchases and payables, payroll, inventory, cash receipts and cash disbursements, and related data based systems.

"Act" means the Oklahoma Accountancy Act, Oklahoma Statutes, Title 59, §§ 15.1 through 15.38, dealing with the practice of public accountancy in Oklahoma.

"Active" when used to refer to the status of a registrant, describes an individual who possesses a certificate or license and who has not otherwise been granted "retired" or "inactive" status.

"Advanced" means the learning activity level most useful for individuals with mastery of the particular topic. This level focuses on the development of in-depth knowledge, a variety of skills, or a broader range of applications. Advanced level programs are often appropriate for seasoned professionals within organizations; however, they may also be beneficial for other professionals with specialized knowledge in a subject area.

"Audit sensitive" means activities of an individual which are normally an element of or subject to significant internal accounting controls. For example, the following positions, which are not intended to be all inclusive, would normally be considered audit sensitive, even though not positions of significant influence: cashier, internal auditor, accounting supervisor, purchasing agent, or inventory warehouse supervisor.

"Basic" means the learning activity level most beneficial to registrants new to a skill or an attribute. These individuals are often at the staff or entry level in organizations, although such programs may also benefit a seasoned professional with limited exposure to the area.

"Close relative" means a non-dependent child, stepchild, brother, sister, grandparent, parent, parent-in-law, and their respective spouses of a registrant. Close relatives of the registrant do not include the brothers and sisters of the spouse of the registrant.

"Code" means Title 10 of the Oklahoma Administrative Code.

"Compensation" means the receipt of any remuneration of any kind for public accounting services, including but not limited to salary, wages, bonuses or receipt of any tangible or intangible thing of value.

"Continuing Professional Education" means an integral part of the lifelong learning required to provide competent service to the public. The set of activities that enables registrants to maintain and improve their professional competence.

"CPE" means continuing professional education.

"CPE credit" means fifty minutes of participation in a group, independent study or self-study program. One-half CPE credit increments (equal to 25 minutes) are permitted after the first credit has been earned in a given learning activity.

"CPE program sponsor" means the individual or organization responsible for setting learning objectives, developing the program materials to achieve such objectives, offering a program to participants, and maintaining the documentation required by these standards. The term CPE program sponsor may include associations of CPAs or PAs, whether formal or informal, as well as employers who offer in-house programs.

"Domicile" means an individual's place of residence.

"Engagement team" means auditors who are required to exercise significant judgment in the audit process and would include positions where the auditor was the person in charge of the fieldwork up through partner on the engagement.

"Evaluative feedback" means specific response to incorrect answers to questions in self-study programs. Unique feedback must be provided for each incorrect response, as each one is likely to be wrong for differing reasons.

"Examining Authority" means the agency, board or other entity, of the District of Columbia, or any state or territory of the United States, entrusted with the responsibility for the governance, discipline, registration, examination and award of certificates, licenses or conditional credits for certified public accountants or public accountants and the practice of public accountancy in said jurisdictions.

"Firm" means a professional entity which is legally constituted in accordance with Oklahoma statutes to engage in accountancy.

"Generally accepted accounting principles" means the same as "Statement on Auditing Standards No. 69, The Meaning of Present Fairly in Conformity With Generally Accepted Accounting Principles in the Independent Auditor's Report" adopted in 1992, and issued by the American Institute of Certified Public Accountants and subsequent amendments.

"Generally accepted auditing standards" means those standards which are used to measure the quality of the performance of auditing procedures and the objectives to be obtained by their use. Statements on Auditing Standards issued by the American Institute of Certified Public Accountants, Standards for Audit of Government Organizations, Programs, Activities and Functions issued by the Comptroller General of the United States, Standards of the Public Company Accounting Oversight Board (PCAOB) and other pronouncements having similar generally recognized authority, are considered to be interpretations of generally accepted auditing standards, and departures from such pronouncements, where they are applicable, must be justified by those who do not follow them.

"Group program" means an educational process designed to permit a participant to learn a given subject through interaction with an instructor and other participants either in a classroom or conference setting or by using the Internet.

"Immediate family members" means the registrant's, or his/her spouse's, lineal and collateral heirs.

"Inactive" used to refer to the status of a registrant who is exempt from complying with the CPE requirements as provided in Subchapter 10:15-30-8(a) (2), (3) and (4). However, inactive status does not preclude volunteer services for which the inactive registrant receives no direct or indirect compensation so long as the inactive registrant does not sign any documents related to such services as a CPA or PA.

"Independent study" means an educational process designed to permit a participant to learn a given subject under a learning contract with a CPE program sponsor.

"Instructional methods" means delivery strategies such as case studies, computer-assisted learning, lectures, group participation, programmed instruction, teleconferencing, use of audiovisual aids, or work groups employed in group, self-study, or independent study programs.

"Intermediate" means learning activity level that builds on a basic program, most appropriate for registrants with detailed knowledge in an area. Such persons are often at a mid-level within the organization, with operational and/or supervisory responsibilities.

"Internet-based programs" means a learning activity, through a group program or a self-study program, that is designed to permit a participant to learn the given subject matter via the Internet. To qualify as either a group or self-study program, the Internet learning activity must meet the respective standards.

"Learning activity" means an educational endeavor that maintains or improves professional competence.

"Learning contract" means a written contract signed by an independent study participant and a qualified CPE program sponsor prior to the commencement of the independent study that:

(A) Specifies the nature of the independent study program and the time frame over which it is to be completed, not to exceed 15 weeks.

(B) Specifies that the output must be in the form of a written report that will be reviewed by the CPE program sponsor or a qualified person selected by the CPE program sponsor.

(C) Outlines the maximum CPE credit that will be awarded for the independent study program, but limits credit to actual time spent.

"Learning objectives" means specifications on what participants should accomplish in a learning activity. Learning objectives are useful to program developers in deciding appropriate instructional methods and allocating time to various subjects.

"Learning plans" means structured processes that help registrants guide their professional development. They are dynamic instruments used to evaluate and document learning and professional competence development. This may be reviewed regularly and modified, as registrants' professional competence needs change. Plans include:

(A) A self-assessment of the gap between current and needed knowledge, skills, and abilities;

(B) A set of learning objectives arising from this assessment; and

(C) Learning activities to be undertaken to fulfill the learning plan.

"Licensee" means an individual designated as a CPA, PA, or equivalent designation in another state.

"Management information system (MIS)" means a computer or manual system, or a group of systems, within an organization that is responsible for collecting and processing data to ensure that all levels of management have the information needed to plan, organize, and control the operations of the organization and to meet both internal and external reporting requirements.

"NASBA" means National Association of State Boards of Accountancy.

"New CPAs and PAs" refers to individuals who are initially certified or licensed in Oklahoma as the result of successfully completing the examination, including those individuals certified or licensed as the result of transferring all credits earned on an examination from another jurisdiction.

"Office" means a building, room, or series of rooms which are owned, leased, or rented by an individual or firm for the purpose of holding out or carrying out the practice of public accounting.

"Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, sole proprietorship, an association, two or more persons having a joint or common interest, an employer of CPAs or PAs, or any other legal or commercial entity.

"Other compensation" means compensation, including remuneration based on a percentage of the amounts involved received by a registrant who is engaged in the practice of public accounting for other than the performance of professional services or for the sale or referral of products or services of third parties.

"Other professional standards" means those standards as defined by Statements on Management Advisory Services, Statements on Responsibilities in Tax Practice, Statements on Standards for Accounting and Review Services and Statements of Quality Control Standards, where applicable, issued by the American Institute of Certified Public Accountants.

"Overview" means learning activity level that provides a general review of a subject area from a broad perspective. These programs may be appropriate for professionals at all organizational levels.

"Period of professional engagement" means the period during which professional services are provided, with such period starting when the registrant begins to perform professional services requiring independence and ending with the notification of the termination of that professional relationship by the registrant or by the client.

"Personal development" means a field of study that covers such skills as communications, managing the group process, dealing effectively with others, interviewing, counseling, and career planning.

"Pilot test" means sampling of at least three independent individuals representative of the intended participants to measure the average completion time to determine the recommended CPE credit for self-study programs.

"Principal place of business" means that physical location identified by a licensee to a state's accountancy regulatory agency where substantial administrative or management activities are conducted. For purposes of "Substantial Equivalency" the physical location cannot be in the State of Oklahoma.

"Professional competence" means having requisite knowledge, skills, and abilities to provide quality services as defined by the technical and ethical standards of the profession. The expertise needed to undertake professional responsibilities and to serve the public interest.

"Program of learning" means a collection of learning activities that are designed and intended as continuing education and that comply with these standards.

"Reinforcement feedback" means specific responses to correct answers to questions in self-study programs. Such feedback restates why the answer selected was correct.

"Related individual" includes spouses, and dependent persons, whether or not related for all purposes of complying with the Rules of Professional Conduct, provided that the independence of the registrant and the firm of the registrant will not normally be impaired solely because of employment of a spouse or dependent person by a client if the employment is in a position that does not allow "significant influence" over the operating, financial, or accounting policies of the client. In the event such employment is in a position in which the activities of the related individual are audit-sensitive, even though not a position of significant influence, the registrant should not participate in the engagement.

"Renewal permit" refers to a permit applied for prior to the expiration of the current permit.

"Retired" means a registrant who holds a certificate or license and verifies to the Board that the registrant is no longer practicing public accounting or employed. However, retired status does not preclude volunteer services for which the retired registrant receives no direct or indirect compensation so long as the retired registrant does not sign any documents related to such services as a CPA or PA.

"Rolling three-year period" means that the registrant is required to have completed 120 hours of CPE in any three-calendar-year period beginning January 1, 2006 and going forward.

"Self-study program" means an educational process designed to permit a participant to learn a given subject without major involvement of an instructor. Self-study programs use a pilot test to measure the average completion time from which the recommended CPE credit is determined.

"Sole Proprietorship" means an unincorporated business enterprise which is owned entirely by one (1) certificate or license holder.

"State" means the District of Columbia, any state, or territory of the United States.

"Update" means learning activity level that provides a general review of new developments. This level is for participants with a background in the subject area who desire to keep current.

SUBCHAPTER 25. PERMITS

10:15-25-3. Individual permit

(a) An individual permit shall have a maximum term of one (1) year and shall expire on June 30 following the date of issuance.

(b) Any registrant engaged in the practice of public accounting, regardless of whether such services are rendered for compensation, must have a permit. ~~if the registrant is holding out as a CPA or PA in any manner as described in the Act.~~ However, for purposes of this section, an individual may not be considered to be in the practice of public accounting if the individual performs an incidental amount of non-compensated services for immediate family members. An individual who meets the definition of retired or inactive status as defined in the Code or the Act is not considered to be in the practice of public accounting. In order to obtain a permit, an individual must have a valid certificate or license, be properly registered, pay all applicable fees, and comply with the continuing education requirements.

(c) Each partner, shareholder, owner, member and certified or licensed employee of a firm located outside this state shall be required to hold a valid permit or to notify the Board of his/her intent to practice public accountancy in this State in accordance with the Substantial Equivalency provision in order to serve clients in this State unless such service is incidental to other responsibilities in the firm or involves the internal review procedures of the firm.

(d) The application for renewal of a permit shall be filed with the Board on a form prescribed by the Board prior to the expiration of the permit currently held and no later than June 30.

(e) At the time the application for a permit is filed, the registrant shall attest to compliance with the continuing education requirement for the applicable compliance period as specified by the Board.

(f) An application for a permit may be filed at any time during the year by a registrant who is entering or reentering the practice of public accounting. Such registrant shall attest to compliance with the applicable continuing education requirement.

(g) The fees to obtain a permit to practice shall accompany the application. The fees for the renewal of permits are set forth in Subchapter 27.

SUBCHAPTER 30. CONTINUING PROFESSIONAL EDUCATION

10:15-30-5. Reporting and documentation by certificate and license holders

(a) Certificate and license holders not otherwise exempt must complete one hundred twenty (120) hours of qualifying CPE within ~~three (3) calendar years~~ a rolling three (3) calendar year period. A certificate or license holder's three (3) year period begins January 1 in the year the certificate or license holder was required to earn CPE. A minimum of twenty (20) hours of acceptable CPE, including two (2) hours of professional ethics, shall be completed each calendar year.

(b) Each certificate and license holder required to report CPE shall certify, in a format prescribed by the Board, information regarding the CPE hours claimed for credit for the calendar year.

(c) CPE hours claimed for credit may be claimed only for the compliance period in which the course was completed and credit granted.

(d) Each letter or certificate of completion shall include the date of completion of the seminar or course as evidenced by:

(1) Date the in-attendance course was completed;

(2) Date a self-study course was completed and evidenced by the date of certified mailing or date of facsimile transmission to the program sponsor;

(3) Date an internet self-study course is transmitted to the program sponsor.

(e) At the time of completing each course, or within sixty (60) days thereafter, the certificate or license holder shall obtain a letter or certificate attesting to completion of the course from the sponsor of the course. Such letters or certificates shall be retained for a period of five (5) years after the end of the compliance period in which the program is completed and shall include the specific information set forth in the Board's CPE Standards.

(f) Participants in structured CPE programs shall also retain descriptive material for five (5) years which reflects the content of a course in the event the participant is requested by the Board to substantiate the course content.

(g) If a certificate or license holder's main area of employment is industry and the certificate or license holder holds a permit to practice, at least seventy-two (72) hours of the one hundred twenty (120) hour requirement within a three (3) year period of the qualifying CPE completed by the certificate or license holder shall be in subjects related to the practice of public accounting and shall earn a minimum of eight (8) hours in the areas of taxation, accounting or assurance per year.

10:15-30-8. Exceptions to CPE reporting requirements

All certificate and license holders must comply with CPE reporting requirements unless exempted below.

(~~a~~ 1) The Board exempts from the requirements of CPE the following classifications:

(~~1~~ A) Retired certificate or license holders who are no longer employed or practicing public accounting;

(~~2~~ B) Certificate or license holders who are on active military service;

(~~3~~ C) Disabled certificate or license holders who are no longer employed or practicing public accounting due to medical circumstances;

~~(4) Certificate or license holders who are (A) not employed due to circumstances other than retirement, military service or disability or (B) certificate or license holders employed but not performing the following services:~~

~~(A) keeping books, preparing trial balances, financial statements or reports~~

~~(B) preparing tax returns, consulting on tax matters, conducting studies on tax matters, preparing reports on tax matters~~

~~(C) preparing personal financial or investment plans~~

~~(D) providing management advisory services~~

(D) Certificate or license holders who are (A) not employed due to circumstances other than retirement, military service or disability or (B) certificate or license holders employed but not performing any services associated with accounting work. For purposes of this section, the term "associated with accounting work" shall include but is not limited to the following:

(i) working or supervising work performed in the areas of financial accounting and reporting; tax compliance, planning or advice; management advisory services; accounting information systems; treasury, finance or audit or preparing personal financial statements or investment plans; or

(ii) representing to the public, including an employer, that the registrant is a CPA or PA in connection with the performance or sale of any services or products involving accounting work, including such designation on a business card, letterhead, promotional brochure, advertisement, office, website or any electronic media.

(~~5~~ E) Other good cause as determined by the Board on an individual basis.

(2) The Board will consider granting an exemption from the CPE requirement on a case-by-case basis if:

(A) a registrant completes and forwards to the Board a sworn affidavit indicating that the registrant will not be associated with accounting work during the period for which the exemption is requested. A registrant who has been granted this exemption and who re-enters the work force shall be required to comply with 10:15-30-9; and

(B) a registrant forwards to the Board a sworn affidavit from the employer or organization indicating no association with accounting work. The affidavit shall include, as a minimum, a brief description of the duties performed, job title, and verification by the registrant's immediate supervisor that there is no reliance on the registrant's expertise as a CPA or PA.

(~~b~~ 3) Unless otherwise exempted for good cause~~, all certificate and license holders must comply with CPE reporting requirements~~ on a case by case basis.

(~~c~~ 4) A certificate or license holder exempt from the requirement of CPE by reason of retirement or inactive status must indicate "retired" or "inactive" if they use their "CPA" or "PA" designation in any manner.

SUBCHAPTER 32. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION (CPE) PROGRAMS

10:15-32-5. Standards for CPE program measurement

(a) Sponsored learning activities are measured by program length, with one 50-minute period equal to one CPE credit. One-half CPE credit increments (equal to 25 minutes) are permitted after the first credit has been earned in a given learning activity.

(1) For learning activities in which individual segments are less than 50 minutes, the sum of the segments should be considered one total program. For example, five 30-minute presentations would equal 150 minutes and should be counted as three CPE credits. When the total minutes of a sponsored learning activity are greater than 50, but not equally divisible by 50, the CPE credits granted

should be rounded down to the nearest one-half credit. Thus, learning activities with segments totaling 140 minutes should be granted two and one-half CPE credits.

(2) While it is the participant's responsibility to report the appropriate number of credits earned, CPE program sponsors must monitor group learning activities to assign the correct number of CPE credits.

(3) For university or college credit courses that meet these CPE Standards, each unit of college credit shall equal the following CPE credits:

(A) Semester System 15 credits; and

(B) Quarter System 10 credits;

(4) For university or college non-credit courses that meet these CPE standards, CPE credits shall be awarded only for the actual classroom time spent in the non-credit course.

(5) Credit is not granted to participants for preparation time.

(6) Only the portions of committee or staff meetings that are designed as programs of learning and comply with these standards qualify for CPE credit.

(c) CPE credit for self-study learning activities must be based on a pilot test of the average completion time. A sample of intended professional participants should be selected to test program materials in an environment and manner similar to that in which the program is to be presented. The sample group of at least three individuals must be independent of the program development group and possess the appropriate level of knowledge before taking the program. The sample does not have to ensure statistical validity. CPE credits should be recommended based on the average completion time for the sample. If substantive changes are subsequently made to program materials further pilot tests of the revised program materials should be conducted to affirm or amend, as appropriate, the average completion time.

(d) Instructors or discussion leaders of learning activities should receive CPE credit for both their preparation and presentation time to the extent the activities maintain or improve their professional competence and meet the requirements of these CPE standards.

(1) Instructors, discussion leaders, or speakers who present a learning activity for the first time should receive CPE credit for actual preparation time up to two times the number of CPE credits to which participants would be entitled, in addition to the time for presentation.

(2) Instructors of university or college courses can claim a maximum of fifteen (15) CPE credits per college credit hour taught to the extent the preparation required for the course maintains or improves their professional competence.

(3) For repeat presentations, CPE credit as provided in 10:15-32-5(d)(1) and (2) can be claimed only if it can be demonstrated that the learning activity content was substantially changed and such change required significant additional study or research.

(e) Writers of published articles, books, or CPE programs should receive CPE credit for their research and writing time to the extent it maintains or improves their professional competence. CPE credit from this activity shall be limited to ~~twenty-five percent (25%) of the CPE credit required in a compliance period~~ 10 CPE credits per calendar year and will be determined by the Board on a case by case basis. Writing articles, books, or CPE programs for publication is a structured activity that involves a process of learning. CPE credits should be claimed only upon publication.

(f) CPE credits recommended by a CPE program sponsor of independent study must not exceed the time the participant devoted to complete the learning activities specified in the learning contract. The credits to be recommended by an independent study CPE program sponsor should be agreed upon in advance and should be equated to the effort expended to improve professional competence. The credits cannot exceed the time devoted to the learning activities and may be less than the actual time involved.

SUBCHAPTER 33. PEER REVIEW

10:15-33-4. Enrollment and participation

(a) Participation in the program is required of each firm holding a permit from the Board that performs any review or audit services after July 1, 2004, unless the firm ceases performing review or audit services before July 1, 2005.

(b) Firm enrollment is required as follows:

(1) An existing firm required to participate under subsection (a) shall enroll in the peer review program of an approved sponsoring organization within one (1) year from the performance of services that require a peer review. The firm shall adopt the peer review due date assigned by the sponsoring organization, and must notify the Board of the date within thirty (30) days of its assignment. In addition, the firm shall schedule and begin an additional peer review within three (3) years of the previous peer review due date, or earlier as may be required by the sponsoring organization. It is the responsibility of the firm to anticipate its needs for peer review services in sufficient time to enable the reviewer to complete the peer review by the assigned review due date.

(2) An existing firm that subsequently begins providing services as set forth in subsection (a) shall notify the Board of the change in status within thirty (30) days and provide the Board with enrollment information within twelve (12) months of the date the services were first provided and have a peer review within eighteen (18) months of the year end of the engagement performed. This provision shall also apply to any new firm that provides the services set forth in subsection (a).

(c) In the event that a firm is merged, otherwise combined, dissolved, or separated, the sponsoring organization shall determine which firm is considered the succeeding firm. Any dispute of the sponsoring organization's determination shall be resolved by the Board. The succeeding firm shall retain its peer review status and the peer review due date.

(d) Any firm having a permit revoked, suspended, surrendered, or cancelled, that held a permit from the Board

at the time it provided audit or review services must enroll in a Board approved peer review program as provided in subsection 10:15-33-4(a) or submit a peer review report as provided in subsection 10:15-33-6(a).

(~~d~~ e) The Board will accept extensions granted by the sponsoring organization to complete a peer review, provided the Board is notified by the firm within thirty (30) days of the date that an extension is granted.

(~~e~~ f) A firm that has been rejected by a sponsoring organization for whatever reason shall notify the Board of:

(1) Name of sponsoring organization rejecting the enrollment;

(2) Reasons for the rejection;

(3) Name of subsequently selected sponsoring organization.

(~~f~~ g) A firm choosing to change to another sponsoring organization may do so only once a final acceptance letter has been issued indicating that all outstanding corrective actions have been completed and outstanding fees paid.

10:15-33-6. Reporting to the board

(a) Any report or document required to be submitted under this subsection shall be filed with the Board within thirty (30) days of receipt from the sponsoring organization. Such report shall contain:

(1) A copy of the report and the final letter of acceptance from the sponsoring organization, if such report is unmodified with or without comments; or

(2) A copy of the report, letter of comments, letter of response, the signed agreement to the conditional letter of acceptance, and final letter of acceptance when corrective actions are complete if the report is modified in any respect or adverse; and

(3) A copy of the Public ~~Committee~~ Company Accounting Oversight Board (PCAOB) report, if applicable.

(b) Any document submitted to the Board under this subsection is confidential pursuant to the Act.

10:15-33-7. Peer review committee

(a) The Board shall appoint a Peer Review Committee for the purpose of:

(1) Monitoring sponsoring organizations to provide reasonable assurance that peer reviews are being conducted and reported on in accordance with peer review minimum standards;

(2) Reviewing the policies and procedures of sponsoring organization applicants as to their conformity with the peer review minimum standards; and

(3) Reporting to the Board on the conclusions and recommendations reached as a result of performing functions in paragraphs (A) and (B) of this subsection.

(b) The Peer Review Committee shall consist of three (3) members nominated by the Chair and approved by the Board, none of whom is a current member of the Board. Initial appointment of the three (3) committee members shall be as follows: one (1) member appointed for three (3) years; one (1) member appointed for two (2) years; and one member appointed for one (1) year. Subsequent committee members shall serve three (3) year terms. ~~A committee member shall not be allowed to be reappointed until a three (3) year period has lapsed after his/her previous appointment.~~ Compensation, if any, of Peer Review Committee members shall be set by the Board, not to exceed One Hundred Fifty Dollars ($150.00) per hour. Each member of the Peer Review Committee must be active in the practice of public accounting at a supervisory level or above in the accounting or auditing function while serving on the committee or any employee involved at a supervisory level or above in an audit function of a state or local government. The member or member's firm must be enrolled in an approved practice/monitoring program and have received an unmodified report on its most recently completed peer review. A majority of the committee members must satisfy the qualifications required of system peer review team captains as established and reported in the AICPA Standards for Performing and Reporting on Peer Reviews.

(1) No more than one Peer Review Committee member may be from the same firm.

(2) A Peer Review Committee member may not concurrently serve as a member of the AICPA's or any state's CPA society ethics or peer review committee. ~~:~~

~~(A) A member of the AICPA's or any state's CPA society's ethics committee; or~~

~~(B) A member of the AICPA's or any state's CPA society's Peer Review Committee for a period of twelve (12) months following that person's service on such Peer Review Committee.~~

(3) A Peer Review Committee member may not participate in any discussion or have any vote with respect to a reviewed firm when the committee member lacks independence or has a conflict of interest. The Board may appoint alternate committee member(s) to serve in these situations.

(c) Information concerning a specific firm or reviewer obtained by the Peer Review Committee during oversight activities shall be confidential, and the firm's or reviewer's identity shall not be reported to the Board. Reports submitted to the Board will not contain information concerning specific registrants, firms or reviewers.

(d) As determined by the Board, the Peer Review Committee shall make periodic recommendations to the Board, but not less than annually, as to the continuing qualifications of each sponsoring organization as an approved sponsoring organization.

(e) The Peer Review Committee may:

(1) When necessary in reviewing reports on peer reviews, prescribe actions designed to assure correction of the deficiencies in the reviewed firm's system of quality control policies and procedures and provide such results to the Board;

(2) Monitor the prescribed remedial and corrective actions to determine compliance by the reviewed firm;

(3) Establish and perform procedures for ensuring that reviews are performed and reported on in accordance with the AICPA Standards for Performing and Reporting on Peer Reviews or other standards as approved by the Board and the rules promulgated herein by the Board;

(4) Establish a report acceptance process, which facilitates the exchange of viewpoints among committee members and sponsoring organization; and

(5) Communicate to the governing body of the sponsoring organization on a recurring basis:

(A) Problems experienced by the enrolled registrants in their systems of quality control as noted in the peer reviews conducted by the sponsoring organization;

(B) Problems experienced in the implementation of the peer review program; and

(C) A summary of the historical results of the peer review program.

(f) Committee members shall become disqualified to serve on Peer Review Committee if any of the provisions that qualify the committee member no longer exist or by majority vote of the Board.

SUBCHAPTER 39. RULES OF PROFESSIONAL CONDUCT

10:15-39-1. Application

(a) To the extent not contradicted by rule herein, a registrant shall conform in fact and in appearance to the AICPA Code of Professional Conduct.

(b) To protect the public interest, the Rules of Professional Conduct are based on the premise that the public and the business community rely on sound financial reporting and on professional competence. This premise is inherent in the authorized use of the titles certified public accountant and public accountant, which imposes on persons registered with the Board certain obligations to the public and to others. These obligations which the Rules of Professional Conduct are intended to enforce, include: the obligation to maintain independence and objectivity of thought and action, to strive continuously to improve professional skills, to observe, where applicable, generally accepted accounting principles, governmental auditing standards, standards as set by the Public Company Auditing Oversight Board, and generally accepted auditing standards, to promote sound and informative financial reporting, to hold the affairs of clients or employers in confidence, to uphold the standards of the public accounting profession, and to maintain high standards of personal conduct in all matters affecting fitness to practice public accounting.

(c) Acceptance by a registrant of a certificate or license involves a duty to abide by the Rules of Professional Conduct.

(d) The Rules of Professional Conduct are intended to have application to all kinds of professional services performed in the practice of accounting, including, but not limited to, assurance, attest, auditing, accounting, review and compilation services, tax services, management advisory services and personal financial and investment planning, and intended to apply as well to all certificate and license holders, whether or not engaged in the practice of public accounting, except where the wording of one of the Rules of Professional Conduct clearly indicates that the applicability is more limited.

(e) A registrant who is engaged in the practice of public accounting outside the United States is not subject to discipline by the Board for departing, with respect to such foreign practice, from any of the Rules of Professional Conduct, so long as the conduct is in accordance with the Rules of Professional Conduct applicable to the practice of public accounting in the country in which the registrant is practicing. If the name of a registrant is associated with financial statements in such manner as to imply that the registrant is acting as an independent CPA or PA under circumstances which would entitle the reader to assume that United States practices are followed, the registrant will be expected to comply with the provisions of Code 10:15-39-6(b), 10:15-39-6(c) and 10:15-39-6(d).

(f) In interpreting and enforcing these rules, the Board may give consideration, but not necessarily dispositive weight, to relevant interpretations, rulings and opinions issued by the boards of other jurisdictions, appropriately authorized ethics committees of professional organizations and other federal and state agencies.

10:15-39-9. Professional misconduct

It is professional misconduct for a CPA, PA or a firm to:

(1) violate or attempt to violate the Oklahoma Accountancy Act or the rules implementing that Act, knowingly assist or induce another to do so, or do so through the act of another; or

(2) commit a criminal act that reflects adversely on the CPA's or PA's integrity, trustworthiness or fitness to practice as a CPA or PA; or

(3) commit any act that reflects adversely on the CPA's or PA's fitness to practice public accounting.

(4) engage in conduct involving dishonesty, fraud, deceit, misrepresentation or omission of a known material fact; or

(5) engage in a pattern of repeated offenses, even ones of minor significance ~~when considered separately, which indicate~~ including an indifference to the Oklahoma Accountancy Act or the rules implementing that Act; or

(6) state or imply an ability to influence improperly a government agency or official; or

(7) violate the rules and regulations of other state or federal regulatory agencies which results in the censure or suspension, cancellation, revocation, or withdrawal of registration or right to practice by such state or federal agency as a result of a hearing, consent agreement, court order, or other administrative proceedings.

[OAR Docket #07-1167; filed 5-23-07]

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

[OAR Docket #07-1118]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:
Subchapter 3. Fee Schedules
35:2-3-12 [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2), (3), and (29), and 3-32.1 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
February 1, 2007 to March 5, 2007
Public hearing:
March 5, 2007
Adoption:
March 21, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
April 26, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2007
Final adoption:
May 18, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rule will provide for cleanup and new fees for the Landscaper or Personal Use category, issuance of phytosanitary certificates, and inspections.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 3. FEE SCHEDULES

35:2-3-12. Schedule of horticulture program fees

(a) The fee for each Federal Phytosanitary Certificate issued or renewed shall be as follows:

(1) Federal Phytosanitary Certificate PPQ Form 577

(A) If the aggregate commercial value of the product inspected for certification is $1,250.00 or more - Fifty Dollars ($50.00).

(B) If the aggregate commercial value of the product inspected for certification is less than $1,250.00 - Twenty Five Dollars ($25.00).

~~(C) No charge for products of no commercial value.~~

(2) Federal Phytosanitary Certificate, Processed Plant Products PPQ Form 578

(A) If the aggregate commercial value of the product inspected for certification is $1,250.00 or more - Fifty Dollars ($50.00).

(B) If the aggregate commercial value of the product inspected for certification is less than $1,250.00 - Twenty Five Dollars ($25.00).

~~(C) No charge for products of no commercial value.~~

(3) Federal Phytosanitary Certificate for Re-export PPQ Form 579

(A) If the aggregate commercial value of the product inspected for certification is $1,250.00 or more - Fifty Dollars ($50.00).

(B) If the aggregate commercial value of the product inspected for certification is less than $1,250.00 - Twenty Five Dollars ($25.00).

~~(C) No charge for products of no commercial value.~~

(4) Ten Dollars ($10.00) for the re-issuance of a Federal Phytosanitary Certificate.

(b) The fee for each State Phytosanitary Certificate issued or renewed shall be ~~as follows:~~Twenty Dollars ($20.00) except there shall be no

~~(1) If the aggregate commercial value of the product inspected for certification is $1,000.00 or more - Ten Dollars ($10.00).~~

~~(2) If the aggregate commercial value of the product inspected for certification is less than $1,000.00 - Five Dollars ($5.00).~~

~~(3) No~~ charge ~~for products of no commercial value or~~ for the issuance of a certificate required by the Japanese Beetle Harmonization Plan unless a treatment is monitored by an authorized agent of the Board.

(c) The fee for each grower, dealer, broker, and landscaper license issued or renewed and inspection conducted shall be as follows:

(1) Growers license - Twenty five Dollars ($25.00) for each business location.

(2) Growers inspection fee - One Dollar ($1.00) per acre ~~or~~and per 1000 square feet of greenhouse area inspected.

(3) Dealers, broker license and landscapers fees -Thirty eight Dollars ($38.00) for each business location.

(4) Landscaper or Personal Use Only license fee - One Hundred Dollars ($100.00) for each business location.

(~~4~~5) No fee for shall be charged for a grower's license issued to any scientific, agricultural, or horticultural club, garden center, educational or eleemosynary institution, or any department or branch of the state or federal government:

(~~5~~6) Failure to remit the license fee by the 15th of the month following the expiration month shall result in a penalty fee equal to the cost of the license.

(d) A fee of Twenty-Five Dollars ($25.00) shall be charged for any requested inspection or certification and shall be payable at the time of inspection and includes inspections and certificates issued for transporting plants.

(~~d~~e) All fees and monies collected under this program shall be paid to the Oklahoma Department of Agriculture, Food, and Forestry.

[OAR Docket #07-1118; filed 5-21-07]

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

[OAR Docket #07-1117]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Fee Schedules
35:2-3-2.4 [AMENDED]
35:2-3-2.6 [AMENDED]
35:2-3-2.7 [AMENDED]
35:2-3-2.8 [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(20) and 14-83; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
January 16, 2007 to February 15, 2007
Public hearing:
February 15, 2007
Adoption:
March 21, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
April 26, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2007
Final adoption:
May 18, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rules amend certain fees contained in Subchapter 3 pertaining to microbiological testing, water and sediment testing, seed testing, and Bureau of Standards. These rules allow the Oklahoma Department of Agriculture, Food, and Forestry's Laboratory Services Division to recoup some of the costs associated with conducting the specific tests addressed by the amendments.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 3. FEE SCHEDULES

35:2-3-2.4. Schedule of microbiological testing fees

(a) Aerobic plate count - $10.00.
(~~a~~b) Bacillus cereus, confirmed - $61.00.
(~~b~~c) Bacillus cereus, presumptive - $14.00.
(~~c~~d) Campylobacter - $20.00.
(~~d~~e) Clostridium perfringens - $14.00.
(~~e~~f) Coliform - $10.00.
(~~f~~g) Confirmed membrane filter (MF), lauryl sulfate tryptose (LST) and brilliant green bile (BGB) - $7.00.
(~~g~~h) E. coli - $20.00.
(~~h~~i) E. coli O157 - $20.00.
(~~i~~j) Enterococcus - $10.00.
(~~j~~k) Fecal coliform, membrane filter (MF), or most probable number (MPN) - $10.00.
(~~k~~l) Filth and adulteration of foods, gross examination - $5.00.
(~~l~~m) Gram stain - $5.00.
(~~m~~n) Listeria - $25.00.
(o) pH food products - $10.00.
(~~n~~p) Plate count, coliform - $10.00.
(q) Residual bacteria count - $10.00.
(r) Residual coliform count - $10.00.
(s) Ribotyping, individual bacteria - $105.00.
(~~o~~t) Salmonella - $20.00.
(~~p~~u) Shigella - $20.00.
(~~q~~v) Staphylococcus - $20.00.
(~~r~~w) Staphylococcus, confirmation of coagulase + - $5.00.
(~~s~~x) ~~Utensil~~Swab or utensil count - ~~$4.00~~$10.00.
(y) Thermometer check - $15.00.
(~~t~~z) Water activity - 30.00.
(~~u~~aa) Yeast and mold count - $9.00.
~~(v) Ribotyping, individual bacteria - $105.00~~

35:2-3-2.6. Schedule of water and sediment inorganic testing fees

(a) Alkalinity, total - $10.00.
(b) Biochemical oxygen demand, 5-day (BOD5) - ~~$30.00~~$35.00.
(c) Biochemical oxygen demand, 20-day (BOD20) - ~~$40.00~~$45.00.
(d) Biochemical oxygen demand, 30-day (BOD30) - ~~$45.00~~$50.00.
(e) Carbonate/Bicarbonate - $10.00.
(f) Chloride - ~~$12.00~~$15.00.
(g) Electrical conductivity (EC) - ~~$4.00~~$5.00.
(h) Hardness - ~~$16.00~~$25.00.
(i) Ion balance, cation/anion balance - ~~$20.00~~$85.00.
(j) Ion screen, anions (chloride, sulfate, nitrate-nitrogen, and nitrite-nitrogen) - ~~$16.00~~$25.00.
(k) Ion screen, cations (sodium, potassium, calcium, and magnesium) - ~~$16.00~~$25.00.
(l) Kjeldahl nitrogen, total (TKN) - ~~$15.00~~$20.00.
(m) Monochromatic chlorophyll a and pheophytin - ~~$35.00~~$40.00.

(n) Monochromatic chlorophyll a and pheophytin, pre-extracted and ground - ~~$5.00~~$7.00.
(o) Nitrogen from ammonia - ~~$12.00~~$15.00.
(p) Nitrogen from nitrates - ~~$12.00~~$15.00.
(q) Nitrogen from nitrites - ~~$12.00~~$15.00.
(r) pH - ~~$4.00~~$5.00.
(s) Phosphorus from ortho-phosphorus - $15.00.
(t) Phosphorus, total (TP) - $20.00.
(u) Solids, total dissolved (TDS) - ~~$10.00~~$15.00.
(v) Solids, total suspended (TSS) - ~~$10.00~~$15.00.
(w) Sulfate - ~~$12.00~~$15.00.
(x) Trichromatic chlorophyll a, b, and c - $35.00.
(y) Turbidity - ~~$5.00~~$10.00.
(z) LMFO assessment for licensed managed feeding operations pursuant to the Oklahoma Concentrated Animal Feeding Operations Act, Title 2 of the Oklahoma Statutes, Section ~~9-205.4~~20-12 (electrical conductivity, pH, ammonia-nitrogen, nitrate-nitrogen and total phosphorus) - ~~$28.00~~$33.00.
(aa) Water well assessment (non-potable) (anion screen, hardness, pH, total alkalinity, and TDS) - $80.00.

35:2-3-2.7. Schedule of seed testing fees

(a) Germination ~~other than grasses and clovers~~all seeds, each component - ~~$8.00~~$12.00.
(b) Purity other than grasses, ~~and~~ clovers, mixtures, and unprocessed seed - ~~$9.00~~$13.00.
(c) ~~Germinations, grasses and clovers - $8.00 per component.~~
~~(d)~~ Purity for grasses, clovers, mixtures, and unprocessed seed - $20.00 per hour.
(~~e~~d) Tetrazolium (TZ) testing - ~~$15.00~~$20.00.
(~~f~~e) Stress/vigor test/accelerated aging - ~~$8.00~~$12.00.
~~(g) Accelerated aging - $12.00.~~
(~~h~~f) Noxious weed check - ~~$10.00~~$15.00 per hour.

35:2-3-2.8. Schedule of Oklahoma Bureau of Standards testing fees

(a) Mass Echelon III.
(1) Tolerance test weights not adjusted:
(A) Up to and including 10 lbs/5 kg - $7.00.
(B) Over 10 lbs/5 kg and up to 50 lbs/30 kg - $12.00.
(C) Over 50 lbs/30 kg and up to 1,000 lbs/500 kg - $18.00.
(D) Over 1,000 lbs/500 kg and up to 2,500 lbs/1,250 kg - $40.00.
(2) Tolerance test weights when adjusted:
(A) Up to and including 10 lbs/5 kg - $21.00.
(B) Over 10 lbs/5 kg and up to 50 lbs/30 kg - $36.00.
(C) Over 50 lbs/30 kg and up to 1,000 lbs/500 kg - $54.00.
(D) Over 1,000 lbs/500 kg and up to 2,500 lbs/1,250 kg - $120.00.
(b) Mass Echelon II.
(1) Tolerance test weights not adjusted:
(A) Up to and including 2 lbs/1 kg - ~~$15.00~~ $20.00.
(B) Over 2 lbs/1 kg and up to 20 lbs/10 kg - $40.00.
(C) Over 20 lbs/10 kg and up to 50 lbs/30 kg - $80.00.
(D) Over 50 lbs/30 kg and up to 2,500 lbs/1,250 kg - ~~$50.00~~ $100.00.
(2) Tolerance test weights when adjusted:
(A) Up to and including 2 lbs/1 kg - $60.00.
(B) Over 2 lbs/1 kg and up to 20 lbs/10 kg - ~~$60.00~~ $120.00.
(C) Over 20 lbs/10 kg and up to 50 lbs/30 kg - $240.00.
(D) Over 50 lbs/30 kg and up to 2,500 lbs/1,250 kg - $300.00.
(c) Mass Echelon I.
(1) Test weights not adjusted:
(A) Up to and including 1 kg - $60.00.
(B) Over 1 kg and up to 30 kg - ~~$60.00~~ $100.00.
(2) Test weights when adjusted:
(A) Up to and including 1 kg - $180.00.
(B) Over 1 kg and up to 30 kg - $300.00.
(d) Volume transfer tests:
(1) Up to and including 5 gal/20 liters - $40.00.
(2) Over 5 gal/20 liters and up to 50 gal/200 liters - $100.00.
(3) Over 50 gal/200 liters and up to 100 gal/400 liters - ~~$100.00~~ $200.00.
(4) Over 100 gal/400 liters and up to 150 gal/600 liters - $250.00.
(5) Over 150 gal/600 liters and up to 200 gal/800 liters - $300.00.
(6) Over 200 gal/800 liters and up to 375 gal/1,500 liters - $450.00.
(e) Volume gravimetric tests:
(1) Up to and including 1 qt/1 liter - $75.00.
(2) Over 1 qt/1 liter and up to 5 gal/20 liters - $200.00.
(3) Over 5 gal/20 liters and up to 50 gal/200 liters - $500.00.
(f) Volume LPG Provers up to and including 100 gal/400 liters - ~~$250.00~~ $500.00.
(g) Length calibration per point - $7.00.
(h) Cleaning of standards, handling, and packing - $50.00 per hour.
(i) Minimum fee per calibration certificate - $40.00.

[OAR Docket #07-1117; filed 5-21-07]

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

[OAR Docket #07-1116]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Fee Schedules
35:2-3-29 [AMENDED]

AUTHORITY:
Oklahoma State Board of Agriculture and the Oklahoma Agriculture Code; 2 O.S. 2001 §§ 2-4(2), (7), (20), and (29), and 6-2 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
February 15, 2007 to March 19, 2007
Public hearing:
March 19, 2007
Adoption:
March 21, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
April 26, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2007
Final adoption:
May 18, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rule amends the fees charged by the Animal Industry Services Division for poultry testing supplies. The fees reflect actual costs for the supplies.
CONTACT PERSON:
Dr. Becky Brewer-Walker, Director, Animal Industry Services, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-6134

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 3. FEE SCHEDULES

35:2-3-29. General animal industry supply fees

(a) Livestock Health Certificates - $7.00 per 25.

(b) Poultry tester supplies:

(1) ~~Wing~~Large or small wing bands - $5.25 per 100.

(2) ~~Wing~~Small wing band plier - $11.00 each.

(3) Leg bands - $5.60 per 100.

(4) Leg band pliers - $16.40 each.

(5) ~~10$\frac{1}{2}$ x 8 x ⅛~~ Pullorum Test Plate - $8.00 each.

(6) 1,000 tests Pullorum Typhoid Antigen - ~~$50.00~~$52.00 per ~~bottle~~1,000 doses or $11.00 per 200 doses.

(7) Shipping fee per order - $5.00.

(8) Cash On Delivery (C.O.D.) shipping fee per order - actual cost.

(9) Large wing band plier - $18.50 each.

(10) Bleeder loop - $8.50 each.

[OAR Docket #07-1116; filed 5-21-07]

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

[OAR Docket #07-1119]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Fine Schedules
Part 15. ~~Plant and~~ Consumer Protection Services Violations
35:3-1-18 [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2), (3) and (29), and 8-77.1 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
February 1, 2007 to March 5, 2007
Public hearing:
March 5, 2007
Adoption:
March 21, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 27, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
April 26, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2007
Final adoption:
May 18, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rule will provide for recommended window fines and adjusted ranges for violations of the Oklahoma Fertilizer Law.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. FINE SCHEDULES

PART 15. ~~PLANT AND~~ CONSUMER PROTECTION SERVICES VIOLATIONS

35:3-1-18. Violations of the Oklahoma Fertilizer Law

(a) Licensing violations.

(1) Sale or distribution of fertilizer without a license pursuant to 2 O.S. §8-77.5(B) and OAC 35:30-29-51(A).

(A) First Violation - $100 to $500

(B) Second Violation - $250 to $750

(C) Subsequent Violations - $500 to ~~$1000~~$10,000

(2) Failure to obtain a license for each business location pursuant to 2 O.S. §8-77.5(B).

(A) First Violation - $100 to $500

(B) Second Violation - $250 to $750

(C) Subsequent Violations - $500 to ~~$1000~~$10,000

(b) Registration violations.

(1) Distribution of unregistered fertilizer pursuant to 2 O.S. §8-77.5(D).

(A) First Violation - $100 to $500

(B) Second Violation - $250 to $750

(C) Subsequent Violations - $500 to ~~$1000~~$10,000

(2) Failure to register or guarantee plant nutrients pursuant to OAC 35:30-29-22(a).

(A) First Violation - $100 to $500

(B) Second Violation - $250 to $750

(C) Subsequent Violations - $500 to ~~$1000~~$10,000

(c) Label violations.

(1) Failure to provide a label pursuant to 2 O.S. §8-77.6(A).

(A) First Violation - $100 to $500

(B) Second Violation - $250 to $750

(C) Subsequent Violations - $500 to ~~$1000~~$10,000

(2) Failure to provide an adequate label pursuant to 2 O.S. §8-77.6(C) and OAC 35:30-29-22(e).

(A) First Violation - $100 to $500

(B) Second Violation - $250 to $750

(C) Subsequent Violations - $500 to ~~$1000~~$10,000

(3) Failure to provide warning or caution statement when required pursuant to OAC 35:30-29-22(c).

(A) First Violation - $100 to ~~$500~~$1000

(B) Second Violation - ~~$250~~$500 to ~~$750~~$2500

(C) Subsequent Violations - ~~$500~~$2500 to ~~$1000~~$10,000

(d) Inspection fee and report violations.

(1) Failure to provide semiannual inspection fee report and pay inspection fee on time pursuant to 2 O.S. §8-77.7(A) shall result in a penalty of $50 or 10% of the amount due, whichever is greater.

(2) Deficient inspection fees discovered as result of an audit pursuant to 2 O.S. §8-77.7(F) shall result in a penalty of $100 or 10% of amount due, whichever is greater, but shall not exceed $2,500.

(e) Distribution violations.

(1) Distribution of misbranded or adulterated fertilizer pursuant to 2 O.S. §8-77.12.

(A) First Violation - ~~$250~~$500 to ~~$1500~~$5000

(B) Second Violation - ~~$750~~$2500 to ~~$3000~~$7500

(C) Subsequent Violations - ~~$3000~~$5000 to $10,000

(2) Distribution of nutrient deficient fertilizer pursuant to 2 O.S. §8-77.10 and OAC 35:30-29-51(c).

(A) First Violation - $250 to $1500

(B) Second Violation - $750 to $3000

(C) Subsequent Violations - $3000 to $10,000

(f) Records and reports violations.

(1) Failure to keep adequate records pursuant to 2 O.S. §8-77.7(H).

(A) First Violation - $100 to ~~$500~~$1000

(B) Second Violation - ~~$250~~$500 to ~~$750~~$2500

(C) Subsequent Violations - ~~$500~~$1500 to ~~$2500~~$10,000

(2) Failure to furnish distribution report pursuant to 2 O.S. §8-77.7(B).

(A) First Violation - $100 to ~~$500~~$1000

(B) Second Violation - ~~$250~~$500 to ~~$750~~$2500

(C) Subsequent Violations - ~~$500~~$1500 to ~~$2500~~$10,000

(g) Pollution prevention violations.

(1) Discharge, release, place, or cause to be placed any fertilizer materials in a location where it is likely to cause contamination of any surface or ground water pursuant to 2 O.S. §8-77.15(A) and (D) and OAC 35:30-29-34.

(A) First Violation - ~~$500 to~~ $1000 to $10,000

(B) Second Violation - ~~$1000 to~~ $5000 to $10,000

(C) Subsequent Violations - ~~$5000 to~~ $10,000

(2) Failure to properly report fertilizer discharge to Board pursuant to OAC 35:30-29-22(l).

(A) First Violation - ~~$100~~$250 to ~~$500~~$2500

(B) Second Violation - $500 to ~~$1000~~$7500

(C) Subsequent Violations - ~~$1000~~$5000 to ~~$2500~~$10,000

(3) Failure to prepare discharge response plan pursuant to OAC 35:30-29-22(m).

(A) First Violation - $100 to $500

(B) Second Violation - $250 to $750

(C) Subsequent Violations - $500 to ~~$1000~~$10,000

(4) Failure to have copy of discharge response plan available pursuant to OAC 35:30-29-22(n).

(A) First Violation - $100 to $500

(B) Second Violation - $250 to $750

(C) Subsequent Violations - $500 to ~~$1000~~$10,000

(h) Miscellaneous violations.

(1) Failure to meet storage facility requirements pursuant to OAC 35:30-29-31 through 35:30-29-32 and OAC 35:30-29-35 through 35:30-29-37.

(A) First Violation - ~~$100 to~~ $500 to $5000

(B) Second Violation - ~~$250~~$2500 to ~~$2550~~$7500

(C) Subsequent Violations - ~~$2500~~$5000 to $10,000

(2) Failure to employ a method to prevent backflow with sprinkler irrigation systems pursuant to OAC 35:30-29-33.

(A) First Violation - ~~$250~~$5000 to ~~$1500~~$10,000

(B) Second Violation - ~~$750~~$7500 to ~~$3000~~$10,000

(C) Subsequent Violations - ~~$3000 to $7500~~$10,000

(3) Failure to meet Anhydrous Ammonia requirements pursuant to OAC 35:30-29-38.

(A) First Violation - $100 to ~~$500~~$2500

(B) Second Violation - ~~$500 to~~ $2500 to $5000

(C) Subsequent Violations - ~~$2500~~$5000 to $10,000

(4) Any other violation of the Oklahoma Fertilizer Law not otherwise addressed.

(A) First Violation - $100 to ~~$500~~$2500

(B) Second Violation - ~~$250~~$1000 to ~~$2500~~$5000

(C) Subsequent Violations - $2500 to ~~$5000~~$10,000

(i) Ammonium nitrate violations.

(1) Failure to secure ammonium nitrate facility pursuant to OAC 35:30-29-37.1(a).

(A) First Violation - $1000 to $10,000

(B) Second Violation - $5000 to $10,000

(C) Subsequent Violations - $10,000

(2) Failure to keep adequate ammonium nitrate records pursuant to OAC 35:30-29-37.1(b).

(A) First Violation - $1000 to $10,000

(B) Second Violation - $5000 to $10,000

(C) Subsequent Violations - $10,000

(3) Failure to keep ammonium nitrate records for the required time period pursuant to OAC 35:30-29-37.1(c).

(A) First Violation - $1000 to $10,000

(B) Second Violation - $5000 to $10,000

(C) Subsequent Violations - $10,000

(4) Failure to obtain license for selling ammonium nitrate pursuant to 2 O.S. Section 8-77.5(B).

(A) First Violation - $1000 to $10,000

(B) Second Violation - $5000 to $10,000

(C) Subsequent Violations - $10,000

[OAR Docket #07-1119; filed 5-21-07]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 10. AGRICULTURAL PRODUCTS

[OAR Docket #07-1120]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Public Warehouses
35:10-7-15 [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2), and (29), 9-20 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
February 1, 2007 to March 5, 2007
Public hearing:
March 5, 2007
Adoption:
March 21, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
April 26, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2007
Final adoption:
May 18, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 7. Public Warehouses
35:10-7-15 [AMENDED]
Gubernatorial approval:
August 7, 2006
Register publication:
24 Ok Reg 7
Docket number:
02-1332
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
This rule is necessary to ensure that anyone with a grain graders permit can perform grain grading duties for any state chartered warehouse. The rule also provides provisions for a temporary permit to be issued. The current rule does not allow transfer of the permit, and as a result, significant hardship occurs to small grain warehouses that lose their grain grader. As a result, they would not be able to take in any grain for that year. Producers would then be unable to take their grain to a convenient location.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 7. PUBLIC WAREHOUSES

35:10-7-15. Weighers and graders permit

(a) An applicant, in order to qualify for a weighers and graders permit issued by the Board, as evidence of their competence, shall pass a test composed of a written and practical application. The test shall be administered following each approved grain grading school~~,~~ by a representative of the Board. First-time permit applicants shall complete all practical applications at the school.

(b) A weighers and graders permit shall remain in force as long as the permit holder is employed by ~~the same~~a state chartered warehouse and ~~attends~~completes a grain grading class approved by the Board at least one (1) time each five (5) years. If the permit holder fails to ~~attend~~complete an approved class, the permit shall automatically terminate.

(c) A temporary permit may be granted for a period of one year upon written request to the Department by the applicant and upon completion of training by the Department.

[OAR Docket #07-1120; filed 5-21-07]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 13. FUEL ALCOHOL

[OAR Docket #07-1121]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
35:13-1-1 [AMENDED]
35:13-1-2 [AMENDED]
35:13-1-4 [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2) and (29), and 11-20 et seq.
DATES:
Comment period:
January 16, 2007 to February 15, 2007
Public hearing:
February 15, 2007
Adoption:
March 21, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
April 26, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2007
Final adoption:
May 18, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rules update the Code of Federal Regulations incorporation by reference date and require federally permitted fuel alcohol facilities to submit the required federal annual report to the Department.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

35:13-1-1. Incorporation by reference of federal distilled spirits for fuel use regulations

The Distilled Spirits for Fuel Use regulations found in Title 27 of the Code of Federal Regulations (CFR) (~~2005~~2006 Revision), Part 19.901 et seq. for the United States Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:13-1-2.

35:13-1-2. Deleted regulations

The following sections of the Code of Federal Regulations governing distilled spirits for fuel use of the United States Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau incorporated by reference under 35:13-1-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 27 CFR §§ 19.905, 19.906, 19.955, 19.956, 19.957, 19.958, and 19.959 (~~2005~~2006 Revision).

35:13-1-4. Permit required

(a) Any person engaging in the production of alcohol for use as a motor fuel shall obtain a permit from the Department.
(b) Any medium or large alcohol fuel producer that receives commodities from grain producers who do not receive compensation for the grain at the time of delivery or title is not transferred at the time of delivery shall obtain a public warehouse charter to operate a public commodity storage warehouse pursuant to the Oklahoma Public Warehouse and Commodity Storage Indemnity Act.
(c) Any person permitted pursuant to this section shall submit a copy of any annual report required by the federal law as incorporated by reference in this chapter to the Department no later than January 30 of each calendar year.

[OAR Docket #07-1121; filed 5-21-07]

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

[OAR Docket #07-1124]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Animal Health Reportable Diseases
35:15-3-1 [AMENDED]
35:15-3-2 [AMENDED]
35:15-3-3 [REVOKED]
35:15-3-4 [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture and the Oklahoma Agriculture Code; 2 O.S. 2001 §§ 2-4(2), (7), and (29), 6-2 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
February 1, 2007 to March 5, 2007
Public hearing:
March 5, 2007
Adoption:
March 21, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
April 26, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2007
Final adoption:
May 18, 2007

Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
These rules update the reportable disease lists to comply with new federal requirements. The former A and B lists are now combined as simply one list of reportable diseases.
CONTACT PERSON:
Dr. Becky Brewer-Walker, Director, Animal Industry Services, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-6134

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 3. ANIMAL HEALTH REPORTABLE DISEASES

35:15-3-1. Reportable contagious or infectious diseases of domestic animals

Under provisions of Title 59, Oklahoma Statutes, Section 698.15, the State Board of Agriculture declares and requires the following actions regarding contagious or infectious diseases of domestic animals by any person engaged in the practice of veterinary medicine:

(1) ~~List A~~Listed reportable diseases shall be immediately reported to the State Veterinarian.

(2) ~~List B diseases shall be reported to the State Veterinarian for statistical reporting purposes.~~

~~(3)~~ Persons reporting ~~List A~~listed reportable diseases shall provide the following information:

(A) The name and address of the animal owner or person in possession.

(B) Identification information on the animal, including species.

(C) Specific location of the animal.

(D) Identification of the specific disease identified in the animal.

~~(4) Persons reporting List B diseases shall provide the following information:~~

~~(A) Animal species infected.~~

~~(B) Identification of the specific disease identified in the animal.~~

~~(C) The county in which the infected animal resides.~~

35:15-3-2. ~~List A~~Reportable diseases

(a) ~~General~~Multiple species diseases

(1) ~~Rinderpest~~Anthrax
(2) ~~Peste des Petitis Ruminants~~Aujeszky's disease
(3) ~~Contagious Bovine Pleuropneumonia~~Bluetongue
(4) ~~Lumpy Skin Disease~~Brucellosis (Brucella abortus)
(5) ~~Rift Valley Fever~~Brucellosis (Brucella melitensis)
(6) Brucellosis (Brucella suis)
(7) Crimean Congo haemorrhagic fever
(8) Echinococcosis/hydatidosis
(9) Foot and mouth disease
(10) Heartwater
(11) Japanese encephalitis
(12) Leptospirosis
(13) New world screwworm (Cochliomyia hominivorax)
(14) Old world screwworm (Chrysomya bezziana)
(15) Paratuberculosis
(16) Q fever
(17) Rabies
(18) Rift Valley fever
(19) Rinderpest
(20) Trichinellosis
(21) Tularemia
(22) Vesicular stomatitis
(23) West Nile fever

(b) ~~Multiple species~~Other diseases

(1) ~~Foot and Mouth Disease (FMD)~~Camelpox
(2) ~~FMD - Virus O~~Leishmaniosis
~~(3) FMD - Virus A~~
~~(4) FMD - Virus C~~
~~(5) FMD - Virus SAT 1~~
~~(6) FMD - Virus SAT 2~~
~~(7) FMD - Virus SAT 3~~
~~(8) FMD - Virus not typed~~
~~(9) Vesicular Stomatitis(VS)~~
~~(10) VS - Virus Indiana~~
~~(11) VS - Virus New Jersey~~
~~(12) VS - Virus not typed~~
~~(13) Anthrax~~
~~(14) Aujeszky's Disease(Pseudorabies)~~
~~(15) Heartwater~~
~~(16) Q Fever~~
~~(17) Screwworm (Cochliomyia hominivorax)~~
~~(18) Bovine Tuberculosis(M. bovis)~~

(c) Cattle diseases

(1) ~~Babesiosis~~Bovine anaplasmosis
(2) ~~Bovine Brucellosis(B. abortus)~~Bovine babesiosis
(3) ~~Theileriosis~~Bovine genital campylobacteriosis
(4) ~~Trypanosomiasis~~Bovine spongiform encephalopathy
(5) ~~Malignant Catarrhal Fever~~Bovine tuberculosis
(6) ~~Bovine Spongiform Encephalopathy(BSE)~~Bovine viral diarrhea
(7) Contagious bovine pleuropneumonia
(8) Enzootic bovine leukosis
(9) Haemorrhagic septicaemia
(10) Infectious bovine rhinotracheitis/infectious pustular vulvovaginitis
(11) Lumpky skin disease
(12) Malignant catarrhal fever
(13) Theileriosis
(14) Trichomonosis
(15) Trypanosomosis (tsetse-transmitted)

(d) Sheep and goat diseases

(1) ~~Sheep Pox and Goat Pox~~Caprine arthritis/encephalitis
(2) ~~Brucellosis Ovis (B. ovis)~~Contagious agalactia
(3) ~~Caprine and Ovine Brucellosis (B. melitensis)~~Contagious caprine pleuropneumonia
(4) ~~Nairobi Sheep Disease~~Enzootic abortion of ewes (ovine chlamydiosis)
(5) ~~Scrapie~~Maedi-visna
(6) ~~Maedi Visna~~Nairobi sheep disease
(7) Ovine epididymitis (Brucella ovis)
(8) Peste des petits ruminants
(9) Salmonellosis (S. abortusovis)
(10) Scrapie
(11) Sheep pox and goat pox

(e) ~~Horse~~Equine diseases
(1) African Horse Sickness
(2) Contagious Equine Metritis
(3) Dourine
(4) Equine Encephalomyelitis (~~EEE~~Eastern and ~~WEE~~Western)
(5) Equine Infectious ~~Anemia (EIA)~~anaemia
(6) Equine ~~Piroplasmosis (Babesiosis)~~influenza
(7) ~~Japanese Encephalitis~~Equine piroplasmosis
(8) ~~Surra (T. evans)~~Equine rhinopneumonitis
(9) ~~Venezuelan~~ Equine ~~Encephalomyelitis~~viral arteritis
(10) Glanders
(11) Surra (Trypanosoma evansi)
(12) Venezuelan equine encephalomyelitis

(f) Swine diseases
(1) ~~Swine Vesicular Disease~~African swine fever
(2) ~~African~~Classical Swine Fever
(3) ~~Classical Swine Fever (Hog Cholera)~~Nipah virus encephalitis
(4) Porcine ~~Brucellosis(B. suis)~~cysticercosis
(5) Porcine reproductive and respiratory syndrome
(6) Swine vesicular disease
(7) Transmissible gastroenteritis

(g) ~~Poultry~~Avian diseases
(1) Avian ~~Influenza (Fowl Plague)~~chlamydiosis
(2) ~~Newcastle disease~~Avian infectious bronchitis
(3) ~~Mycoplasmosis (M. gallisepticum)~~Avian infectious laryngotracheitis
(4) ~~Pullorum Disease (Salmonella pullorum)~~Avian mycoplasmosis (M. gallisepticum)
(5) Avian mycoplasmosis (M. synoviae)
(6) Duck virus hepatitis
(7) Fowl cholera
(8) Fowl typhoid
(9) Highly pathogenic avian influenza and low pathogenic avian influenza in poultry as per Chapter 2.7.12. of the Terrestrial Animal Health Code
(10) Infectious bursal disease (Gumboro disease)
(11) Marek's disease
(12) Newcastle disease
(13) Pullorum disease
(14) Turkey rhinotracheitis

(h) Cervidae diseases - Chronic Wasting Disease (CWD)

(i) Lagomorph diseases
(1) Myxomatosis
(2) Rabbit haemorrhagic disease

(j) Fish diseases
(1) Epizootic haematopoietic necrosis
(2) Infectious haematopoietic necrosis
(3) Spring viraemia of carp
(4) Viral haemorrhagic septicaemia
(5) Infectious pancreatic necrosis
(6) Infectious salmon anaemia
(7) Epizootic ulcerative syndrome
(8) Bacterial kidney disease (Renibacterium salmoninarum)
(9) Gyrodactylosis (Gyrodactylus salaris)
(10) Red sea bream iridoviral disease

(k) Crustacean diseases
(1) Taura syndrome
(2) White spot disease
(3) Yellowhead disease
(4) Tetrahedral baculovirosis (Baculovirus penaei)
(5) Spherical baculovirosis (Penaeus monodon-type baculovirus)
(6) Infectious hypodermal and haematopoietic necrosis
(7) Crayfish plague (Aphanomyces astaci)

(l) Bee diseases
(1) Acarapisosis of honey bees
(2) American foulbrood of honey bees
(3) European foulbrood of honey bees
(4) Small hive beetle infestation (Aethina tumida)
(5) Tropilaelaps infestation of honey bees
(6) Varroosis of honey bees

(m) Mollusc diseases
(1) Infection with Bonamia ostreae
(2) Infection with Bonamia exitiosa
(3) Infection with Marteilia refringens
(4) Infection with Mikrocytos mackini
(5) Infection with Perkinsus marinus
(6) Infection with Perkinsus olseni
(7) Infection with Xenohaliotis californiensis

35:15-3-3. List B diseases [REVOKED]

~~(a) Multiple species diseases~~
~~(1) Bluetongue~~
~~(2) Echinococcosis/Hydatitdosis~~
~~(3) Leptospirosis~~
~~(4) Rabies~~
~~(5) Paratuberculosis~~

~~(b) Cattle diseases~~
~~(1) Anaplasmosis~~
~~(2) Bovine Genital Campylobacteriosis~~
~~(3) Cysticercosis (C. bovis)~~
~~(4) Dermatophilosis~~
~~(5) Enzootic Bovine Leucosis~~
~~(6) Hemorrhagic Septicemia~~
~~(7) Infectious Bovine Rhinotracheitis (IBR/IPV)~~
~~(8) Trichomoniasis~~

~~(c) Sheep and goat diseases~~
~~(1) Caprine Arthritis/Encephalitis~~
~~(2) Contagious Agalactia~~

~~(3) Contagious Caprine Pleuropneumonia~~
~~(4) Enzootic Abortion of Ewes~~
~~(5) Pulmonary Adenomatosis~~
~~(6) Salmonellosis (S. abortus ovis)~~
~~(d) Horse diseases~~
~~(1) Epizootic Lymphangitis~~
~~(2) Equine Influenza (Virus type A)~~
~~(3) Equine Rhinopneumonitis~~
~~(4) Glanders~~
~~(5) Horse Pox~~
~~(6) Infectious Arteritis of Horses~~
~~(7) Horse Mange~~
~~(8) Salmonellosis (S. abortus equi)~~
~~(9) West Nile Virus~~
~~(e) Swine diseases~~
~~(1) Atrophic Rhinitis~~
~~(2) Cysticercosis (C. cellulosis)~~
~~(3) Transmissible Gastroenteritis of Pigs~~
~~(4) Trichinellosis~~
~~(5) Enterovirus Encephalomyelitis~~
~~(6) Porcine Reproductive and Respiratory Syndrome~~
~~(f) Poultry diseases~~
~~(1) Avian Infectious Bronchitis~~
~~(2) Avian Infectious Laryngotrachitis (ILT)~~
~~(3) Avian Tuberculosis~~
~~(4) Duck Virus Hepatitis~~
~~(5) Duck Virus Enteritis~~
~~(6) Fowl Cholera (Avian Pasteurellosis)~~
~~(7) Fowl Pox~~
~~(8) Fowl Typhoid (Salmonella gallinarum)~~
~~(9) Infectious Bursal Disease (Gumboro disease)~~
~~(10) Marek's Disease~~
~~(11) Avian Chlamydiosis (Psitticosis and Ornithosis)~~
~~(g) Lagomorph diseases~~
~~(1) Myxomatosis~~
~~(2) Tularaemia~~
~~(3) Viral Hemorrhagic Disease of Rabbits~~
~~(h) Fish diseases~~
~~(1) Viral Hemorrhagic Septicemia~~
~~(2) Spring Viraemia of Carp~~
~~(3) Infectious Hematopoietic Necrosis~~
~~(4) Herpesvirosis of Salmonids~~
~~(5) Renibacterosis~~
~~(6) Herpesvirosis of Ictalurids~~
~~(7) Epizootic Haematopoietic Necrosis~~
~~(8) Edwarsiellosis (E. ictaluri)~~
~~(i) Mollusc diseases~~
~~(1) Bonamiosis~~
~~(2) Haplosporidiosis~~
~~(3) Perkinsosis~~
~~(4) Marteiliosis~~
~~(5) Iridovirosis~~
~~(j) Bee diseases~~
~~(1) Acariasis of Bees~~
~~(2) American Foul Brood~~
~~(3) European Foul Brood~~
~~(4) Nosemosis of Bees~~
~~(5) Varroasis~~
~~(k) Other animal species diseases - Leishmaniasis~~

35:15-3-4. Diseases by clinical symptoms

Diseases not confirmed or diagnosed as a ~~List A or List B~~listed reportable disease shall be reported ~~as a List A disease~~ if the following clinical symptoms are exhibited:

(1) Sore mouth or muzzle, especially if accompanied by foot, udder, vulva, or skin lesions resembling blisters or vesicles.

(2) Encephalitis (CNS) conditions in all animals and avians.

(3) High death loss, especially over a short period of time in animals more than several weeks old.

(4) Reproductive problems.

(5) Any highly unusual condition or unusual symptomatology of any kind.

[OAR Docket #07-1124; filed 5-21-07]

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

[OAR Docket #07-1122]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 13. Testing and Inspection for Disease and Release of Livestock at Auction Markets
35:15-13-3 [AMENDED]
Subchapter 15. Equine Infectious Anemia (EIA)
Part 3. Procedures
35:15-15-34 [AMENDED]
Part 7. Requirements for Approved Markets
35:15-15-71 [AMENDED]
Subchapter 17. Bovine and Bison Brucellosis
Part 1. Definitions
35:15-17-1 [AMENDED]
Part 11. Entry Permit and Retest Requirements
35:15-17-80 [AMENDED]
Subchapter 19. Poultry Regulations
35:15-19-4 [AMENDED]
35:15-19-8 [AMENDED]
Subchapter 22. Swine Pseudorabies
Part 1. General Provisions
35:15-22-3 [NEW]
Part 9. Requirements for Approved Markets
35:15-22-91 [AMENDED]
Subchapter 24. Swine Brucellosis
Part 1. General Provisions
35:15-24-3 [AMENDED]
Subchapter 36. Scrapie
35:15-36-3 [NEW]
AUTHORITY:
Oklahoma State Board of Agriculture and the Oklahoma Agriculture Code; 2 O.S. 2001 §§ 2-4(2), (7), and (29), 6-2 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
February 15, 2007 to March 19, 2007
Public hearing:
March 19, 2007
Adoption:
March 21, 2007

Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
April 26, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2007
Final adoption:
May 18, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
These rules update various animal health rules of the Department. The rules specifically update rules for livestock auction market, Equine Infectious Anemia, brucellosis, poultry, pseudorabies, and scrapie. In addition, the rules clarify the brucellosis requirements for rodeo bulls.
CONTACT PERSON:
Dr. Becky Brewer-Walker, Director, Animal Industry Services, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-6134

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 13. TESTING AND INSPECTION FOR DISEASE AND RELEASE OF LIVESTOCK AT AUCTION MARKETS

35:15-13-3. General requirements for an auction market

(a) In order for a market to be licensed to operate in Oklahoma, it is required that:

(1) Application for license be made to the Board on an official form.

(2) The market be bonded according to 2 O.S., Section 9-132, as amended or according to the provisions of the Federal Packers and Stockyards Act as amended.

(3) An approved veterinarian be employed.

(4) ~~It shall have an approved laboratory.~~

~~(5)~~ The license shall expire on December 31, of each year, and shall cost $25.00.

(b) Both the buyer's and seller's invoices must be complete as to name, address of the owner and description of the cattle as to breed, sex and age. Invoices for swine shall show the predominate breed and shall show them to be feeding, breeding or slaughter swine.

(c) The veterinarian or sale company shall not be responsible for results of any tests that are made properly, or any reactor animals found in the market. All reactor animals shall revert back to the consignor.

(d) No cattle or swine shall be allowed to leave the market until an approval for release is secured from an approved veterinarian or an agent of the Board. The market shall be responsible to see that no cattle or swine are removed without first being released by an approved veterinarian or an agent of the Board.

(e) Each market must have a quarantine pen or pens for yarding reactor animals. Said pen is to be identified by painting the top of the gate either red or yellow and the word "Quarantine" spelled out on said gate. The pen shall be constructed so as to make it easily cleaned and disinfected after each sale. Any watering troughs or feed bunks in the quarantine pen shall be located so that livestock in adjoining pens will not have access to them.

(f) All reactor animals shall be yarded in the quarantine pen and shall be sold last. Such animals must be identified as reactors on the invoices of both the buyer and seller.

(g) Refusal or failure to comply with the Board regulations shall be just cause for the revocation or suspension of the Auction Market License.

SUBCHAPTER 15. EQUINE INFECTIOUS ANEMIA (EIA)

PART 3. PROCEDURES

35:15-15-34. Requirements for approved EIA testing laboratories

(a) No person shall operate an EIA testing laboratory without first obtaining approval from the Board.

(b) Conditions of approval.

(1) Submit ~~an~~a complete application to the office of the State Veterinarian.

(2) Upon receipt of an application, the facility shall be inspected by an authorized agent of the Board.

(3) A report of the inspection shall be submitted to the State Veterinarian and identify the EIA testing laboratory's compliance with the minimum standards for facilities, equipment, and personnel.

(4) The applicant shall agree in writing to operate the laboratory in conformity with the Department rules and the requirements of the USDA and shall continually meet all requirements during operation of the laboratory.

(c) Operating requirements.

(1) All personnel conducting an official test at an approved laboratory shall receive training prescribed by the National Veterinary Services Laboratories (NVSL).

(2) Approved laboratories shall use USDA licensed antigen and follow standard test protocols prescribed by NVSL.

(3) Approved laboratories shall maintain a work log clearly identifying each individual sample and test results.

(4) Approved laboratories shall maintain a work log and a file of all submission forms for a period of not less than two (2) years.

(5) All approved laboratories shall report all positive results to an official test for EIA to the State Veterinarian's office within twenty four (24) hours.

(6) A copy of all test charts for positive Equidae shall be sent to the State Veterinarian's office within seventy two (72) hours.

(7) Negative results shall be reported to the office of the State Veterinarian on a monthly basis.

(d) Inspections and proficiency tests.

(1) The Board shall randomly and without prior notification collect samples and inspect the facilities and records of all EIA laboratories in Oklahoma.

(2) All records required to be maintained by approved laboratories shall be open to inspection by state or federal employees during normal business hours.

(3) All approved laboratories shall pass annual proficiency test requirements administered by the NVSL.

(4) All approved laboratories shall pass any additional proficiency test requirements administered by the Board.

(A) All approved laboratories that pass the additional proficiency test requirements administered by the Board shall be published on the Department maintained list of "Oklahoma Certified EIA Laboratories."

(B) The Board shall charge a fee to the approved laboratory for administering each additional proficiency test in the amount of Fifty Dollars ($50.00).

(C) The Board may waive any additional proficiency test requirements if an approved laboratory enters into a written agreement with the State Veterinarian and is designated as "ELISA Only" on the Department maintained list of "Oklahoma Certified EIA Laboratories."

(e) An EIA laboratory may have its approval cancelled if the Board finds that the laboratory has failed to meet the requirements or has falsified records or reports.

(f) Any action taken by the Board to cancel laboratory approval shall conform to the Administrative Procedures Act.

(g) The Department ~~shall not approve~~may deny the application of any ~~new~~ EIA ~~laboratories for a period of twelve (12) months or until the United States~~laboratory if it fails to meet any criteria required by the Department~~ of Agriculture removes the national moratorium on the approval of new EIA laboratories, whichever is later~~.

(h) State approved laboratories shall only perform the EIA-ELISA test.

(i) The Department may at its discretion in limited and approved circumstances grant state approved laboratories the ability to perform the AGID test for equine being exported from Oklahoma to a foreign country or for horses not residing in Oklahoma. The limited exception shall be detailed in a written agreement between the Department and the state approved laboratory.

(j) Any approved EIA laboratory shall resubmit all application information for approval by the Department upon a change in ownership of the facility or a change in location of the facility.

PART 7. REQUIREMENTS FOR APPROVED MARKETS

35:15-15-71. Movement of Equidae through approved markets

(a) All test eligible Equidae offered for sale or sold at ~~Oklahoma approved auction markets~~any market shall meet one of the following requirements:

(1) Be accompanied by a record of an official negative test for EIA conducted by an approved laboratory within twelve (12) months of the date of the sale.

(2) Have a blood sample collected by an accredited veterinarian at the market and obtain official negative test results for EIA from an approved laboratory before the animal leaves the market.

(3) Have a blood sample collected by an accredited veterinarian at the market and be quarantined to the market or to an Oklahoma premise until negative results are received from an approved laboratory.

(4) ~~Be purchased by a licensed livestock dealer and consigned to a quarantined holding facility or an approved slaughter establishment.~~

~~(5)~~ Be allowed to return to the premise of origin prior to consignment.

~~(6) Be consigned to and meet all the importation and transportation requirements of the state of destination, including Oklahoma.~~

(b) A copy or a certified copy of a VS Form 10-11 shall not be considered an official test record.

(c) All Equidae consigned to an approved market shall be released by the market veterinarian to meet the requirements of this Subchapter and the state of destination.

(d) Known positive or exposed Equidae shall not be consigned for sale at approved markets.

(e) Equidae found to be positive or exposed through testing conducted at an approved market shall be maintained in quarantine pens, isolated as far as possible from all other Equidae in the sale facility, and the quarantine pen or pens shall be clearly identified, by sign or paint, with the word "Quarantined."

SUBCHAPTER 17. BOVINE AND BISON BRUCELLOSIS

PART 1. DEFINITIONS

35:15-17-1. Definitions

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

"Affected herd" means a herd of cattle that has had a brucellosis reactor disclosed from an on-farm test or is the herd of origin of a market cattle identification brucellosis reactor from which a field strain Brucella abortis bio-variety has been isolated.

"Animals" means all bovine, dairy, and beef breeds and bison.

"Approved brucella vaccine" means a product that is approved by and produced under license of the United States Department of Agriculture for injection into cattle or bison to enhance their resistance to brucellosis.

"Cattle" means bison, dairy, and beef animals.

"Commuter herd" means all cattle under common ownership or supervision, that are located on one or more premises in two or more states and there an interchange or interstate movement of animals between premises in those states as part of the normal farming, breeding or ranching operation without a change of ownership. A commuter herd agreement shall be completed and approval of commuter herd status shall be obtained from each chief animal health official of all states in which the herd resides.

"Domestic livestock" means those species of animals that have adapted to life in intimate association with, and provide advantage to man for use as food, fiber (furs and leather), labor and companionship. This adaptation usually involves the modification of growth or other traits through the provision of food, protection from enemies and selective breeding, thereby reducing the ability of that species to survive in the wild.

"Exposed animals" means animals that are part of a known affected herd or have been in contact with brucellosis reactors in marketing channels for periods of 24 hours or periods of less than 24 hours if the reactor has recently aborted, calved, or has a vaginal or uterine discharge. These animals are considered to be exposed regardless of the blood test results, and shall be placed under quarantine and restricted pending slaughter or testing after return to the herd of origin. These animals shall be identified with a hot iron letter "S" brand on the tailhead at least 2x2 inches, prior to movement from the premise.

"Farm of origin of cattle" means a farm or other premises where the cattle to be shipped were born or have been kept for not less than four (4) months prior to the date of shipment and the premises within the four (4) months prior to the date of shipment have not been used to assemble cattle from any other premises.

"Feedlot" means a confined drylot area for finish feeding of animals on concentrated feed with no facilities for pasturing or grazing. The feedlot may not hold any test eligible animals of unknown status or "S" branded animals.

"Herd" means all cattle (genus Bos) and bison (genus Bison bison) under common ownership or supervision, that are grouped on one or more parts of any single premise (lot, farm, or ranch) or on two or more premises geographically separated, but have had an interchange movement or contact. Such contact shall be accepted as fact unless otherwise established by the owner and consistent with the findings of the epidemiologic investigation. Groups of animals under multiple ownership on common premises, such as community pastures, grazing association allotments, etc., shall also be considered as a herd. For brucellosis eradication purposes such herds shall include all other groups of animals owned by those persons unless the veterinary medical officer, on an epidemiologic investigation, establishes that association has not occurred.

"Herd test" means a test that includes all animals over six (6) months of age except steers, spayed heifers and official vaccinates of the dairy breeds under 20 months of age, and of the beef breed and bison under 24 months of age. Bulls, steers, and female animals held in feedlots meeting the requirements of quarantined feedlots as defined in 35:15-17-5 are exempt from herd test requirements. Breeding animals tested shall be identified with an official eartag or other permanent identification.

"High risk herd" means those herds of cattle from which an MCI test or herd test reactor has been disclosed as an adjacent or exposed herd within the previous five (5) years.

"Individual herd plan" means a herd management and testing plan designed by the herd owner and a veterinarian of the Cooperative Brucellosis Eradication Program that will control and eradicate brucellosis from an affected herd and shall include a similar plan for determining the true status of suspects and preventing exposure to brucellosis within the herd.

"Market test animals" means test eligible animals moving in trade channels through auction markets, stockyards, commission firms or to slaughtering establishments; also those animals assembled at farms or ranches that are being readied for immediate movement to markets, stockyards, slaughtering establishments or other sales. The animals shall be identified by eartag or backtag to the herd of origin prior to or at the first point of concentration in marketing channels. All test eligible animals shall be tested prior to removal from the sale premises.

"Official test" means any serologic or bacteriologic test recognized by and listed in the USDA Uniform Methods and Rules of Brucellosis Eradication or the Code of Federal Regulations. The official test sample shall be collected by an accredited veterinarian or an employee of the State-Federal Brucellosis Program. The test shall be conducted in an official State-Federal Brucellosis Laboratory or licensed and approved Auction Market Laboratory, or by an employee of the State-Federal Brucellosis Program in field situations. All tests shall be confirmed in an official State-Federal Brucellosis Laboratory.

"Official vaccinate" means a female bovine or bison animal vaccinated against brucellosis with an approved brucella vaccine between four (4) and ten (10) months of age. All vaccination shall be conducted under the supervision of a federal or state veterinary official or accredited veterinarian. Vaccinated animals shall be permanently identified as vaccinates and reported at the time of vaccination to the appropriate state or federal agency cooperating in the eradication of brucellosis.

"Permit" means an official document (USDA VS Form 1-27 or comparable State Form) that is required to accompany "B" branded cattle and exposed cattle moved under official seal, issued by a veterinary services representative, state representative or accredited veterinarian that lists the identification tag, tattoo, USDA backtag, registration number, or similar identification, reactor tag number, owner's name and address, origin and destination, number of animals covered, and the purpose of the movement. If a change in destination becomes necessary a new permit shall be prepared. No diversion from the permitted destination is allowed. Copies of the permit shall be distributed in accordance with the instructions printed on the official document.

"Permit for entry" means a premovement authorization for entry of cattle into a state from the animal health official in that state. The authorization shall state the conditions under which movement may be made, and these conditions may be in addition to the requirements of the USDA Uniform Methods and Rules for Brucellosis Eradication (UM&R) and Code of Federal Regulations.

"Rodeo bulls" means sexually intact male cattle kept solely for performances at rodeos or for exhibition purposes and in no case shall include any animal offered for sale or used for breeding.

"S brand permit" means any document required to accompany animals in marketing channels having a restricted destination. It shall show the origin, the destination, the number of restricted animals, the purpose of the movement, the USDA backtag numbers (when applied serially, only the beginning and the ending number need be recorded), and a statement certifying to the "S" brand identification. It shall be prepared at the point of origin by an accredited veterinarian, a representative of the animal health officials, or a designated official at a quarantined feedlot. A copy shall be maintained at the quarantined feedlot and a copy shall be immediately sent to the state animal health official with the original accompanying the animals. The original shall be delivered at the destination and retained at that location for a minimum of six (6) months.

"S branded animals" means animals identified by branding with a hot iron the "S" (at least 2x2 inches) placed on the tailhead.

"S" branding is required for suspect animals and movement of exposed animals from affected herds.

"Test eligible animals" means all animals 18 months of age, as determined by the loss of first pair of temporary incisor teeth, except exposed animals that have been "S" branded, steers, spayed heifers, official vaccinates of dairy breeds under 20 months of age, and official vaccinates of beef breeds and bison under 24 months of age that are not parturient or postparturient.

"Tested herds" means a herd of animals for which the state has records showing that the herd has been subjected to official testing for brucellosis within 12 months prior to movementand the herd is not known to be affected with brucellosis.

PART 11. ENTRY PERMIT AND RETEST REQUIREMENTS

35:15-17-80. Rodeo bulls ~~moving into the State of Oklahoma~~

(a) Rodeo bulls ~~can~~may move into the State of Oklahoma provided:

(1) The bull is classified as brucellosis negative based upon an official test conducted less than 365 days before the date of interstate movement;

(2) The bull is identified with an official eartag;

(3) There is no change of ownership since the date of the last official test;

(4) A certificate accompanies each interstate movement of the bull; and

(5) A permit for entry is issued for each interstate movement of the bull.

(b) Rodeo bulls moving within the state shall be tested and meet the following requirements:

(1) The bull is classified as brucellosis negative based upon an official test conducted less than 365 days before the date of intrastate movement;

(2) The bull is identified with an official eartag; and

(3) There is no change of ownership since the date of the last official test.

(c) Rodeo bulls shall not be offered for sale or used for breeding unless they meet the testing requirement for beef breeds.

(d) Rodeo bulls shall be tested prior to any change in ownership.

SUBCHAPTER 19. POULTRY REGULATIONS

35:15-19-4. Import and exhibition poultry

(a) Domesticated fowl including chickens, turkeys, game chickens, game birds, or waterfowl over four (4) months of age and intended for breeding, meat, or egg production purposes shall not be imported into the state unless they:

(1) Have originated from a National Plan source which is U.S. pullorum-typhoid clean or equivalent, or

(2) Have passed a negative agglutination test for reportable salmonella groups within thirty (30) days prior to import. Turkeys, in addition, shall have passed an M. Gallisepticum test within thirty (30) days prior to import.

(b) All poultry under four (4) months of age, including baby chicks, started chicks, turkey poults, started poults, other newly hatched domestic poultry, game chickens, game birds, and waterfowl, except those intended for immediate slaughter, and hatching eggs shipped, brought into, or offered for sale in Oklahoma, shall have originated from a hatchery or premise operating under the supervision of the poultry disease control authority of the state of origin, and their disease classification shall be negative or clean. Each container of products shall bear an official label showing the name and address of the shipper, the authority under which the testing for disease was done, and the disease control and eradication class and/or classes of the product. The use of this label shall be approved by the official state agency or livestock disease control official of the state of origin. In addition, an official form shall be properly executed showing the name and address of both the consignee and the consignor and the disease control authority for which the testing was done and classification of the product.

(c) Exhibition poultry are subject to the following:

(1) Any poultry or other domestic fowl being exhibited in Oklahoma shall be free of visible evidence of disease, and

(2) Have passed a negative test for reportable salmonella groups within ninety (90) days prior to exhibition, with the results recorded on an official form from the state of origin certifying that the testing was done by a permitted tester of that state, or

(3) Have originated from negative or clean flocks authoritatively participating in the disease control and eradication phases of the National Poultry Improvement Plan or NPIP approved state plan, and

(4) Be from flocks not known to be infected with reportable salmonella groups.

(5) Poultry qualifying under 2 or 3 may be imported without an official health certificate if accompanied by an approved state or NPIP form.

(6) All exhibition poultry shall be identified by an official leg or wing band unless they originate from a negative or clean flock authoritatively participating in the National Poultry Improvement Plan or NPIP approved state plan.

(7) Application of official leg or wing bands shall not be required for birds tested on the exhibition premise for a specific event. Birds tested and not identified with an official leg or wing band shall be tested prior to entering any future exhibitions.

(d) All persons holding poultry exhibitions in Oklahoma shall obtain a permit from the State Veterinarian prior to the exhibition. Those persons holding multiple exhibitions at the same location may apply for a permit by listing the dates and times of all exhibitions scheduled during a fiscal year beginning July 1 and ending June 30. The permittee shall be responsible for maintaining a list of the names and addresses of all exhibitors for each exhibition. The permittee shall keep these records and make them available to any authorized agent for inspection or photocopying for at least one (1) year after the date of the exhibition.

35:15-19-8. Infectious Laryngo Trachietis (ILT)

(a) Tissue culture vaccine or vector vaccine for Infectious Laryngo Trachietis shall only be used in ~~primary~~ breeding flocks with the permission of the State Veterinarian.

(1) Permission shall be in the form of a Memorandum of Understanding between the State Veterinarian and the ~~primary~~ breeder.

(2) The Memorandum shall be effective for five (5) years and may include an option for renewal.

(b) Chick Egg Embryo vaccine, tissue culture vaccine, or vector vaccine for Infectious Laryngo Trachietis shall only be used in broilers with the permission of the State Veterinarian by a signed Memorandum of Understanding in specific outbreak situations.

(c) The conditions of any Memorandum of Understanding shall be at the sole discretion of the State Veterinarian.

SUBCHAPTER 22. SWINE PSEUDORABIES

PART 1. GENERAL PROVISIONS

35:15-22-3. Change of ownership requirements

All swine shall be tested and found negative to pseudorabies within the previous thirty (30) days prior to changing ownership, or originate from a Pseudorabies Validated Free Herd. Test eligible swine moving directly from a premise of origin to an approved slaughter facility, or through an approved market to an approved slaughter facility, are exempt from test requirements provided identity to the herd of origin is maintained.

PART 9. REQUIREMENTS FOR APPROVED MARKETS

35:15-22-91. Requirements for approved markets

(a) ~~Feeder~~All swine consigned to an approved livestock market shall have an official ear tag for each pig. The market operator shall maintain a record of all official ear tags, the consignee's name and address, and the premise of origin.

(b) The livestock market shall immediately identify all out-of-state farm origin swine.

(c) The livestock market shall not release any out-of-state swine unless the appropriate entry requirements from Part 3 of this Subchapter have been met or the swine are to be shipped directly from the market to an approved slaughter facility.

(d) Upon release from a livestock market, untested out-of-state ~~breeding~~ swine shall be quarantined until, at the owner's expense, the swine are tested negative for pseudorabies and brucellosis not less than thirty (30) or more than sixty (60) days after the release. The owner is responsible for notifying the Department that the pseudorabies and brucellosis test ~~has~~have been completed.

(e) ~~Out-of-state breeding~~Untested out-of-state swine released from a livestock market directly to an approved slaughter establishment ~~or a quarantine feedlot~~ are exempt from (d) of this section.

(f) Any market that is approved to handle out-of-state slaughter swine and is the final market for these swine prior to release directly to an approved slaughter facility shall keep the slaughter swine separate from any feeding or breeding swine. Any facilities or equipment used for the out-of-state slaughter swine, including but not limited too, scales, loading chutes, etc., shall be thoroughly cleaned prior to use for any feeding or breeding swine.

SUBCHAPTER 24. SWINE BRUCELLOSIS

PART 1. GENERAL PROVISIONS

35:15-24-3. Administrative

(a) **Entering premises.** Authorized agents of the Oklahoma Department of Agriculture shall be authorized to enter premises as required to meet the standards of the Swine Brucellosis Eradication Program.

(b) **Services to owners.** Services pertaining to Brucellosis eradication in affected or suspect herds shall be rendered to livestock owners as long as funds for such purposes are allocated.

(c) **Human infection.** All human cases of B. suis shall be reported to appropriate public health officials.

(d) **Exhibition requirements.** All Oklahoma origin swine shall have an official ear tag and shall be accompanied by either

a certificate of veterinary inspection or a copy of an official test chart for each exhibition. The certificate of veterinary inspection shall include either the negative results from an official Brucellosis test or the validated Brucellosis negative herd number and current quarterly herd test date and show the corresponding official ear tag for each pig.

(1) All swine from other than Oklahoma shall have an official ear tag and shall be accompanied with a certificate of veterinary inspection for each exhibition. The certificate of veterinary inspection shall include either the negative results from an official brucellosis test or the validated brucellosis negative herd number and current quarterly herd test date and show corresponding official ear tag for each pig.

(2) Oklahoma origin exhibition swine shall have a negative official brucellosis test after June 1 each year for fall exhibitions and after December 1 each year for spring exhibitions. These tests are valid for the entire respective exhibition season, unless in the opinion of the designated epidemiologist the swine have been exposed to brucellosis.

(3) Out of state swine shall have either a negative official brucellosis test within thirty (30) days prior to each exhibition or shall have evidence that the swine are from a validated brucellosis negative herd and current quarterly herd test date and show the corresponding official ear tag for each pig.

(4) Owners or immediate family members of owners of a validated brucellosis negative herd may exhibit swine originating from the validated herd without a negative official brucellosis test as long as the swine are accompanied with evidence of the herd status at each exhibition. This documentation shall include the corresponding official ear tag for each pig entered in the exhibition.

(5) All swine, after being exhibited, shall be kept isolated from all non-exhibition swine until the swine are retested negative for brucellosis not less than thirty (30) days but not more than sixty (60) days following the exhibition unless the swine are consigned to a quarantined feedlot, an approved slaughter establishment, or an approved market for sale to slaughter or to a quarantined feedlot.

(e) **Change of ownership requirements.** All ~~breeding~~ swine ~~six (6) months of age and older~~ shall be tested and found negative to Brucellosis within the previous thirty (30) days ~~of~~prior to changing ownership, or originate from a Brucellosis Validated Free Herd. Test eligible swine moving directly from a premise of origin to an approved slaughter facility, or through an approved market to an approved slaughter facility, are exempt from test requirements provided identity to the herd of origin is maintained.

(f) **Penalties.** The Oklahoma Board of Agriculture shall have the authority to impose penalties for any person found guilty of violating the provisions of this rule. The Administrative Procedures Act shall be utilized in determining such action.

SUBCHAPTER 36. SCRAPIE

35:15-36-3. Requirements for identification

All sheep and goats shall be individually identified prior to movement for sale or exhibition.

[OAR Docket #07-1122; filed 5-21-07]

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

[OAR Docket #07-993]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 14. Equine Viral Arteritis [NEW]
35:15-14-1. Definitions [RESERVED]
35:15-14-2. Entry requirements [NEW]
AUTHORITY:
Oklahoma State Board of Agriculture and the Oklahoma Agriculture Code; 2 O.S. 2001 §§ 2-4(2), (7), (17), and (29), and 6-2
DATES:
Comment period:
December 2, 2006 through January 2, 2007
Public hearing:
January 3, 2007
Adoption:
January 18, 2007
Submitted to Governor:
January 18, 2007
Submitted to House:
January 18, 2007
Submitted to Senate:
January 18, 2007
Gubernatorial approval:
February 7, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on March 28, 2007
Final adoption:
March 28, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 14. Equine Viral Arteritis [NEW]
35:15-14-1. Definitions [RESERVED}
35:15-14-2. Entry requirements [NEW]
Gubernatorial approval:
December 21, 2006
Register publication:
24 Ok Reg 575
Docket number:
07-98
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
This rule is necessary to protect the horse and horse show industry in the state of Oklahoma from an outbreak of Equine Viral Arteritis. A recent outbreak of the disease in quarter horses in a New Mexico breeding operation has resulted in quarantines in several states. Because Oklahoma has a large transient horse population, the State Veterinarian has placed entry restrictions on horses originating in a state with quarantined areas. These rules were previously submitted as emergency rules.
CONTACT PERSON:
Dr. Becky Brewer-Walker, Director, Animal Industry Services, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-6134

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 14. EQUINE VIRAL ARTERITIS

35:15-14-1. Definitions [RESERVED]

35:15-14-2. Entry requirements

(a) No equidae originating from an area under quarantine for Equine Viral Arteritis shall enter the state of Oklahoma.

(b) Equidae originating from a state with areas under quarantine for Equine Viral Arteritis shall be accompanied by the following:

(1) A Certificate of Veterinary Inspection listing the body temperature of each equine that shall be equal to or less than one hundred one degrees Fahrenheit; and

(2) The statement that the listed animals do not have any clinical signs associated with Equine Viral Arteritis, respiratory, or dependent edema and did not originate from an area under quarantine for Equine Viral Arteritis.

[OAR Docket #07-993; filed 5-11-07]

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

[OAR Docket #07-1123]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 16. Contagious Equine Metritis
35:15-16-1 [AMENDED]
Subchapter 36. Scrapie
35:15-36-1 [AMENDED]
35:15-36-2 [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture and the Oklahoma Agricultural Code; 2 O.S. 2001 §§ 2-4(2), (7), and (29), 6-2; 6-124, and 6-152; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
January 16, 2007 to February 15, 2007
Public hearing:
February 15, 2007
Adoption:
March 21, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
April 26, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2007
Final adoption:
May 18, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rules update the incorporation by reference of the Code of Federal Regulations for Contagious Equine Metritis and Scrapie.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 16. CONTAGIOUS EQUINE METRITIS

35:15-16-1. Incorporation by reference

(a) The contagious equine metritis regulation found in Title 9 of the Code of Federal Regulations (CFR) (~~2005~~2006 Revision), Section 93-301 for the United States Department of Agriculture (USDA) as promulgated and amended in the Federal Register, is hereby adopted in its entirety.

(b) All words and terms defined or used in the federal regulation incorporated by reference by the Department shall mean the state equivalent or counterpart to those words or terms.

SUBCHAPTER 36. SCRAPIE

35:15-36-1. Incorporation by reference of federal regulations

(a) The Scrapie in Sheep and Goats Regulations found in Title 9 of the Code of Federal Regulations (CFR) ~~2004~~2006 Revision, Part 79 et seq. for the United States Department of Agriculture (USDA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:15-36-2.

(b) All words or terms defined or used in the Federal regulations incorporated by reference shall mean the state equivalent or counterpart to those words or terms.

35:15-36-2. Deleted regulations

The following sections of the Federal regulations governing scrapie in sheep and goats (9 CFR, Part 79 et seq.) (~~2004~~2006 Revision) of the USDA incorporated by reference under 35:15-36-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 79.6 and 79.7.

[OAR Docket #07-1123; filed 5-21-07]

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

[OAR Docket #07-994]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 40. Bovine Tuberculosis
Part 5. Herd Status Requirements
35:15-40-71 [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture and the Oklahoma Agriculture Code; 2 O.S. 2001 §§ 2-4(2), (7), and (29), 6-2, and 6-141; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
October 2, 2006 through November 3, 2006
Public hearing:
November 3, 2006
Adoption:
November 16, 2006
Submitted to Governor:
November 16, 2006
Submitted to House:
November 16, 2006
Submitted to Senate:
November 16, 2006
Gubernatorial approval:
December 21, 2006
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on March 27, 2007
Final adoption:
March 27, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 40. Bovine Tuberculosis
Part 5. Herd Status Requirements
35:15-40-71 [AMENDED]
Gubernatorial approval:
July 6, 2006
Register publication:
23 Ok Reg 3119
Docket number:
06-1231
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
This rule mirrors the previous emergency rule and is necessary to effectuate the new federal changes to the Bovine Tuberculosis Eradication Uniform Methods and Rules regarding reaccreditation of Tuberculosis accredited herds. Oklahoma must incorporate the federal requirements into state law to ensure the state maintains its Tuberculosis Free Status. Producers in Oklahoma would receive a severe economic hardship if the state does not maintain its Tuberculosis Free Status. The rule extends the time period from one year to two years for retesting to obtain reaccreditation of the herd.
CONTACT PERSON:
Dr. Becky Brewer-Walker, Director, Animal Industry Services, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-6134

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 40. BOVINE TUBERCULOSIS

PART 5. HERD STATUS REQUIREMENTS

35:15-40-71. Minimum standards for accreditation and reaccreditation of tuberculosis accredited cattle or bison herds

The minimum standards for accreditation and reaccreditation of tuberculosis accredited cattle and bison herds are as follows:

(1) All ~~animals must~~ test eligible cattle and bison shall pass two (2) consecutive negative official tuberculin tests not less than ten (10) months nor more than fourteen (14) months apart~~ of all test eligible animals~~. Test eligible animals shall include all cattle or bison twenty-four (24) months of age and older~~ and all animals other than natural additions under twenty-four (24) months of age. Natural additions become test eligible at twenty-four (24) months~~.

(2) All ~~animals~~ cattle and bison in the herd ~~to be accredited must~~shall be individually identified by an official ~~metal~~ eartag, registration tattoo, or individual permanent numerical brand.

(3) ~~Movement of~~Any cattle ~~into~~or bison added to an accredited herd ~~must be~~ shall either:

(A) ~~From an accredited herd, or~~Test negative to an official tuberculin test sixty (60) days prior to entering the premises, be kept in isolation, and test negative sixty (60) days following entry, or

(B) ~~From a herd in an accredited free state, or~~Be from one of the following:

(i) An accredited herd,

(ii) A herd from an accredited free state, or

(iii) A herd in a modified accredited area that passed a herd test of all cattle and bison over twenty-four (24) months of age within the previous twelve (12) months and the added cattle and bison test negative to an official tuberculin test within sixty (60) days of entering the herd.

~~(C) From a herd in a modified accredited area that has passed a herd test of all animals over twenty-four (24) months of age within the previous twelve (12) months, and the animals for addition are negative to an official tuberculin test within sixty (60) days of entering the herd, or~~

~~(D) Individual animal(s) tested negative sixty (60) days prior to entering the premise, be kept in isolation and retested negative sixty (60) days following entry.~~

(4) ~~Animals~~Any cattle or bison added ~~under 35:15-40-71(3)(B)(C) and (D)~~to an accredited herd that did not originate from an accredited herd shall not receive new herd status for sale purposes until they have been a herd member for at least sixty (60) days and are included in a complete herd test.

(5) All additions, both purchased and natural, ~~will~~shall be ~~individually~~ identified ~~and included~~ as herd members for ~~annual~~the herd retest.

(6) ~~Accurate~~The owner shall keep records ~~on~~individually identifying each ~~individual~~ animal~~ must be kept~~, including ~~disposal and/or death of an animal,~~all natural ~~additions and purchased~~or other additions, and shall also keep records of the death or other disposition of each animal.

(7) Accreditation is valid for a ~~twelve (12)~~twenty-four (24) month period. The original date of accreditation ~~will serve as~~shall be the herd's official accreditation date.

(8) Reaccreditation shall require a negative test of all test eligible herd members not less than ~~ten (10)~~twenty-two (22) nor more than ~~fourteen (14)~~twenty-six (26) months from the official accreditation date. All ~~animals must~~cattle or bison shall be bona fide members of the herd.

(9) ~~No~~Any evidence of bovine tuberculosis ~~may be disclosed~~ in ~~the~~a herd ~~for the purposes of~~shall result in a denial of accreditation or reaccreditation.

[OAR Docket #07-994; filed 5-11-07]

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

[OAR Docket #07-995]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 42. Tuberculosis Eradication in Cervidae
Part 1. Definitions
35:15-42-1 [AMENDED]
Part 3. Rules Adopted from USDA Uniform Methods and Rules for Tuberculosis Eradication in Cervidae
35:15-42-34 [AMENDED]
35:15-42-37 [AMENDED]
35:15-42-39 [AMENDED]
35:15-42-41 [AMENDED]
35:15-42-43 [AMENDED]
35:15-42-44 [AMENDED]
Part 5. Herd Status Requirements
35:15-42-51 [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture and the Oklahoma Agriculture Code; 2 O.S. 2001 §§ 2-4(2), (7), and (29), 6-2; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
October 2, 2006 through November 3, 2006
Public hearing:
November 3, 2006
Adoption:
November 16, 2006
Submitted to Governor:
November 16, 2006
Submitted to House:
November 16, 2006
Submitted to Senate:
November 16, 2006
Gubernatorial approval:
December 21, 2006
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on March 27, 2007
Final adoption:
March 27, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 42. Tuberculosis Eradication in Cervidae
Part 1. Definitions
35:15-42-1 [AMENDED]
Part 3. Rules Adopted from USDA Uniform Methods and Rules for Tuberculosis Eradication in Cervidae
35:15-42-34 [AMENDED]
35:15-42-37 [AMENDED]
35:15-42-39 [AMENDED]
35:15-42-41 [AMENDED]
35:15-42-43 [AMENDED]
35:15-42-44 [AMENDED]
Part 5. Herd Status Requirements
35:15-42-51 [AMENDED]
Gubernatorial approval:
August 7, 2006
Register publication:
24 Ok Reg 7
Docket number:
06-1273
INCORPORATIONS BY REFERENCE:
Incorporated standards:
N/A
ANALYSIS:
This rule is necessary to effectuate the new federal changes to the Tuberculosis in Captive Cervids rules regarding reaccreditation of Tuberculosis accredited herds and removing the use of the blood tuberculosis test. Oklahoma must incorporate the federal requirements into state law to ensure Oklahoma cervidae herds maintain their Tuberculosis Free Status. Producers in Oklahoma would receive a severe economic hardship if the state does not adopt the rules. The rule extends the time period from two years to three years for retesting to obtain reaccreditation of the herd.
CONTACT PERSON:
Dr. Becky Brewer-Walker, Director, Animal Industry Services, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-6134

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 42. TUBERCULOSIS ERADICATION IN CERVIDAE

PART 1. DEFINITIONS

35:15-42-1. Definitions

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

"Accredited Herd (Cervidae)" means a herd that has passed three (3) or more consecutive negative official tuberculosis tests of all eligible animals conducted at not less than nine (9) nor more than fifteen (15) month intervals, has no evidence of bovine tuberculosis and meets the standards of this Subchapter.

"Adjacent Herd" means a group or groups of cervids, cattle, bison, or dairy goats sharing common pasture, or having

other direct contact with the affected herd, and herds containing previous purchases from or exchanges with the affected herd. Herds separated by a single fence are considered contact or adjacent herds.

"Affected Herd" means a herd of cervids that contains, or has recently contained, one (1) or more animals infected with Mycobacterium bovis, and that has not passed the required tests necessary for release from quarantine.

"Annual Tests" means those tests conducted at intervals of not less than ten (10) months nor more than fourteen (14) months.

"Approved Laboratory" means a state, federal, or other USDA approved veterinary diagnostic laboratory. The primary laboratory for tuberculosis histopathology and bacteriology culture shall be the National Veterinary Services Laboratories (NVSL), Ames, IA. Food Safety and Inspection Service (FSIS) field service laboratories may be utilized for histopathology.

"Area Veterinarian In Charge (AVIC)" means the veterinary official of Veterinary Services (VS), APHIS, USDA, who is assigned by the Deputy Administrator to supervise and perform official APHIS animal health work.

~~**"Blood Tuberculosis (BTB) Test"** means a supplemental test for bovine tuberculosis in Cervidae. The BTB test may be used at the owner's expense as a supplemental test to establish the disease status of a herd. Samples for this test shall be collected only by state, federal, or accredited veterinarians.~~

"Cervidae" means all species of deer, elk and moose raised under confinement and/or agricultural conditions for the production of meat, the production of other agricultural products, sport or exhibition.

"Comparative Cervical Tuberculin (CCT) Test" means the intradermal injection of biologically balanced bovine purified protein derivative (PPD) tuberculin and an avian PPD tuberculin at separate sites in the midcervical area and a determination as to the probable presence of bovine tuberculosis (Mycobacterium bovis) by comparing the responses of the two (2) tuberculins seventy-two (72) hours (+ or - 6 hours) following injection. This test shall be administered only by a full-time state or federal regulatory veterinarian.

"Designated Accredited Veterinarian" means an accredited veterinarian trained and approved by state or federal representatives to conduct the single cervical test for tuberculosis on cervids.

"Direct Shipment to Slaughter" means the shipment of tuberculosis reactors, tuberculosis suspects, and tuberculosis exposed cervids from the premises of origin by permit directly to a slaughter establishment operating under state or federal inspection without diversion to assembly points of any type.

"Exposed Animals" means Cervidae that have associated with or been in direct contact with animals known to be tuberculous.

"Herd" means one or more cervids, or a group of cervids and other hoofed stock, maintained on common ground or two (2) or more groups of cervids and other hoofed stock under common ownership or supervision that are geographically separated but can have an interchange or movement without regard to health status.

"Herd Depopulation" means the removal of all Cervidae exposed to bovine tuberculosis in a herd directly to slaughter prior to any restocking of the premises with cervids.

"Herd Plan" means a herd management and testing agreement designed by a state or federal regulatory veterinarian and the herdowner that will control and eventually eradicate bovine tuberculosis from an affected, adjacent, or exposed herd of Cervidae.

"Monitored Herd" means a herd raised under range conditions on which identification records are maintained for animals over one (1) year of age that are slaughtered and inspected for tuberculosis at an approved state or federal slaughtering facility or an approved laboratory. The animals slaughtered shall be identified to the herd and the number slaughtered shall be evenly distributed over a three (3) year period at a rate to detect infection at a two percent (2%) prevalence level with ninety-five percent (95%) confidence.

"Natural Additions" means animals born and raised in a herd.

"Negative Animals" means cervids that show no response to a tuberculosis test or have been classified negative by the testing veterinarian or designated epidemiologist based upon history, supplemental test, examination of carcasses or laboratory results.

"No Gross Lesion (NGL) Animals" means cervids that do not reveal one or more lesions of bovine tuberculosis upon postmortem examination.

"Official Tuberculosis Test (Cervidae)" means a test for bovine tuberculosis applied and reported by approved personnel in accordance with this Subchapter. The official tests for Cervidae are the single cervical test, the comparative cervical test, ~~the blood tuberculosis test,~~ and any other test that is approved by the United States Department of Agriculture (USDA).

"Permit" means an official document issued by an authorized agent of the Board of Agriculture, a representative of APHIS VS, or an accredited veterinarian that is required to accompany reactor, suspect, or exposed cervids to slaughter. The permit will list the reactor tag number, or in the case of suspect or exposed cervids, an official eartag number; the owner's name and address; origin and destination locations; number of cervids covered; and the purpose of the movement. If a change in destination becomes necessary, a new permit shall be issued by authorized personnel. No diversion from the destination on the permit is allowed.

"Qualified Herd" means a cervid herd that has undergone at least one (1) complete official negative test of all eligible animals within the previous twelve (12) months and is not classified as an accredited herd, has no evidence of bovine tuberculosis, and meets the standards of this Subchapter.

"Reactor" means any cervid that shows a response to an official tuberculosis test and is classified a reactor by the testing veterinarian or designated epidemiologist.

"Single Cervical Tuberculin (SCT) Test (Cervidae)" means the intradermal injection of 0.1 milliliters (5,000 tuberculin units) of USDA PPD bovis tuberculin in the midcervical region with reading by visual observation and palpation in seventy-two (72) hours (+ or - 6 hours) following injection. This

test shall be administered only by a state, federal or designated accredited veterinarian.

"Suspect" means any cervid that shows a response to the single cervical tuberculin test and is not classified as a reactor; or is not classified as negative or a reactor by a supplemental tuberculosis test.

"Tuberculin" means a product that is approved by and produced under USDA license for the intradermal injection of cervids for the purpose of detecting bovine tuberculosis.

"Tuberculosis" means a disease in Cervidae caused by Mycobacterium bovis (M. bovis).

PART 3. RULES ADOPTED FROM USDA UNIFORM METHODS AND RULES FOR TUBERCULOSIS ERADICATION IN CERVIDAE

35:15-42-34. Supplemental diagnostic tests

The comparative cervical tuberculin (CCT) test~~, the blood tuberculosis (BTB) test,~~ or any other test ~~which is~~ approved by the USDA ~~will~~shall be used for the retesting of suspects.

35:15-42-37. Classification of Cervidae tested

(a) **Single cervical tuberculin test.** In herds of unknown status, all responses to the SCT test shall be recorded and the animals classified as suspects and quarantined for retest with the CCT test ~~or BTB test~~ unless in the judgement of the testing veterinarian, the reactor classification is indicated. In known affected herds all responses shall be recorded and the animals classified as reactors.

(b) **Comparative cervical tuberculin test.** All responses are to be measured to the nearest 0.5 millimeters. Animals having a response to bovine PPD of less than one (1) millimeter should be classified negative. Animals having a response to bovine PPD of one (1) millimeter through two (2) millimeters and also equal or greater than the responses to the avian PPD shall be classified as suspects. Animals having a response to bovine PPD greater than two (2) millimeters, but equal to the response to avian PPD, shall be classified as suspects except when in the judgement of the testing veterinarian, the reactor classification is indicated. Animals meeting the criteria for suspect classification on two (2) successive CCT tests shall be classified as reactors. Animals having a response to bovine PPD that is greater than two (2) millimeters and is at least 0.5 millimeters greater than the avian PPD response shall be classified as reactors.

(c) **Retest of suspects.** Suspects to the SCT test may be retested by either the CCT ~~or the BTB test~~. The CCT may be applied within ten (10) days following the SCT test injection or after ninety (90) days. If the CCT test is applied within ten (10) days of the SCT test, the opposite side of the neck shall be used. ~~The sample for the BTB test shall be taken not less than twelve (12) days nor more than thirty (30) days after the SCT test injection.~~ Animals positive to the CCT test ~~or the BTB test~~ shall be classified as reactors.

(d) **Reclassification of animals.** Suspects to the SCT test may be necropsied in lieu of retesting by supplemental test and, if found without evidence of M. bovis infection by histopathology (including selected specimens submitted from animals having no gross lesions indicative of tuberculosis) or culture, shall be considered negative for tuberculosis.

35:15-42-39. Reporting of tests

A report of all tuberculin tests (SCT~~,~~ and CCT~~, and BTB~~), including the individual identification of each animal by eartag number or tattoo, age, sex, and breed and a record of the size of the response where indicated and test interpretation, shall be submitted to the Oklahoma Department of Agriculture, Animal Industry Services Division, within ten (10) days of the date the test is read.

35:15-42-41. Disposition of tuberculin responding Cervidae

(a) Reactors shall remain on the premises where they were disclosed until a state or federal permit for movement has been obtained. Movement for immediate slaughter will be within fifteen (15) days of classification directly to a slaughter establishment where approved state or federal inspection is maintained. Alternatively, the animals may be destroyed and a necropsy may be conducted by or under the supervision of a full time state or federal regulatory veterinarian trained in tuberculosis necropsy procedures.

(b) Herds containing suspects to the SCT test shall be quarantined until the suspect animals are:

(1) retested negative by the CCT test within ten (10) days of the SCT test injection, ~~(or)~~

(2) retested negative by the CCT test after ninety (90) days, ~~(or)~~

~~(3) retested negative by the BTB test not less than twelve (12) days nor more than thirty (30) days following the SCT test injection, (or)~~

(4) shipped under permit directly to a slaughter facility under state or federal inspection or may be necropsied by or under the supervision of a full-time state or federal regulatory veterinarian trained in tuberculosis necropsy procedures. If such animals are found without evidence of M. bovis infection by histopathology (including selected specimens submitted from animals having no gross lesions indicative of tuberculosis) or culture, they shall be considered negative for tuberculosis.

(c) Suspects to the CCT test ~~or equivocal to the BTB test~~ shall remain under quarantine until:

(1) comparative cervical suspects are tested negative using the CCT test after ninety (90) days, ~~(or)~~

~~(2) BTB equivocal animals are retested negative using the BTB test not less than thirty (30) nor more than sixty (60) days following the SCT test injection, (or)~~

(3) shipped under permit directly to a slaughter facility under state or federal inspection or necropsied by or under the supervision of a full-time state or federal regulatory veterinarian trained in tuberculosis necropsy procedures. Such animals shall be considered tuberculosis negative unless evidence of the disease is found by culture or

histopathology (including selected specimens submitted from animals having no gross lesions).

(d) An animal meeting the suspect criteria on two (2) successive CCT ~~or BTB (equivocal)~~ tests shall be classified as a reactor and be identified as such. The testing veterinarian must justify exceptions in writing and have the concurrence of state or federal animal health officials.

(e) All Cervidae necropsied shall be properly disposed at owner's expense by a method approved by the Board and under the supervision of a full-time state or federal regulatory veterinarian.

35:15-42-43. Quarantine procedures for Cervidae

(a) All herds in which reactor animals are disclosed shall be quarantined. The remaining exposed animals must remain on the premises where the disease was disclosed unless a state or federal permit for movement to slaughter has been obtained. Movement for immediate slaughter must be direct to a slaughter establishment where approved state or federal inspection is administered. Exposed animals must be identified by official eartag and "S" branded prior to shipment, or animals must be shipped in an officially sealed vehicle. The "S" brand shall be applied to the tail head.

(b) Cervid herds in which M. bovis is confirmed (affected herds) shall remain under quarantine, if not depopulated, and must pass three (3) consecutive negative whole herd SCT test. ~~The BTB test may be used, provided that it is used simultaneously with a whole herd SCT test. The sample for the BTB test may be taken at the time of injection or reading of the SCT tests.~~ All animals positive to ~~either~~the test shall be classified as reactors. The first test must be conducted not less than ninety (90) days after the last test yielding a positive animal, and two (2) additional tests must be conducted at not less than 180-day intervals. The CCT test shall not be used in affected herds until the completion of two (2) consecutive negative whole herd tests or two (2) consecutive whole herd tests with NGL reactors only in which selected tissues are negative on histopathology and culture. Five (5) annual whole herd tests of all animals shall be conducted following the release from quarantine.

(c) Cervid herds that have had a test of all eligible animals with NGL reactors only and on evidence of tuberculosis infection found by histopathology and culture of M. bovis (including selected specimens submitted from animals having no gross lesions indicative of tuberculosis) may be released without further restrictions.

(d) Cervid herds in which one (1) or more animals are found to have compatible or suggestive lesions by histopathology without the isolation of M. bovis may be released from quarantine following a negative 90-day retest of the entire herd and with the concurrence of the regional tuberculosis epidemiologist provided that there is no known association with M. bovis.

(e) Cervid herds with NGL reactors only (in which no evidence of tuberculosis infection is found by histopathology and culture of M. bovis) and such herds where all eligible animals cannot be tested shall be evaluated by the state and/or regional tuberculosis epidemiologist for possible release of quarantine.

(f) The issuance of a quarantine may be waived if the State Board of Agriculture or the State Veterinarian enters into a formal cooperative agreement with the affected party that will control and eradicate M. bovis from the cervid herd.

35:15-42-44. Retest schedules for high risk cervid herds

(a) In herds with a history of lesions compatible or suggestive for tuberculosis by histopathology (without isolation of M. bovis), two (2) annual whole herd tests shall be given after release from quarantine. Herds with a bacteriologic isolation of a microbacteria species other than M. bovis should be considered negative for bovine tuberculosis with no further testing requirements.

(b) In a newly assembled herd on premises where a tuberculous herd has been depopulated, two (2) annual whole herd tests shall be conducted. The first test is to be given not less than six (6) months nor more than one (1) year after assembly of the new herd. If the premises has been vacated for more than one (1) year, these requirements may be waived.

(c) Exposed animals previously sold from known affected herds shall be depopulated if possible or tested with the SCT test by full-time state or federal regulatory veterinarians. ~~The BTB test may be used simultaneously with the SCT test as an additional diagnostic tool. The sample for the BTB test may be taken at the time of injection or reading of the SCT test.~~ All animals positive to ~~either~~the test shall be classified as reactors.

(1) If bovine tuberculosis is confirmed in the exposed animal(s), the remainder of the receiving herd shall be tested with the SCT test by full-time state or federal regulatory veterinarians. ~~The BTB test may be used, provided that it is used simultaneously with a whole herd SCT test. The BTB test may be taken at the time of injection or reading of the SCT test.~~ All animals positive to ~~either~~the test shall be classified as reactors.

(2) If negative to the test, the exposed animals will subsequently be handled as if they were part of the affected herd of origin for purposes of testing, quarantine release, and the five (5) annual high risk tests; also, the remainder of the herd shall be retested in one (1) year with the SCT test. Supplemental diagnostic tests may be used if needed.

(d) Herds indicated as the source of an infected animal in slaughter traceback investigations shall be placed under quarantine within 30 days of notification to the State Veterinarian, and a complete herd test shall be scheduled within 30 days. Testing of source herds of slaughter animals having lesions of tuberculosis shall be done by full-time state or federal regulatory veterinarians. If the herd of origin is positively identified and M. bovis has been confirmed by bacterial isolation from the slaughtered animal, all animals responding to the SCT test shall be classified as reactors. In all other cases, supplemental diagnostic tests may be used.

(e) Herds identified as the source of animals found to have tuberculous lesions in an affected herd shall be tested by full-time state or federal regulatory veterinarians using the SCT test. Responding animals may be classified as reactors or suspects. If classified as suspects, they may be retested by supplemental diagnostic tests.

(f) In the event new technology and advancements provide alternative testing procedures which are approved by the

USDA, the State Veterinarian may alter testing schedules listed above to conform and utilize the new and improved methods and tests.

PART 5. HERD STATUS REQUIREMENTS

35:15-42-51. Minimum standards for accreditation and reaccreditation for Cervidae herds

(a) **Animals to be tested.** Testing of herds for accreditation of reaccreditation shall include all Cervidae and all other hoof stock over twelve (12) months of age and animals under twelve (12) months of age that are not natural additions.

(b) **Qualifying standards.** To meet the requirements for accredited herd status, the herd must pass at least ~~three~~two consecutive negative official tests for tuberculosis conducted at not less than nine (9) nor more than fifteen (15) month intervals with no evidence of bovine tuberculosis disclosed. Herds meeting these standards shall be issued a certificate by the local, state and federal officials.

(c) **Additions.** Herd additions must originate directly from one of the following sources and have no exposure to cervids from herds of lesser status than the additions' herd of origin:

(1) An accredited herd, (or)

(2) A qualified or monitored herd provided that the individual animals for addition are negative to an official tuberculosis test conducted not more than ninety (90) days prior to entry and isolated from members of the accredited herd until negative to an official tuberculosis test conducted not less than ninety (90) days following entry, (or)

(3) Individual animals for additions from herds not meeting the requirements listed above must be isolated from all other members of the herd of origin and must pass two (2) negative official tests for tuberculosis conducted at least ninety (90) days apart, with the second test conducted within ninety (90) days prior to movement to the premises of the accredited herd. These additions ~~must~~shall be kept in isolation ~~for~~from members of the accredited herd until they are negative to an official tuberculosis test conducted not less than ninety (90) days following the date of entry. Animals from accredited, qualified, or monitored herds shall not receive accredited status for sale or movement purposes until they are negative on a retest ninety (90) days after entry.

(d) **Reaccreditation.** To qualify for reaccreditation, the herd must pass a test within a period of not less than ~~twenty-one~~thirty-three (~~21~~33) nor more than ~~twenty-seven~~thirty-nine (~~27~~39) months of the anniversary date. The accreditation period will be ~~twenty-four~~thirty-six (~~24~~36) months ~~(730 days)~~ from the anniversary date ~~(not 24 months from the date of the reaccreditation test)~~.

[OAR Docket #07-995; filed 5-11-07]

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

[OAR Docket #07-996]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 44. Farmed Cervidae [NEW]
35:15-44-1 through 35:15-44-19 [NEW]
35:15-44-20 [RESERVED]
AUTHORITY:
Oklahoma State Board of Agriculture and the Oklahoma Agricultural Code; 2 O.S. 2001 §§ 2-4(2), (7), (17) and (29), 6-2; and 6-501 et seq.
DATES:
Comment period:
December 2, 2006 through January 2, 2007
Public hearing:
January 3, 2007
Adoption:
February 15, 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:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Supchapter 44. Farmed Cervidae [NEW]
35:15-44-1 through 35:15-44-19 [NEW]
35:15-44-20 [RESERVED]
Gubernatorial approval:
November 29, 2006
Register publication:
24 Ok Reg 373
Docket number:
06-1542
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
These rules are necessary to effectuate the provisions of House Bill 2621 regarding the creation of the Oklahoma Farmed Cervidae Act. The bill became effective November 1, 2006, and transfers authority over farmed cervidae facilities from the Oklahoma Department of Wildlife Conservation to the Department. These rules were previously submitted as emergency rules.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 44. FARMED CERVIDAE

35:15-44-1. Purpose

The purpose of these rules is to establish procedures and requirements for the licensing of farmed cervidae facilities. These rules shall not apply to any cervidae facilities owned or operated for the purpose of commercial hunting of farmed or captive bred cervidae regulated by the Oklahoma Department of Wildlife Conservation.

35:15-44-2. Definitions

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

"Proof of ownership" means an inspection certificate, a purchase invoice from a licensed public livestock market showing individual identification, a duly executed bill of sale, court orders, certification that the cervidae was born from animals owned by the seller, or any other document the Department deems acceptable.

35:15-44-3. Application for license

(a) An owner or operator shall obtain a farmed cervidae license prior to breeding, possessing, or raising cervidae for commercial or noncommercial purposes.

(b) The Department may issue a license if the cervidae were lawfully obtained, the owner and operator act in good faith, and the owner and operator adhere to all applicable laws and rules.

(c) An application for a farmed cervidae facility shall contain the following complete, accurate, and legible information:

(1) Name, address, and telephone number of owner.

(2) Name, address, and telephone number of the operator, if different from the owner.

(3) Name, address, and telephone number of the primary contact.

(4) Farm name, facility address, and facility telephone number.

(5) Name, address and telephone number of the location where records are kept.

(6) Specific legal description of the facility to the nearest quarter section.

(7) A map showing topography of the area with a diagram of the facility structures, fencing plan, and perimeter clearly marked.

(8) A description of the experience and education of the owner and operator to successfully maintain and operate the facility.

(9) Whether the applicant has been convicted of a felony, misdemeanor, administrative, or civil violation of any natural resources requirements, including but not limited to wildlife, forestry, fisheries, environment, or animal health within the past three (3) years in Oklahoma or any other jurisdiction.

(10) Whether the property where the farmed cervidae facility is located is owned or leased.

(11) An initial inventory of the farmed cervidae, including their ages, breed and species, and a minimum of one form of official individual identification approved by the Department.

(12) Method of carcass disposal for the facility, including carcass storage sites, carcass burial areas, incineration approval, rendering company, composting plan, or landfill.

(13) Driving directions from the nearest town.

(14) The D/B/A, corporate name, or other name the farmed cervidae facility operates under. If a corporation, submit a certificate of good standing from the secretary of state.

(15) A list of each name the farmed cervidae facility operates under.

(16) Signature under oath "I certify under penalty of law this document, all attachments, and information submitted are to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for knowingly submitting false, inaccurate, or incomplete information, including the possibility of fines for each violation."

(d) The Department shall not issue a license in the following circumstances:

(1) The facility was not inspected by the Department.

(2) The owner or operator had any equivalent license denied, revoked, or suspended by any authority, except by accordance with the provisions of OAC 35:15-44-16.

(e) Using information from the application and from the State's files, the Department shall determine:

(1) The accuracy of all materials in the application;

(2) The applicant can reasonably be expected to comply with all legal requirements; and

(3) The proposed facility is adequate and complies with all legal requirements and would not result in harm to native wildlife.

35:15-44-4. Renewals

(a) The license shall expire on June 30 of each calendar year.

(b) The renewal application shall be submitted not later than January 15 of each calendar year.

(c) The annual report containing all inventory information shall be submitted with the renewal application.

(1) The Department may, on a case by case basis, approve a different date for submission of the annual report.

(2) An owner or operator shall request a different date in writing to the Department, and shall provide justification for using a date other than January 15.

(3) Submission of an annual report for other disease monitoring purposes may be considered justification for requesting a different date.

(d) Any renewal application received or postmarked after the renewal date shall be subject to a 10% penalty in addition to the renewal fee, and shall be deemed a violation of the Oklahoma Farmed Cervidae Act.

(e) Submit a signed, complete, accurate, and legible form containing the following information:

(1) The annual report.

(2) Any changes to the facility since the last renewal or original license application, including, but not limited to:

(A) Changes in contact information.

(B) Changes in perimeter fences. Attach an updated facility map indicating any expansion, change in facility perimeter, or any additional fencing.

(f) No renewals shall be issued for a license that is allowed to lapse due to the negligence of the owner or operator.

(g) Failure to renew shall result in the facility being quarantined until due process of law against the current owner occurs. The failure may result in revocation of the license, loss of the facility number, closure of the facility, and removal of the cervidae from the premises.

35:15-44-5. Transfers

For transfer of a license to a new owner or operator, the following conditions shall be met:

(1) The new owner or operator shall submit to the Department a transfer application, attaching any change of conditions resulting from the transfer of ownership or operation;

(2) After receipt of the information required, the Department shall review the information, and within thirty (30) days, issue approval or denial of the transfer. Transfer of a license shall be denied only if:

(A) the new owner or operator cannot comply with the requirements of transfer,

(B) failure of the new owner or operator to meet any other conditions or requirements for compliance established by the Department, or

(C) If a transfer is denied, written notification of the denial and an opportunity for an administrative hearing on the denial shall be given to the applicant for a transfer license by the Department. The notification shall set forth the reasons for the denial, steps necessary to meet the requirements for a transfer license and the opportunity for the applicant to request an administrative hearing.

35:15-44-6. Record keeping

(a) All required records shall be kept by the owner or operator for a minimum of five (5) years.

(b) The following records shall be maintained at the facility:

(1) Records of all cervidae sold, killed, given away, transported, or shipped.

(2) The name and address of any recipient or consignee and the date of any transaction.

(3) Sales receipts.

(4) Proof that the cervidae are from a legal source and records kept and animals marked to identify individual animals.

(5) The CWD inventory or an inventory of cervidae containing the following information:

(A) Name and address of the farmed cervidae facility, the owner, and the operator.

(B) A listing of each individual animal.

(C) A statement of ownership.

(D) A listing of any and all identification numbers assigned to the cervidae by the owner or operator and any other official entity.

(i) Tattoo number.

(ii) Any official identification approved by the Department.

(iii) USDA alphanumeric test tag number or official Canadian alphanumeric test tag number, if applicable.

(E) Age.

(F) Sex.

(G) Date of purchase or date of birth.

(H) Date of death or date of change of ownership.

(I) Any cervidae born at the facility shall be shown on the inventory record on or before December 31 of the year of birth, or upon sale or transfer of ownership or upon leaving the facility, whichever comes first.

(J) Any cervidae purchases shall be on the inventory record immediately after acquisition.

(K) Date the inventory was completed.

(6) Herd and individual animal health documents, including, but not limited to, the Certificate of Veterinary Inspection and test results.

35:15-44-7. Limit on facility size

(a) Facility size shall be limited to the largest practicable area to ensure no native or wild cervidae are within the confines of the facility. Limitations on facility size may include but not be limited to geography and topography of the property.

(b) No farmed cervidae facility shall share a common fence with any Wildlife Management Area operated by the Oklahoma Department of Wildlife Conservation.

(c) Each separate location of a farmed cervidae facility shall be licensed separately.

35:15-44-8. Fencing and facility requirements

(a) The owner or operator shall ensure that farmed cervidae are confined to the lands described in the application.

(b) The perimeter of each new farmed cervidae facility shall be an eight (8) foot game or high tensile fence designed in a manner to prevent ingress and egress of cervidae.

(1) Facilities in operation prior to the effective date of the Oklahoma Farmed Cervidae Act shall maintain fencing sufficient to prevent ingress and egress of cervidae.

(2) The owner or operator shall install eight (8) foot game or high tensile fence for any new fencing at a new or existing facility.

(c) Damage caused to a farmed cervidae facility perimeter fence by a natural disaster shall not constitute a violation so long as the owner or operator begins any necessary repairs immediately upon discovery, acts expeditiously in the opinion of the Department to complete any necessary repairs, and reports the extent and cause of any damage to the Department within two working days of discovery.

(d) The owner or operator shall notify the Department within two working days of discovery of any wild cervidae within the farmed cervidae facility.

(e) The owner or operator shall provide each farmed cervidae with adequate water, adequate feed, appropriate natural or manmade shelter, and reasonable protection from predators.

35:15-44-9. Flushing procedures

(a) Prior to the final enclosure of the farmed cervidae facility, the owner or operator shall undertake a flushing procedure to ensure that any native or wild cervidae are not present in the area.

(b) The flushing procedure shall be performed in the presence of authorized agents of the Oklahoma Department of Wildlife Conservation.

(c) The owner or operator shall obtain documentation from the Oklahoma Department of Wildlife Conservation that the flushing procedure was adequately completed.

35:15-44-10. Slaughter requirements

(a) Owners and operators of licensed farmed cervidae facilities may slaughter farmed cervidae at any time throughout the year pursuant to the Exotic Livestock and Exotic Livestock Products Inspection Act or other applicable law.

(b) An owner or operator may slaughter their own farmed cervidae for personal or noncommercial consumption, but in no case shall someone other than the owner or operator be allowed to hunt or shoot the farmed cervidae.

(c) Any person holding meat or antlers with attached skull plates from a farmed cervidae facility that obtained it through non commercial methods shall hold a receipt from the owner or operator of the farmed cervidae facility for so long as they have the meat or antlers with attached skull plates.

35:15-44-11. Transportation permit

A permit developed by the Department or a sales receipt shall be provided to any purchaser or transporter of live cervidae, meat, or antlers with attached skull plates and it shall be kept with the live cervidae, meat, or antlers with attached skull plates at all times.

35:15-44-12. Sale or disposal of hides and antlers

(a) Any owner and operator of a farmed cervidae facility may sell or dispose of hides and antler sheds at any time.

(b) An owner or operator shall only sell or dispose of antlers with attached skull plates in the following circumstances:

(1) Each set of antlers shall be individually identified with sufficient documentation linking it to the farmed cervidae, including, but not limited to, photographs, lock on identification tags, DNA testing, or other proof of ownership;

(2) In no case shall an owner or operator sell or dispose of antlers without appropriate documentation.

(3) The owner or operator shall notify the Department within two working days of any sale or disposal of antlers pursuant to this section and provide a copy of all appropriate documentation to the Department.

(4) The owner or operator shall provide a copy of all appropriate documentation to the purchaser or recipient at the time of sale or disposal.

(c) The sale or disposal of antler sheds or antlers that are not attached to the skull plate shall not be restricted.

35:15-44-13. Carcass disposal

(a) Facilities shall comply with all carcass disposal requirements.

(b) The following methods may be used for disposal of carcasses from a farmed cervidae facility:

(1) Rendering,

(2) Landfill,

(3) Burial,

(4) Incineration, or

(5) Composting.

(c) Carcass disposal areas shall be located a minimum of thirty feet from any live farmed cervidae.

(d) The owner or operator shall comply with Title 2, Section 2-18.1 and Title 21, Sections 1222, 1223, and 1224 at all times.

35:15-44-14. Inspections

(a) Each premises shall be inspected at least annually.

(b) Prelicensing inspections:

(1) Upon submission of a complete application, the Department shall schedule an onsite meeting and inspection to review the facility.

(2) The Department shall review the location of the facility, including perimeter fencing, gates, feed bunkers, shelter, carcass disposal areas, and any other facilities for the location.

(3) The Department may request appropriate changes to the facility design.

(4) In no case shall a license for a farmed cervidae facility be granted unless the Department has conducted a prelicensing inspection and the Department has approved the facility based on that inspection.

(5) The license shall be revoked for any facility that does not construct or operate the facility in accordance with the approved prelicensing inspection.

(c) All new facilities shall be inspected within ninety (90) calendar days prior to issuance of a new license.

(d) All facilities and cervidae for inventory purposes shall be inspected within six (6) months prior to the renewal of an existing license.

(e) It is the responsibility of the owner or operator to arrange the appropriate inspection and the Department shall be given an adequate time to respond to the request for the inspection.

(f) Authorized agents of the Oklahoma Department of Wildlife Conservation shall have the authority to enter and inspect any premises pursuant to Title 29, Section 3-201 of the Oklahoma Statutes for the purpose of implementing and enforcing the Oklahoma Wildlife Conservation Code.

35:15-44-15. Complaint and compliance investigations

(a) Upon receipt of a written complaint, the Department notifies the person filing the complaint in writing of its receipt and status within five (5) working days. The party whom the complaint is filed against, if known, is notified within five (5) working days. The resolution of a complaint is the completion of the appropriate administrative, jurisdictional, and legal

remedies to the extent possible by the Department. The complainant and owner shall be notified in writing within seven (7) working days after resolution of the complaint.
(b) Department initiated investigations may occur at any time.

35:15-44-16. Modify, suspend, cancel, or revoke licenses

(a) The license of any owner or operator may be revoked if the owner or operator is convicted of violating any provisions of the Oklahoma Agricultural Code.
(b) In the event a license is denied, revoked, cancelled, or suspended, the owner or operator is not eligible to reapply until after the date the license would have expired.

35:15-44-17. Closure of the facility

(a) The owner or operator may take up to one hundred twenty (120) days to dispose of all cervidae at the facility pursuant to the Oklahoma Farmed Cervidae Act and rules upon expiration of a license.
(b) In no case shall the farmed cervidae be released into the wild.
(c) Cleaning and disinfection of the premises shall be completed immediately upon closure of the facility if required by the Department.

35:15-44-18. Fees

(a) The application fee for a new farmed cervidae facility shall be $125.
(b) The annual license renewal fee shall be $75 per facility.

35:15-44-19. Entry and export requirements

(a) Import of cervidae originating in any state or Canadian province where CWD exists in free ranging native herds shall be prohibited, unless it originates from a CWD monitored herd with a five-year status within a county where no CWD exists in free ranging native herds.
(b) All other cervidae imports shall only be from a source herd that is in a CWD surveillance and certification program that meets the standards of cervidae importation into Oklahoma.
(c) Import of cervidae shall be accompanied by a Certificate of Veterinary Inspection and an approved Cervidae Import Permit.

35:15-44-20. Animal identification requirements [RESERVED]

[OAR Docket #07-996; filed 5-11-07]

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

[OAR Docket #07-1126]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Concentrated Animal Feeding Operations
35:17-3-2 [AMENDED]
35:17-3-11 [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2), (7), (16), and (29), and 20-1 et seq.; 27A O.S. § 1-3-101(D); and Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
January 16, 2007 to February 16, 2007
Public hearing:
February 16, 2007
Adoption:
March 21, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
April 26, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2007
Final adoption:
May 18, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
These rules incorporate the changes made during the 2006 legislative session in House Bills 2604, 2646, and 3015 to the Oklahoma Concentrated Animal Feeding Operations Act.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 3. CONCENTRATED ANIMAL FEEDING OPERATIONS

35:17-3-2. Definitions

In addition to terms defined in the Oklahoma Concentrated Animal Feeding Operations Act, the following words or terms, when used in this Subchapter, shall have the following meaning unless the context clearly indicates otherwise:

"Act" means the Oklahoma Concentrated Animal Feeding Operations Act beginning at Section 9-201 of Title 2 of the Oklahoma Statutes.

"ALJ" means Administrative Law Judge.

"ASTM" means the most current version of the American Society of Testing Materials standards.

"APA" means the Oklahoma Administrative Procedures Act, beginning at Section 301 of Title 75 of the Oklahoma Statutes.

"Application" means a set of documents filed with the Oklahoma Department of Agriculture for the purpose of obtaining an Oklahoma CAFO License from the State Board of Agriculture.

"Building permit" means an approval from the State Board of Agriculture to commence construction of a new or expanding LMFO.

"CAFO" means Concentrated Animal Feeding Operation as defined in Section 9-202 of Title 2 of the Oklahoma Statutes.

"Discharge" means any release by leaking, pumping, pouring, emitting, emptying, dumping, escaping, seeping, leaching, or other means of release of wastes or wastewater except as otherwise provided in Section 9-204.1 of Title 2 of the Oklahoma Statutes. The term discharge shall not include a distribution of waste water into an irrigation system for the purpose of land application of waste to property, provided the waste does not leave the land application area.

"Hearing" means an individual proceeding conducted pursuant to the provisions of the Oklahoma Administrative Procedures Act.

"Licensing process" means the procedures where permission to engage in certain activities pursuant to the provisions of the Oklahoma Concentrated Animal Feeding Operations Act is granted by the Board. Procedures include but are not limited to application, notice to affected property owners, Department review, publication of notice of application, hearings, and issuance of a building permit and license.

"LMFO" means a Licensed Managed Feeding Operation as defined by Section 9-202 of Title 2 of the Oklahoma Statutes.

"Party" means a person or agency named and participating or properly seeking and entitled by these rules to participate in hearings.

"Person" means any individual, association, partnership, firm, company, public trust, corporation, joint-stock company, limited liability company, limited liability partnership, trust, estate, state or federal government agency, municipality, other governmental entity, or any other legal entity or their agent, employee, representative, assignee, or successor.

"Spill" means the release from a swine animal feeding operation of any process wastewater or manure that does not reach waters of the state.

"USDA NRCS" means the United States Department of Agriculture Natural Resources Conservation Service.

"25-year, 24-hour rainfall event" means the maximum twenty-four (24) hour precipitation event with a probable recurrence interval of once in twenty-five (25) years, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States," May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information.

35:17-3-11. Pollution Prevention Plan (PPP)

(a) Prior to the submission of a CAFO license application, each facility shall develop a Pollution Prevention Plan (PPP) according to the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant to the Act. The Plan shall include provisions for documentation of structural controls, documentation of operating Best Management Practices (BMPs), an Animal Waste Management Plan (AWMP), a carcass disposal plan for normal and emergency disposal of carcasses, and record keeping provisions. The Plan shall identify an individual who is responsible for implementing, maintaining, and revising the PPP. The PPP for an LMFO shall also include an Odor Abatement Plan (OAP) and a Pest Management Plan (PMP).

(b) Equivalent measures contained in a site specific AWMP prepared by the United States Department of Agriculture, Natural Resources Conservation Service (NRCS) may be substituted for the appropriate PPP requirements. An AWMP developed by USDA NRCS can be substituted for the documentation of land application rate calculations.

(c) With Department approval, the owner shall amend the PPP prior to any change in design, construction, operation, or maintenance, which has significant effect on the potential for the discharge of pollutants to the surface or groundwaters of the State.

(d) The owner shall implement appropriate changes to the Plan within ninety (90) calendar days of notification that the plan does not meet one or more specified minimum requirements unless otherwise provided by the Department. If notice of changes is not received by the Department within the prescribed ninety (90) calendar days, the application shall be denied.

(e) In addition to the requirements of the Act, the PPP shall include:

(1) A list of materials that are used, stored, or disposed of at the facility which may cause pollution. A ~~spill~~ contingency plan for releases of potential pollutants shall also be included. The PPP shall contain a log of any pollutant ~~spills~~releases and clean up of those materials. Documentation of ~~spills~~releases shall include any corrective action taken to prevent recurrence.

(2) Testing of groundwater, Nitrogen as Nitrate, total Phosphorous, and fecal coliform bacteria levels shall be performed by an Oklahoma Department of Environmental Quality certified independent testing laboratory at least annually. All testing shall establish a management record, with all costs paid by the owner. Owners of LMFOs shall sample groundwater annually for electrical conductivity, pH, ammonium-nitrogen, nitrate-nitrogen, total phosphorus, and fecal coliform bacteria.

(3) Soil tests from land application sites shall be performed by an Oklahoma Department of Environmental Quality certified testing laboratory at least annually. All testing shall establish a management record, with all costs paid by the owner. Owners of LMFOs shall perform soil

tests for electrical conductivity, pH, nitrate-nitrogen, ammonium-nitrogen, organic matter, sodium, potassium, calcium, magnesium, available phosphorus, and total nitrogen.

(4) Sufficient testing of wastewater in waste storage facilities shall be required at least every three (3) years and performed by a qualified independent testing laboratory. Testing may be required more frequently at an individual facility at the Department's request. All owners of LMFOs shall sample waste retention structure contents annually prior to the first land application of the calendar year. Owners of LMFOs shall sample waste retention structure contents for ammonium-nitrogen, nitrate-nitrogen, total phosphorus, electrical conductivity, pH, sodium, potassium, calcium, magnesium, total nitrogen, and total solids. Additional parameters may be required upon request of the Department.

(5) A description of management controls appropriate for the facility. The owner initiates these controls. The appropriateness and priorities of any controls shall reflect the identified sources of pollutants at the facility and conform to criteria established by the Act and the Department.

(A) The location and a description of existing surface water controls. Structural controls shall be inspected at least quarterly each year for structural integrity and maintenance. Dates of inspections of the retention structure and a log of the findings of the inspections shall be maintained at the site.

(B) Documentation of retention structure capacity shall be submitted to the Department and shall be based upon input parameters, the assumptions and actual calculations, showing volumes for all intermediate steps, used in determining the appropriate volume capacity. All waste retention structures for LMFOs shall be designed for the maximum number of animals that are or will be licensed at the facility. Retention structure capacity shall be based upon the following, at a minimum:

(i) The runoff volume from open lot surfaces.

(ii) The runoff volume from areas between open lot surfaces and the retention structure.

(iii) The rainfall multiplied by the area of the retention structure.

(iv) The volume of rainfall from any roofed area that is directed into the retention structure.

(v) All waste and process generated wastewater produced during a period of time not less than twenty-one (21) calendar days, including: volume of wet manure that enters a pond; plus volume of water used for manure or waste removal; plus volume of wash or cleanup water; plus other water, including drinking water that enters the retention structure. All waste retention structures designed for LMFOs shall have a capacity for all waste and process generated wastewater produced during a period of time not less than one hundred and eighty (180) calendar days.

(vi) Volume of a 25-year, 24-hour rainfall event.

(vii) One (1) foot of freeboard below spillway or outlet.

(C) A description of the design standards for the retention facility embankments. The following minimum design standards are required for construction or modification of a retention structure embankment:

(i) Soils used in the embankment shall be free of foreign material, including trash, brush, and fallen trees.

(ii) If retention structures are constructed with an emergency spillway, a minimum of one (1) foot of freeboard shall be maintained between the top of the 25-year, 24-hour storm volume and the bottom of the emergency spillway.

(iii) An erosion control plan shall be developed and approved by the Department detailing how the owner immediately stabilizes the embankment walls to prevent erosion and deterioration. The plan shall include a preventive maintenance section. Each plan shall be approved on a case by case basis and may include the use of vegetative cover, geomembrane liners, sod, or other Department approved methods for controlling erosion.

(iv) A permanent measuring device shall be maintained in the wastewater retention structure to show the volume required to contain a 25-year, 24-hour rainfall event. The device shall be visible from the top of the levee and a separate mark shall be placed on the measuring device clearly identifying the 25-year, 24-hour rainfall event. Installation of the measuring device shall be performed in a manner to protect the integrity of liner at all times.

(v) A rain gauge shall be kept on site and properly maintained. A log of all measurable precipitation events shall be kept with the PPP.

(vi) Documentation of method used to ensure liner of the waste retention structure is protected at or below the inlet.

(6) All owners of LMFOs shall install a leak detection system or monitoring wells in accordance with criteria approved by the Department.

(A) Samples of groundwater shall be collected by the ~~State~~Oklahoma Department of Agriculture, Food, and Forestry at least annually. The analysis of the water samples shall be performed by a qualified environmental laboratory ~~certified~~approved by the Oklahoma Department of Environmental Quality or the relevant certification agency for the state in which the laboratory is located and approved by the ~~State~~Oklahoma Department of Agriculture, Food, and Forestry. All costs of analysis shall be the responsibility of the owner of the LMFO.

(i) The frequency of sampling may be reduced to once every three (3) years for those monitoring wells which have been sampled for at least three

(3) consecutive years and have always been found to be dry.

(ii) If any subsequent sampling event indicates the monitoring well is no longer dry, that monitoring well shall be sampled pursuant to this subsection.

(B) All waste retention structures shall have sufficient numbers of groundwater monitoring wells upgradient and downgradient in the direction of groundwater flow. All monitoring well locations shall be approved by the Department on a case by case basis.

(C) No monitoring well shall be installed more than one hundred and fifty (150) feet from the crown of the outer berm.

(D) All new monitoring wells shall be drilled through the first aquifer encountered, but need not extend more than fifty (50) feet below the bottom of the waste retention structure. One downgradient monitoring well shall be drilled to the first aquifer encountered or the first impermeable layer, but need not extend more than one hundred (100) feet below the bottom of the waste retention structure.

(E) All monitoring wells shall be drilled and completed by an Oklahoma Water Resources Board licensed monitoring well driller.

(F) If no groundwater is encountered during the drilling operation, the bore hole shall be left open for at least forty eight (48) hours but not over thirty (30) days for the aquifer to recharge the bore hole. Thereafter, the bore hole shall be either developed into a monitoring well or plugged according to Oklahoma Water Resources Board requirements.

(G) All new monitoring wells shall meet the following minimum requirements:

(i) A minimum of two (2) inch diameter PVC casing shall be used with a sealing cap on the bottom.

(ii) The casing shall consist of minimum SDR-21 rated casing with a minimum SDR-21 rated factory screen in the saturated zone, or the bottom ten (10) feet if no groundwater is encountered.

(iii) Perforated zone shall be gravel or sand packed originating at the bottom of the screen and extending to two (2) feet above the top of the screen, and otherwise as appropriate for the installation.

(iv) Bentonite shall be placed in the annular space of the well above the gravel or sand pack for an interval of at least two (2) feet to form an impermeable seal.

(v) A cement grout or a mixture of bentonite and cement shall be placed above the bentonite seal to prevent seepage from entering behind the pipe and causing hydrologic connection.

(vi) At least the top ten (10) feet of the annular space shall be filled with type A cement.

(vii) A concrete apron, minimum of four (4) inch thickness and two (2) feet from the casing shall be installed at the surface to prevent seepage of rain water into the bore hole. The apron shall be sloping away from the casing to avoid percolation of rain water.

(viii) A lockable protective cap shall be placed on top of the casing, which shall be a metal protective casing extending two (2) feet above the concrete apron and one (1) foot into the apron. The well shall remain securely capped and locked at all times, except during sampling events.

(ix) Within thirty (30) days of installation, a copy of the Oklahoma Water Resources Board approved Multi-Purpose Completion Form shall be submitted to the Department.

(x) Existing monitoring wells shall be evaluated on a case by case basis by the Department to determine equivalency. Monitoring wells previously required and approved by the Department shall be considered equivalent.

(H) Groundwater monitoring wells shall be sampled at least annually for electrical conductivity, pH, ammonium-nitrogen, nitrate-nitrogen, total phosphorus, and fecal coliform bacteria.

(I) Owners of LMFOs may install a leak detection system instead of monitoring wells. The system shall be approved by the Department on a case by case basis.

(7) The following records, in addition to those required by the Act, shall be maintained at the site for a minimum of three (3) years. Owners of LMFOs shall retain the records on site for as long as the facility is in operation.

(A) Weekly measure of water level in the retention facility;

(B) Quarterly inspection and maintenance reports;

(C) Other specific information required by the Department.

(8) The following records, in addition to those required by the Act, shall be maintained at the site as long as the facility is in operation:

(A) Documentation of no significant impact, if applicable.

(B) Copy of Notice of Intent (NOI) or Notice of Termination (NOT), if applicable.

(C) Other records as required by the Department.

[OAR Docket #07-1126; filed 5-21-07]

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

[OAR Docket #07-1125]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 9. Agricultural Compost Facilities
35:17-9-1 [AMENDED]
35:17-9-3 [AMENDED]
35:17-9-8 [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2) and (29); 27A O.S. Supp. 2005 § 1-3-101(D)(1)(a); Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
February 1, 2007 to March 5, 2007
Public hearing:
March 5, 2007
Adoption:
March 21, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
April 26, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2007
Final adoption:
May 18, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
These rules amend the existing rules to clarify the source materials that are exempt from the compost rules and to address storage of the final composted product.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 9. AGRICULTURAL COMPOST FACILITIES

35:17-9-1. Purpose and applicability

This subchapter applies to any person who owns or operates any compost facility using source materials within the Department's areas of environmental jurisdiction. These rules shall not apply to any compost facility located on a facility permitted or licensed as a concentrated animal feeding operation or a registered poultry feeding operation so long as any portion of the source materials is from the concentrated animal feeding operation or registered poultry feeding operation, nor to any compost facility permitted or required to be permitted by the Oklahoma Department of Environmental Quality.

35:17-9-3. Permit provisions and application

(a) Prior to operation, any person using any source materials within the Department's jurisdictional areas of environmental responsibility to produce compost shall obtain a permit to operate the facility from the Department, unless the person is producing compost solely for personal use and not for commercial purposes.

(b) The permit shall be renewed every five (5) years on October 1.

(c) The application for a compost facility shall contain, as a minimum, the following information:

(1) Name, address, and telephone number of the owner;

(2) Name, address, and county of the facility, including specific driving directions from the nearest municipality, and legal description of the facility to the nearest ten (10) acres;

(3) Name, address, and telephone number of the operator, if other than the owner;

(4) Narrative describing the proposed compost facility.

(5) A composting plan that shall include but not be limited to the following:

(A) Source materials proposed for use and the estimated amount of compost produced per month or per year;

(B) Proposed type of composting process or processes to be used at the facility, including windrow, static pile, or in vessel composting method;

(C) Characterization of the physical and environmental setup of the facility, including but not limited to the following:

(i) Description of topography using a current 7.5 minutes topographic map highlighting the location of waters of the state within three (3) miles of the facility, an outline of the watershed drainage area with arrows indicating general direction of surface water drainage from the facility;

(ii) Soil map showing soil types at the facility; and

(iii) 100-year flood plain map.

(D) Laboratory test reports showing the amount of nitrogen as nitrate and total phosphorus contained in waters of the state at the facility, including but not limited to groundwater from all existing wells and surface impoundments located on the site.

(E) Design drawings and specifications for:

(i) receiving, processing, storage, disposal, or reuse areas;

(ii) leachate collection systems;

(iii) storage, treatment, and disposal of leachate;

(iv) storm water drainage;

(v) protection of groundwater from leachate;

(vi) any other design drawings and specifications necessary to describe the proposed operations of the facility.

(F) Proposed operational parameters.

(G) Site layout and construction.

(H) Best management practices used at the site for erosion control, water pollution control, odor control, storage of the source materials, storage of the finished compost, and aesthetic enhancement.

(I) A notarized sworn statement signed by the owner accepting full responsibility for properly closing the facility upon termination of operation at the facility.

(J) A notarized certification signed by the person applying for the permit, stating: "I certify under penalty of law this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for knowingly submitting false, inaccurate, or incomplete information, including the possibility of fines for each violation."

(K) Supporting documentation regarding composting method used, including compost mix design, selection of C:N ratio, determining bulking agent need, aeration method, and moisture content and temperature to be maintained.

(L) All other documentation deemed necessary and requested by the Department to assure the quality of waters of the state is not compromised, and any other information required by the Department directly related to the construction, installation and operation of the facility.

(d) The application for a new facility or a renewal shall be accompanied by an application fee of Two Hundred Dollars ($200.00).

(e) The operator of a facility shall notify the Department in writing that the facility is no longer in operation within thirty (30) days of the cessation of operation.

(f) The Department shall require closure of any facility under the following circumstances:

(1) The operator of the facility notifies the Department that the facility is no longer in operation.

(2) The facility has not accepted source material nor produced compost for a period of six (6) months.

(3) The facility is ordered to close by the Board due to failure to operate in compliance with any provision of the Agriculture Code or rules of the Board.

35:17-9-8. Existing facilities

(a) Any facility in existence on the effective date of these rules shall apply for a permit and comply with all operational requirements.

(b) Any facility in existence on the effective date of these rules shall comply with all structural requirements ~~within ten (10) years of the effective date~~no later than May 11, 2016.

(c) In no case shall an existing facility discharge to waters of the state.

[OAR Docket #07-1125; filed 5-21-07]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 20. FORESTRY

[OAR Docket #07-1127]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 13. Governor's Ban on Outdoor Burning [AMENDED]
Part 1. General Provisions
35:20-13-1 [AMENDED]
35:20-13-2 [AMENDED]
35:20-13-3 [REVOKED]
Part 3. Overview of Governor's Ban on Burning
35:20-13-7 [AMENDED]
35:20-13-8 [AMENDED]
Part 5. Burning Ban Guidelines
35:20-13-13 through 35:20-13-18 [AMENDED]
35:20-13-19 [REVOKED]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2), (15), and (29), 2 O.S. 2001 § 16-1 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
February 1, 2007 to March 5, 2007
Public hearing:
March 5, 2007
Adoption:
March 21, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
April 26, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2007
Final adoption:
May 18, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
These rules modify the procedures for declaring a burn ban pursuant to Senate Bill 1481 and also provides clean up to the rules.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 13. GOVERNOR'S BAN ON OUTDOOR BURNING

PART 1. GENERAL PROVISIONS

35:20-13-1. Purpose

The rules of this Subchapter have been adopted for the purpose of administering the Governor's Ban on Outdoor Burning in Oklahoma. These rules describe the procedures ~~which will be~~ used to determine when a ~~Governor's Burning Ban~~burning ban is ~~needed~~necessary and how the decision will be made to implement ~~it~~the burning ban.

35:20-13-2. ~~Statutory definitions~~Definitions

~~The following~~In addition to the terms ~~are~~ defined in 2 O.S. ~~1991~~2001, Section ~~1301-102~~16-1, the following term, when used in this subchapter, shall have the following meaning unless the context clearly indicates otherwise:

"Burning ban" means gubernatorial action taken by proclamation that emergency drought conditions and extraordinary fire danger exist.

~~(1) Board~~

~~(2) Director~~

~~(3) Division~~

~~(4) Wildfire~~

35:20-13-3. Additional definitions [REVOKED]

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

~~**"Ban"** means gubernatorial action taken by proclamation that emergency drought conditions and extraordinary fire danger exist. The exact wording of this reference is found in 2 O.S. 1991, Section 1301-206 (A). See also: "Burning Ban", "Governor's Ban", and "Governor's Ban on Outdoor Burning".~~

~~**"Burning Ban"** means "Ban" as defined in this Section.~~

~~**"Governor's Ban"** means "Ban" as defined in this Section.~~

~~**"Governor's Ban on Outdoor Burning"** means "Ban" as defined in this Section.~~

PART 3. OVERVIEW OF GOVERNOR'S BAN ON BURNING

35:20-13-7. ~~Purpose~~Conditions

(a) ~~Three~~Each of the following conditions ~~must~~shall exist ~~for~~prior to the Governor ~~to proclaim~~proclaiming a burning ban~~. These three conditions are~~:

(1) A drought ~~must be~~is currently in progress;

(2) The drought ~~must be~~is severe enough to constitute an emergency; and

(3) ~~There must be an~~An extraordinary danger from fire exists.

(b) ~~The Governor's Burning Ban is~~A burning ban shall not ~~designed for routine use. It is reserved for~~be used routinely and shall only be utilized during periods of extraordinary fire danger.

35:20-13-8. Contingency

~~In the event that a crisis unfolds so rapidly that a significant threat to public safety is imminent, the Governor's Office~~The Governor, in consultation with the Commissioner of Agriculture and ~~the Director of the Forestry Services Division of the~~ Oklahoma ~~State~~ Department of Agriculture~~ (OSDA)~~, Food, and Forestry may supersede ~~the~~these rules ~~contained in this Subchapter~~upon determination that a significant threat to public safety is imminent and following the procedures in these rules would impede the response to that threat.

PART 5. BURNING BAN GUIDELINES

35:20-13-13. Drought conditions evaluation

Drought severity ~~will~~shall be determined by the Director~~. The Director shall use~~ using the Keetch-Byram Drought Index (KBDI) during the vegetative growing season between May 1 ~~through~~and October 31 and the Palmer Drought Severity Index (PDSI) ~~from~~during the dormant vegetative season between November 1 ~~through~~and April 30.

35:20-13-14. Drought emergency determination

(a) ~~The condition of "emergency" as proclaimed by the Governor is defined in the 1996 Oklahoma Emergency Operations Plan. This definition reads as follows: "Whenever, in the opinion of the Governor, the safety of Oklahoma and its citizens requires the exercise of extreme measures due to an impending or actual disaster, he may declare an emergency to exist in the state or any part of the state, in order to aid individuals and local government." [sic] Two methods are used by the Director to determine drought severity.~~ When using the Keetch-Byram Drought Index (KBDI)(May through October), a value above ~~650~~600 is indicative ~~that~~ a severe drought is in progress.~~ When using the Palmer Drought Severity Index (PDSI) (November through April) a value below -2.99 means a "Severe Drought" is in progress. This (-3.00 or less) is the PDSI level which meets the drought condition of Title 2 O.S. 1991, Sections 1301-206 for these months. Both the KBDI and the PDSI must be coupled with fire occurrence data and current weather conditions to accurately describe an emergency situation. The Forestry Services Division of the Department of Agriculture will continuously monitor each of these factors.~~

(b) When using the Palmer Drought Severity Index (PDSI) (November through April), a value below -2.99 indicates a severe drought is in progress.

(c) Both the KBDI and the PDSI shall be coupled with fire occurrence data and current weather conditions to accurately describe an emergency situation based on continuous monitoring of each of these factors by the Oklahoma Department of Agriculture, Food, and Forestry.

35:20-13-15. Extraordinary fire danger evaluation

The following factors ~~will~~shall be evaluated by ~~Forestry Services~~the Oklahoma Department of Agriculture, Food, and Foresry prior to requesting a ~~Governor's Burning Ban.~~burning ban:

(1) **Wildland fire occurrence.** News reports, field reports and fire assistance requests ~~will~~shall be monitored for indications that ~~wildlife~~wildfire activity is increasing above a normal or manageable level~~ as indicated by any one of the following criteria:~~

~~(A) Any single, exceedingly large fire event (generally over 10,000 acres in grasslands and 3,000 acres in forest) reported to Forestry Services; or~~

~~(B) Any Forestry Services administrative area reports more than twenty (20) wildfire responses per day OR more than five hundred (500) acres burned per day for any consecutive four day period, or~~

~~(C) Forestry Services aggregate daily wildfire response exceeds fifty (50) wildfire responses for any consecutive four day period, or~~

~~(D) Four or more consecutive days with unusually large fires (5,000 acres in grassy fuel or 1,500 acres in forest) reported to Forestry Services~~.

(2) **Current conditions.**

(A) **Season.** ~~A need for burning ban can occur at any time of the year. The most probable times a Governor's Ban on Outdoor Burning may be needed are mid-November through mid-April when the fine fuels, such as grasses, are dormant and dry.~~

(B) **Keetch-Byram Drought Index (KBDI) or Palmer Drought Severity Index (PDSI).** ~~The KBDI should exceed 650 or the PDSI should be at or below minus three (3) (Severe drought).~~

(C) **Weather.** ~~Any time there is one week or more of continuous low relative humidities (30% or less), warmer than normal temperatures (15 degrees F above normal) and/or high winds (greater than 20 m.p.h.) grassy fuels will be curing rapidly to the point a burning ban may be needed.~~

(3) **Forecasted conditions.**

~~(A) Forecasts will be the National Weather Service three and ten day forecasts. The 30 and 90 day outlooks may be considered, but are generally unreliable for the purposes of the ban on burning.~~

~~(B) To be of concern, forecasted conditions should include a dry (no precipitation predicted), three day forecast and a mostly dry (precipitation only predicted for two days in the period) ten day forecast. Temperatures and winds will also be considered but are less predictable and will be given less weight in the evaluation of the forecast.~~

(4) **Personal contacts.** The Department shall contact local representatives of the areas affected.

~~(A) After wildland fire occurrence, current and forecasted conditions are evaluated, Forestry will make personal contacts with representatives of the areas affected and include:~~

~~(i) All counties when the ban covers less than five counties;~~

~~(ii) At least 50% of the impacted counties when from five to 20 counties are included:~~

~~(iii) At least 25% of the impacted counties well distributed geographically when 21 to 40 counties are included;~~

~~(iv) At least 15% of the impacted counties well distributed geographically when 41 to 77 counties are included~~.

~~(B) Contacts will minimally include the largest fire department in the county, the local Forestry Services office for the county, the County Commissioners and the Rural Fire Coordinator for the impacted area.~~

35:20-13-16. ~~Making the request~~Requesting the burning ban

~~Forestry Services will integrate the~~The Oklahoma Department of Agriculture, Food, and Forestry shall review all information and ~~recommendations from the contacts with fire occurrence data and climatic data. A~~provide a summary ~~of this information will be prepared and passed~~ to the Governor's office~~ as the "Official Advice of the State Department of Agriculture, Division of Forestry" shall contain~~containing the following:

(1) A ~~memo or letter~~statement from the ~~Director of the State~~ Department ~~of Agriculture, Division of Forestry,~~ to the Governor's office containing:

(A) A description of the area being recommended for inclusion in a ~~Governor's Ban~~burning ban;

(B) A summary of the most recent KBDI or PDSI for the counties being considered;

(C) A summary of wildland fire occurrence ~~(~~by cause, if available~~)~~, in the affected area; and

(D) A summary of the three (3) and ten~~-~~ (10) day National Weather Service Forecasts for the affected area~~; and~~

~~(E) A summary of the personal contacts made in the area to be impacted~~.

(2) A draft of the text to be used in the Governor's emergency proclamation; and

(3) ~~A sample news release; and~~

~~(4)~~ A print-ready map of the affected area.

35:20-13-17. Implementing the declaration

~~(a) Once the "Official Advice of the State Department of Agriculture, Division of Forestry" has been delivered to the Governor's Office, the Oklahoma State Department of Agriculture (OSDA) and Forestry Services will only acknowledge that "OSDA Forestry Services has advised the Governor's Office as required by law."~~

~~(b) Forestry Services shall prepare to print placards and prepare to place legal notices as soon as the "Official Advice of the State Department of Agriculture, Division of Forestry" is delivered to the Governor's Office to reduce time delays with printing and posting of legal notice.~~

~~(c)~~ Upon receipt of the official, signed emergency proclamation ~~by Forestry Services, Forestry Services will:~~

~~(1) Print and distribute placards;~~

~~(2) FAX copies of the proclamation~~, the Oklahoma Department of Agriculture, Food, and Forestry shall, in addition to posting on the Department's website, provide notice of the proclamation to the Office of Emergency Management, the State Fire Marshal, affected area County Sheriffs ~~and Red Flag Fire Alert network;~~, local news media, and selected cooperating local, state, and federal agencies.

~~(3) Post legal notices for the next day's publication;~~

~~(4) Change the phone message on the Red Flag Fire Alert line to read in accordance with the proclamation;~~

~~(5) Work with the OSDA Public Information Officer to issue an appropriate statement; and~~

~~(6) Distribute sets of "Guidelines" for enforcement of the ban to County Sheriffs in the Ban area.~~

~~(d) Contacts will be made three days following implementation with those contacted prior to implementation to verify that:~~

~~(1) Legal requirements of posting have been met;~~

~~(2) The ban appears to be reducing fire activity; and~~

~~(3) The ban is being adequately enforced.~~

35:20-13-18. Removing the Ban

(a) In making the determination to remove a burning ban, ~~Forestry Services will~~the Oklahoma Department of Agriculture, Food, and Forestry shall evaluate ~~several~~the following factors:

(1) Drought conditions. ~~The condition of drought, as determined by the PDSI, does not have to be reduced to allow the Governor's Ban on Burning to be removed. However, if the KBDI was used to determine drought severity, the KBDI must be reduced below 500 before a recommendation will be made to remove a Governor's Ban on Burning.~~

(2) Wildland Fire Occurrence. ~~Wildland fire occurrence in the area being considered for removal from the burning ban should not be at a significant level. A significant level is further defined as:~~

~~(A) Generally less than two wildfires per 1,000,000 acres per day inside Forestry's Organized Protection Area;~~

~~(B) Reports from local contacts that wildfire numbers have declined to a manageable level in the counties outside of Forestry Services Organized Protection Area.~~

(3) Current weather. ~~Current weather conditions are useful in evaluating current fire danger and will be considered in the decision to remove an area from the burning ban. However, current weather alone will not overly influence the decision. Widespread precipitation in excess of 1/2 inch of rain or three inches of snow will be needed to sufficiently reduce the immediate fire danger. If a burning ban cannot be removed as a significant precipitation event occurs, it should be removed within two days of the event or left in place until the next opportunity.~~

(4) Forecasted conditions. ~~Forecast conditions, like current conditions, should be considered, but not used, as a sole criteria to remove an area from the burning ban. The only valid forecasts will be the official National Weather Service three and ten day forecasts. The three day forecast should call for a predominantly wet (two out of three days) period. The ten day forecast should call for at least one other period of significant precipitation with a greater than 50% chance.~~

(5) Personal contacts. ~~Local needs and opinions will be considered. However, the first obligation of the burning ban is to protect the public from wildfires. Local input will be considered from the following sources:~~

~~(A) The Rural Fire Coordinator for the area will be contacted for an evaluation of conditions.~~

~~(B) Those local contacts used to implement a ban will be called to ask their evaluations of changing conditions.~~

~~(C) Requests from the public will be considered.~~

(b) ~~Forestry Services will integrate information and recommendations from the contacts with fire occurrence data and climatic data. A~~The Department shall review all information and provide a summary ~~of this information will be prepared and passed~~ to the Governor's office ~~as "Official Advice of the State Department of Agriculture, Division of Forestry." The "Official Advice of the State Department of Agriculture, Division of Forestry: shall contain~~containing the following:

(1) A ~~memo or letter~~statement from the ~~Director of the State~~ Department ~~of Agriculture, Division of Forestry,~~ to the Governor's Office containing:

(A) A description of the area ~~being~~ recommended for lifting of the ~~Governor's Ban~~burning ban;

(B) A summary of the most recent KBDI or PDSI for the ~~climate divisions being~~areas considered.

(C) A summary of the wildland fire occurrence ~~(~~by cause, if available~~)~~, in the affected area; and

(D) A summary of the three (3) and ten- (10) day National Weather Service Forecasts for the affected area~~; and~~

~~(E) A summary of the personal contacts made in the area to be impacted~~.

(2) Draft of the text to be used in the Governor's emergency proclamation; and

(3) ~~Sample news release; and~~

~~(4)~~ Print-ready map of the affected area.

35:20-13-19. Implementing the declaration [REVOKED]

~~(a) Once the "Official Advice of the State Department of Agriculture, Division of Forestry" has been delivered to the Governor's Office, OSDA and Forestry Services will only acknowledge that "OSDA Forestry Services has advised the Governor's Office as required by law."~~

~~(b) Forestry Services shall prepare to place legal notices as soon as the "Official Advice of the State Department of Agriculture, Division of Forestry" is delivered to the Governor's Office to reduce time delays with printing and posting of legal notice.~~

~~(c) Upon receipt of the official, signed proclamation by Forestry Services, Forestry Services will:~~

~~(1) FAX copies of the proclamation to the Office of Emergency Management, State Fire Marshal, affected area County Sheriffs and Red Flag Fire Alert network;~~

~~(2) Post legal notices for the next day's publication;~~

~~(3) Change the phone message on the Red Flag Fire Alert line to read in accordance with the proclamation; and~~

~~(4) Work with the OSDA Public Information Officer to issue an appropriate statement.~~

~~(d) Contacts will be made three days following implementation with those contacted prior to implementation to verify that:~~

~~(1) Legal requirements of posting have been met;~~

~~(2) Minimal confusion exists in the affected area as to the status of the ban.~~

[OAR Docket #07-1127; filed 5-21-07]

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

[OAR Docket #07-1128]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 14. Oklahoma Boll Weevil
35:30-14-1 [AMENDED]
35:30-14-2 [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2), and (29), 3-50.1; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
January 16, 2007 to February 16, 2007
Public hearing:
February 16, 2007
Adoption:
March 21, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
April 26, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2007
Final adoption:
May 18, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rules incorporate the changes made during the 2006 legislative session in Senate Bill 1614 to the Boll Weevil Eradication Act.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 14. OKLAHOMA BOLL WEEVIL

35:30-14-1. Definitions

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

"Certificate" means a document issued by an authorized agent of the Department indicating that the movement or transportation of the regulated article complies with the legal requirements detailed in these rules.

"Cotton products" means seed cotton, cotton lint, linters, oil mill waste, gin waste, squares, bolls, gin trash, cotton seed, cottonseed hulls, and all other forms of cotton fiber, excluding the cotton plant or any part of it including stalks, flowers, roots, or leaves.

"Cotton production equipment" means cotton equipment used to plant, harvest, transport, or destroy cotton.

"Elimination zone" means that portion of this state where eradication of the boll weevil is undertaken as an objective.

~~**"Eradicated area"** means an area free of boll weevil or an area where documentation acceptable to both the Board of directors and the Department is provided that indicates no boll weevils were captured for a period of at least one cotton growing season by boll weevil pheromone traps operated by the Organization or any other state agency.~~

"Functionally eradicated area" means an area meeting the trapping criteria for a suppressed area with no confirmed evidence of boll weevil reproduction, no oviposition in squares, and movement of regulated articles into or through the area presents a threat to the success of the boll weevil eradication program. The boll weevil population shall be equal to or less than the average of 0.001 boll weevils per trap per week during the cotton-growing season as measured by boll weevil pheromone traps operated by the Organization or any other state agency.

"Inspector" means any authorized agent of the Oklahoma Department of Agriculture, Food, and Forestry assigned to enforce the provisions of the Boll Weevil Eradication Act and promulgated rules.

"Permit" means a specialized document issued by an authorized agent of the Department for the movement or transportation of a regulated article that complies with the legal requirements in these rules.

~~**"Quarantined area"** means that portion of an elimination zone not designated as being suppressed, functionally eradicated, or eradicated.~~

"Regulated area" means any state other than Oklahoma or any portion of that state that is infested with the boll weevil.

"Restricted area" means that portion of an elimination zone designated as suppressed, functionally eradicated, or eradicated.

"Suppressed area" means an area in which boll weevil reproduction may be present and movement of regulated articles into or through the area presents a threat to the success of the boll weevil eradication program. The boll weevil population must be equal to or less than 0.025 weevils per trap per week during the cotton-growing season as measured by boll weevil pheromone traps operated by the Organization or any other state agency.

35:30-14-2. Regulated articles

(a) The following articles are regulated:

(1) The boll weevil (Anthonomus grandis Boheman) in any living stage of development.

(2) Cotton.

(3) Cotton products.

(4) Cotton production equipment.

(5) Any other products, articles, means of conveyance, or any other item not already listed if determined by an inspector that a hazard of spreading the boll weevil exists and the person in possession has been notified.

(b) An area shall be considered free of boll weevil and determined to be an eradicated area when documentation acceptable to the Board of Directors and the Department is provided that indicates no boll weevils were captured for a period of at least one cotton growing season by boll weevil pheromone traps operated by the Organization or any other state agency.

[OAR Docket #07-1128; filed 5-21-07]

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

[OAR Docket #07-1129]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 17. Combined Pesticide
Part 1. Commercial and Non-Commercial Categories of Pesticide Application
35:30-17-3 [AMENDED]
35:30-17-3.1 [NEW]
35:30-17-3.2 [NEW]
35:30-17-3.3 [NEW]
Part 9. Minimum Standards for Contracts and Keeping of Records
35:30-17-21 [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2) and (29), 3-81 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
February 15, 2007 to March 19, 2007
Public hearing:
March 19, 2007
Adoption:
March 21, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
April 26, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2007
Final adoption:
May 18, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rules add requirements for pesticide dealer permits for restricted use and non-restricted use pesticides. The proposed rules require dealers to obtain permits and provide record keeping requirements for dealers.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 17. COMBINED PESTICIDE

PART 1. COMMERCIAL AND NON-COMMERCIAL CATEGORIES OF PESTICIDE APPLICATION

35:30-17-3. Categories of pesticide dealer permits

(a) A restricted use pesticide dealer permit includes the sale, offer for sale, or distribution within this state of any restricted use pesticide.

(b) A non-restricted use pesticide dealer permit includes the sale, offer for sale, or distribution within this state of any non-restricted use pesticide or device.

35:30-17-3.1. Pesticide dealer permit required

(a) It shall be unlawful for any person to sell, offer for sale, or distribute within this state any pesticide without first obtaining a pesticide dealer's permit issued by the Board.

(b) A permit may be issued by the Board in any category of pesticide sales if the applicant qualifies under the provisions of this subarticle and the applicant is limited to the category of pesticide sales named on the permit. The Board may establish categories of pesticide sales as necessary.

(c) The permit shall be issued only upon application on a form prescribed by the Board and the application shall contain information regarding the applicant's proposed operation and other information as specified by the Board.

35:30-17-3.2. Restricted use pesticide dealer permit

(a) Each business location engaged in the sale or distribution of restricted use pesticides shall require a separate permit.

(b) The annual permit fee for a restricted use pesticide dealer permit shall be Fifty Dollars ($50.00) for each location.

(c) The Board may require a certified applicator to be present at any location where the designated restricted use pesticide sales occur.

(d) Every restricted use pesticide dealer shall keep accurate records pertaining to restricted use pesticide purchases and sales, as required by the Board. The records shall be kept intact at the principal business location in this state for at least two (2) years after their date of expiration. Copies shall be furnished to any authorized agent of the Board at any time during the regular business hours of the dealer, immediately upon request in person, or within seven (7) working days of a written request, in summary form, by mail, fax, email, web site, or any other electronic media customarily used.

(e) It shall be the duty of the Board to audit the maintenance of records as necessary to carry out the provisions of the Oklahoma Agricultural Code.

35:30-17-3.3. Non-restricted use pesticide dealer permit

(a) Each business location engaged in the sale or distribution of non-restricted use pesticides or devices shall require a separate permit.

(b) The annual permit fee for a non-restricted use pesticide dealer permit shall be:

(1) Annual pesticide or device sales greater than $5,000.00 - Fifty Dollars ($50.00) for each location.

(2) Annual pesticide or device sales $5,000.00 or less - Twenty Five Dollars ($25.00) for each location.

(c) A business that has a valid restricted use pesticide dealer permit shall not be required to purchase a non-restricted use pesticide dealer permit, but the business shall be considered to act as a non-restricted use pesticide dealer if the pesticides or devices are sold at the business.

(d) The Board may require a certified applicator to be present at any location where designated non-restricted use pesticide sales occur.

(e) Every non-restricted use pesticide dealer shall keep accurate records pertaining to non-restricted use pesticide or device purchases or sales, as required by the Board. The records shall be kept intact at the principal business location in this state for at least two (2) years after their date of expiration. Copies shall be furnished to any authorized agent of the Board at any time during the regular business hours of the dealer, immediately upon request in person, or within seven (7) working days of a written request, in summary form, by mail, fax, email, web site, or any other electronic media customarily used.

(f) It shall be the duty of the Board to audit the maintenance of records as necessary to carry out the provisions of the Oklahoma Agricultural Code.

PART 9. MINIMUM STANDARDS FOR CONTRACTS AND KEEPING OF RECORDS

35:30-17-21. Records required for pesticide applications and restricted use pesticide sales

(a) Commercial and non-commercial applicators shall keep an accurate record pertaining to pesticide activities, which, at a minimum show:

(1) Time of application.

(2) Place of each application.

(3) Name and address of the applicator.

(4) Name and address of person for whom applied.

(5) Legal description of the land where applied. The description may be a street address when properly marked, but shall not be a Post Office Box address.

(6) Date of application.

(7) Pesticide tank mix concentration.

(8) Dilution rate for mixing.

(9) Total quantity of pesticide used, including the total amount of pesticide concentrate and tank mix used.

(10) Complete trade name of pesticide product used.

(11) EPA registration number of pesticide product used.

(12) Target pest for the application.

(13) Site where the pesticide was applied.

(14) Restricted Entry Interval as stated on the product label.

(15) A copy of the pesticide product label or labeling that is attached to the container or included in the shipping case.

(16) Copies of any contracts issued.

(17) Copies of any wood infestation reports issued.

(18) Other information as required by the Board.

(b) Restricted use pesticide dealers shall keep an accurate record of restricted use pesticide sales, which, at a minimum show:

(1) Complete brand name of the pesticide.

(2) EPA registration number of the pesticide.

(3) Date the pesticide was sold.

(4) Total amount of restricted use pesticide sold.

(5) Name of the person to whom sold.

(6) Name and license or certification number of the certified or private applicator.

(7) Other information as required by the Board.

(c) Non-restricted use pesticide dealers shall keep an accurate record of non-restricted use pesticide and device sales that show at a minimum the following:

(1) Total amount of each non-restricted use pesticide or device purchased annually.

(2) Total amount of each non-restricted use pesticide or device sold annually.

(3) Any other information requested by the Department.

(~~c~~d) Failure to allow inspection of these records by the Board, to provide copies to the Board when requested in person, or to provide a summary of these records within seven (7) working days when requested by mail or in person shall be a violation of this section.

(~~d~~e) The principle place of business where records are maintained shall be easily accessible to authorized agents of the

Board during reasonable business hours. An applicator's principle place of business shall not be located in a closed gated community or at a residence unless the applicator submits a plan of access to the principle place of business and that plan is approved by the Board.

[OAR Docket #07-1129; filed 5-21-07]

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

[OAR Docket #07-1130]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 17. Combined Pesticide
Part 5. Prerequisites for Licensing
35:30-17-10 [AMENDED]
Part 6. Pesticidal Product Producing Establishments
35:30-17-13 [AMENDED]
Part 9. Minimum Standards for Contracts and Keeping of Records
35:30-17-21 [AMENDED]
Part 22. Wood Infestation Reports
35:30-17-105 [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2), and (29), 3-81 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
February 1, 2007 to March 5, 2007
Public hearing:
March 5, 2007
Adoption:
March 21, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
April 26, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2007
Final adoption:
May 18, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rules incorporate the date for the most recent version of the Code of Federal Regulations, modify the requirements for insurance of applicators, modify the recordkeeping requirements, and clarify the requirements for a written wood infestation report.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 17. COMBINED PESTICIDE

PART 5. PREREQUISITES FOR LICENSING

35:30-17-10. Application insurance requirements

(a) The Board shall not issue an applicator's license until the applicant or agent has furnished evidence of financial responsibility. A liability insurance policy or certification shall protect persons who may suffer legal damages as a result of the pesticide operations of the applicant. The policy need not apply to damages or injury to agricultural crops, plants, or land being worked on by the applicant.

(b) The liability insurance shall provide for not less than $50,000 per occurrence and $100,000 aggregate bodily injury and not less than $50,000 per occurrence and $100,000 aggregate for property damage. Liability insurance shall be maintained at all times during the licensed period. The Board shall be notified by the insurer fifteen (15) days prior to any applicant's request for a reduction or cancellation of the liability insurance. The total and the aggregate of the insurer for all claims shall be limited to the face amount of the liability insurance policy. The Board may accept a liability insurance policy with a deductible clause in an amount not exceeding $5,000 for all applicators. If the applicant has not satisfied the requirement of the deductible amount in any prior legal claim, the deductible clause shall not be accepted by the Board unless the applicant has furnished the Board with additional liability insurance which satisfies the amount of the deductible.

(c) If the furnished liability insurance becomes unsatisfactory, the applicant shall upon notice immediately provide a new liability insurance. Upon failure to do so, the Board shall cancel the license and give notice. It shall be unlawful to engage in the business of applying pesticides until the insurance is brought into compliance and the license is reinstated by the Board.

(d) Application of a pesticide specifically excluded on the insurance policy shall be considered working without a license.

PART 6. PESTICIDAL PRODUCT PRODUCING ESTABLISHMENTS

35:30-17-13. Incorporation by reference of federal pesticide producing establishment regulations

(a) The Registration of Pesticide and Active Ingredient Producing Establishments, Submission of Pesticide Reports and Books and Records of Pesticide Production and Distribution Regulations found in Title 40 of the Code of Federal Regulations (CFR) ~~2004~~2006 Revision, Part 167 et seq. and Part 169 et seq. for the United States Environmental Protection Agency (EPA) as promulgated and amended in the Federal Register, are

hereby adopted in their entirety with the exception of 40 CFR § 167.90.

(b) All words or terms defined or used in the Federal regulations incorporated by reference shall mean the state equivalent or counterpart to those words or terms.

PART 9. MINIMUM STANDARDS FOR CONTRACTS AND KEEPING OF RECORDS

35:30-17-21. Records required for pesticide applications and restricted use pesticide sales

(a) Commercial and non-commercial applicators shall keep an accurate record pertaining to pesticide activities, which, at a minimum show:

(1) ~~Time~~Start and stop time of application.

(2) ~~Place of each application~~Total amount of pesticide used.

(3) Name and address of the ~~applicator~~commercial or non-commercial company.

(4) Name and address of person for whom applied.

(5) Legal description of the land where applied. The description may be a street address when properly marked, but shall not be a Post Office Box address.

(6) Date of application.

(7) ~~Pesticide tank mix concentration~~Application rate.

(8) Dilution rate for mixing.

(9) Total quantity ~~of pesticide used, including the total amount of pesticide concentrate and~~ tank mix used.

(10) Complete trade name of pesticide product used.

(11) EPA registration number of pesticide product used.

(12) Target pest for the application.

(13) Site where the pesticide was applied.

(14) Restricted Entry Interval as stated on the product label.

(15) A copy of the pesticide product label or labeling that is attached to the container or included in the shipping case.

(16) Copies of any contracts issued.

(17) Copies of any wood infestation reports issued.

(18) Other information as required by the Board.

(b) Restricted use pesticide dealers shall keep an accurate record of restricted use pesticide sales, which, at a minimum show:

(1) Complete brand name of the pesticide.

(2) EPA registration number of the pesticide.

(3) Date the pesticide was sold.

(4) Total amount of restricted use pesticide sold.

(5) Name of the person to whom sold.

(6) Name and license or certification number of the certified or private applicator.

(7) Other information as required by the Board.

(c) Failure to allow inspection of these records by the Board, to provide copies to the Board when requested in person, or to provide a summary of these records within seven (7) working days when requested by mail or in person shall be a violation of this section.

(d) The principle place of business where records are maintained shall be easily accessible to authorized agents of the Board during reasonable business hours. An applicator's principle place of business shall not be located in a closed gated community or at a residence unless the applicator submits a plan of access to the principle place of business and that plan is approved by the Board.

PART 22. WOOD INFESTATION REPORTS

35:30-17-105. WIR inspections

(a) Areas to be inspected shall include, but not be limited to, the following:

(1) All structures on the property, unless specifically identified on the WIR.

(2) Areas around the plumbing in bathrooms, kitchens, laundry areas, or any other areas with plumbing.

(3) Window and door frames and sills.

(4) Baseboards, flooring, walls, and ceilings.

(5) Floored attics.

(6) Entrance steps and porches.

(7) Exteriors of slabs or foundations walls.

(8) Exteriors of all structures.

(9) Crawl spaces, including but not limited to, support piers or stiff legs, floor joists, sub floors, sill plates, or foundation walls.

(10) Fireplaces.

(b) Inaccessible areas are not required to be inspected for the WIR, and may include, but are not limited to, the following:

(1) Areas of attics with no flooring.

(2) Interiors of hollow walls, floors, or ceilings.

(3) Structural segments that cannot be accessed without defacing or tearing out lumber, masonry, or finished work, such as enclosed bay windows, buttresses, and other similar areas.

(4) Areas behind or beneath stoves, refrigerators, furniture, built in cabinets, insulation, or floor coverings.

(5) Areas where storage, locks, or other conditions render an inspection impracticable.

(6) Insufficient clearance for inspection of a crawl space.

(c) Any structures on the property not included in the inspection shall be identified on the WIR as not inspected.

(d) Any subsequent inspections shall be considered a follow up inspection.

(e) A written inspection form pursuant to this part shall be completed on all inspections.

[OAR Docket #07-1130; filed 5-21-07]

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

[OAR Docket #07-1134]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 17. Combined Pesticide
Part 21. Standards for Disposal of Pesticide and Pesticide Containers
35:30-17-89.1 [NEW]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2) and (29), 3-81 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
February 1, 2007 to March 5, 2007
Public hearing:
March 5, 2007
Adoption:
March 21, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
April 26, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2007
Final adoption:
May 18, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rule will allow for the adoption of the changes to Federal Regulations 40 CFR Parts 156 and 165 of the Federal Insecticide, Fungicide, and Rodenticide Act as described in Federal Register Vol. 71, No. 158, Wednesday, August 16, 2006, Rules and Regulations 47419 to 47437, regarding pesticide management and disposal; standards for pesticide containers and containment as part of the Oklahoma Combined Pesticide Law. The adoption is to protect human health and the environment from exposure to agricultural pesticides.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 17. COMBINED PESTICIDE

PART 21. STANDARDS FOR DISPOSAL OF PESTICIDE AND PESTICIDE CONTAINERS

35:30-17-89.1. Incorporation by reference of federal pesticide management and disposal regulations

(a) The Labeling Requirements for Pesticides and Devices, Container Labeling and Pesticide Management and Disposal regulations found in Title 40 of the Code of Federal Regulations (CFR) 2006 Revision, Part 156.140 et seq. and Part 165 et seq. for the United States Environmental Protection Agency (EPA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety.

(b) All words or terms defined or used in the federal regulations incorporated by reference shall mean the state equivalent or counterpart to those words or terms.

[OAR Docket #07-1134; filed 5-21-07]

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

[OAR Docket #07-1135]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 37. Nursery Stock Sales
35:30-37-11 [NEW]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2), and (29), 3-32.1 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
January 16, 2007 to February 15, 2007
Public hearing:
February 15, 2007
Adoption:
March 21, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
April 26, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2007
Final adoption:
May 18, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rule will allow the use of Methyl Bromide as a soil treatment for forest tree seedlings in Oklahoma. Currently, federal regulations only allow this use of methyl bromide if the state applies for an exemption. This rule change will allow the state to apply for the federal exemption.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 37. NURSERY STOCK SALES

35:30-37-11. Methyl bromide use

(a) A phytosanitary certificate may be issued for intrastate and interstate shipments of conifer and hardwood seedlings to verify that the seedlings are free of pests and diseases.

(b) The method of treatment shall be fumigation using methyl bromide in seedling plant beds prior to seeding.

(c) Any treatment shall only be performed using state and federally registered pesticides.

(d) Any shipment of seedlings originating out of state shall be accompanied by a certificate of inspection issued by the state of origin to verify inspections and treatments.

[OAR Docket #07-1135; filed 5-21-07]

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

[OAR Docket #07-1133]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Meat Inspection
Part 1. General Provisions
35:37-3-1 [AMENDED]
35:37-3-3 [AMENDED]
Subchapter 5. Poultry Products Inspection
Part 1. General Provisions
35:37-5-1 [AMENDED]
35:37-5-2 [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2), (7), (24), (25), and (29), 6-181 et seq., 6-251 et seq., 6-280.1 et seq., and 6-290.1 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
January 16, 2007 to February 15, 2007
Public hearing:
February 15, 2007
Adoption:
March 21, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
April 26, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2007
Final adoption:
May 18, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rule changes update the incorporation by reference of Code of Federal Regulations citations.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 3. MEAT INSPECTION

PART 1. GENERAL PROVISIONS

35:37-3-1. Incorporation by reference of federal meat inspection regulations

The Mandatory Meat Inspection Regulations found in Title 9 of the Code of Federal Regulations (CFR) (~~2005~~2006 Revision), Parts 301 ~~et seq.~~to 391; 416~~ et seq.~~; 417~~ et seq.~~; 424~~ et seq.~~; 430; 441~~ et seq.~~; and 500~~ et seq.~~ for the United States Department of Agriculture (USDA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:37-3-3. Whenever an official mark, form, certificate or seal is designated by federal regulations, the appropriate Oklahoma Department of Agriculture, Food, and Forestry form, certificate or seal shall be substituted.

35:37-3-3. Deleted regulations

The following sections of the Federal regulations governing the mandatory meat inspection of the USDA incorporated by reference under 35:37-3-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 9 CFR 302.2; 303.1(c); 304.1; 304.2(a); 304.2(c); 305.2(b); 307.4; 307.5; 307.6; 316.12; 316.13(c); 317.5; 317.7; 317.9; 317.13; 318.8; 318.12; 321; 322; 327; 329.6; 329.7; 329.8; 329.9; 331; 335; 351; 352; 354; 355; 362; 381; 390; 391; and 590 (~~2005~~2006 Revision).

SUBCHAPTER 5. POULTRY PRODUCTS INSPECTION

PART 1. GENERAL PROVISIONS

35:37-5-1. Definitions and incorporation by reference of federal poultry inspection regulations

(a) The Mandatory Poultry Inspection Regulations found in Title 9 of the Code of Federal Regulations (CFR) (~~2005~~2006 Revision), Parts 381~~ et seq.~~; 416~~ et seq.~~; 417~~ et seq.~~; 424 ~~et seq.~~; 430; 441~~ et seq.~~; and 500~~ et seq.~~ for the United States Department of Agriculture (USDA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:37-5-2. Whenever an official mark, form, certificate or seal is designated by federal regulations, the appropriate Oklahoma Department of Agriculture, Food, and Forestry mark, form, certificate or seal shall be substituted.

(b) All words and terms defined or used in the federal regulations incorporated by reference by the Department shall mean the state equivalent or counterpart to those words or terms.

(c) The following terms, when used in this subchapter, shall have the following meaning unless the context clearly indicates otherwise:

(1) "Act" means the Oklahoma Poultry Products Inspection Act.

(2) "Director" means the Director of Meat Inspection.

(3) "Poultry" means any domesticated bird, whether live or dead, including chickens, turkeys, ducks, geese, guineas, ratites, or squabs (also known as young pigeons from one to about thirty (30) days of age).

(4) "Poultry product" means any poultry carcass, part, or product made wholly or in part from any poultry carcass or part that can be used as human food, except those exempted from definition as a poultry product in Title 9 of the Code of Federal Regulations (CFR), Part 381.15. This term shall not include detached ova.

(5) "Poultry byproduct" means the skin, fat, gizzard, heart, or liver, or any combination of any poultry for cooked, smoked sausage.

35:37-5-2. Deleted regulations and exemptions

(a) The following sections of the Federal regulations governing the mandatory poultry inspection (9 CFR, Part 381 et seq.; 416 et seq.; 417 et seq.; 424 et seq.; 441 et seq.; and 500 et seq.), (~~2005~~2006 Revision) of the USDA incorporated by reference under 35:15-27-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 381.6; 381.10(a)(2), (5), (6), and (7); 381.10(b); 381.10(d)(2)(i); 381.13(b); 381.16; 381.17; 381.20; 381.21; 381.37; 381.38; 381.39; 381.96; 381.101; 381.103 through 381.112; 381.123(b)(1) and (4); 381.132(c); 381.133; 381.179; 381.185; 381.186; and 381.195 through 381.225.

(b) The provisions of this Act and rules do not apply to poultry producers who slaughter their own poultry raised on their farm, and each of the following apply:

(1) The producers slaughter no more than two hundred and fifty (250) turkeys or their equivalent with a ratio of four (4) birds of other species, excluding ratites, to one (1) turkey during a calendar year;

(2) The producers do not engage in buying or selling poultry products other than those produced from poultry raised on their own farms;

(3) The poultry and poultry products do not move in commerce. Poultry producers are prohibited from selling or donating uninspected poultry products to retail stores, brokers, meat markets, schools, orphanages, restaurants, nursing homes, and other similar establishments and are prohibited from sales or donation of uninspected poultry through any type of retail market or similar establishment owned or operated by the poultry producer;

(4) The producers submit a certificate of registration to the Board;

(5) The poultry is healthy, the poultry is slaughtered and processed under sanitary standards, practices, and procedures that result in the preparation of poultry products that are sound, clean, and fit for human food, and each carcass, part, or poultry product bears a label that lists the customer's name, the producer's name, and the following statement, "This poultry product has not been inspected and passed";

(6) The poultry is sold directly to the household consumer and transported by either the household consumer or the poultry producer without third-party intervention or intervening transfer or storage, and is maintained in a safe and unadulterated condition during transportation; and

(7) The poultry producers, allow an authorized agent of the Board access to their facilities and an opportunity to examine records at all reasonable times upon notice.

[OAR Docket #07-1133; filed 5-21-07]

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

[OAR Docket #07-1131]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 13. Milk and Milk Products
35:37-13-2 [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2), (7), (24), and (29), and 7-401 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
February 1, 2007 to March 5, 2007
Public hearing:
March 5, 2007
Adoption:
March 21, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
April 26, 2007

Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2007
Final adoption:
May 18, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rule updates the incorporation by reference of the Pasteurized Milk Ordinance to the 2005 edition.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 13. MILK AND MILK PRODUCTS

35:37-13-2. Incorporations by reference

(a) **Adopted references.**

(1) **PMO.** Grade A Pasteurized Milk Ordinance with Administrative Procedures - ~~2001~~2005 Recommendations", including Appendices A through ~~P~~R thereto, hereinafter referred to as the "PMO", ~~consisting of pages 1 through 271~~ as published in the Grade A Pasteurized Milk Ordinance, ~~2001~~2005 Revisions, by the Department of Health and Human Services, Public Health Service/Food and Drug Administration, Washington, D.C., true and correct copies of which shall be maintained by the Commissioner of Agriculture and provided to the State Librarian and Archivist, IS HEREBY INCORPORATED BY REFERENCE.

(2) ~~**DMO.** Supplement I to the Grade A Pasteurized Milk Ordinance, 1995 Recommendations, "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey", also known as the "DMO", as published in the Grade A Pasteurized Milk Ordinance, 2001 Recommendations, by the Department of Health and Human Services, Public Health Service/Food and Drug Administration, Washington, D.C., true and correct copies of which shall be maintained by the Commissioner of Agriculture and provided to the State Librarian and Archivist, IS HEREBY INCORPORATED BY REFERENCE.~~

~~(3)~~ **Code of Federal Regulations.** Where mention is made to any section or sections of the Code of Federal Regulations in either the PMO or DMO, that section or sections shall be incorporated by reference. The State Board of Agriculture declares that, by incorporating the PMO by reference, it does not intend to create any inconsistency with the Oklahoma Milk and Milk Products Act, in the event there may be any inconsistency.

(b) Exceptions.

(1) ~~Section 3, "Permits" (portions of pages 6, 7 and 8 of the PMO), is not incorporated by reference.~~

~~(2)~~ "Table 1" ~~(page 20 of the PMO)~~ of Section 7 of the PMO is not incorporated by reference.

(~~3~~2) Section 16, "Penalty" ~~(page 96 of the PMO)~~ is not incorporated by reference.

(~~4~~3) Section 17, "Repeal and Date of Effect" ~~(page 96 of the PMO)~~, is not incorporated by reference.

(~~5~~4) Section 5, "Certified Industry Inspection" ~~(pages 12, 13 and 14 of the PMO)~~, is not incorporated by reference.

(~~6~~5) Appendices E, "Examples of 3-out-of-5 Compliance Enforcement Procedures" ~~(pages 163 and 164 of the PMO,)~~, is not incorporated by reference.

[OAR Docket #07-1131; filed 5-21-07]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 44. AGRICULTURE POLLUTANT DISCHARGE ELIMINATION SYSTEM

[OAR Docket #07-1136]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Concentrated Animal Feeding Operations
35:44-3-3 [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2), (7), (16), and (29), 2-18.2, 2A-1 et seq.; and 2A-21 et seq.; 27A OS. § 1-3-101(D); and Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
January 16, 2007 to February 15, 2007
Public hearing:
February 15, 2007
Adoption:
March 21, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
April 26, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2007
Final adoption:
May 18, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
This rule updates the Code of Federal Regulations date for the incorporation by reference of the permitting requirements for concentrated animal feeding operations.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 3. CONCENTRATED ANIMAL FEEDING OPERATIONS

35:44-3-3. 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 #07-1136; filed 5-21-07]

TITLE 165. CORPORATION COMMISSION CHAPTER 5. RULES OF PRACTICE

[OAR Docket #07-1216]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Fees
Part 1. General Provisions
165:5-3-1. Fees [AMENDED]
Subchapter 7. Commencement of Cause
Part 3. Oil and Gas
165:5-7-9. Well location exception [AMENDED]
Subchapter 15. Orders
165:5-15-6. Location exception orders [AMENDED]
AUTHORITY:
Oklahoma Corporation Commission
Article IX, §§ 18, 19, Oklahoma Constitution
17 Okla. Stat. § 151 *et seq.*
DATES:
Comment Period:
February 22, 2007 through March 26, 2007
Public Hearing:
March 26, 2007
Adoption:
March 26, 2007
Submitted to the Governor:
March 29 2007
Submitted to the House:
March 29, 2007
Submitted to Senate:
March 29, 2007
Gubernatorial approval:
May 4, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 24, 2007.
Final Adoption:
May 24, 2007
Effective Date:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
OAC 165:5-3-1 (b)(1)(D) is amended to increase the amount of the application fee to $100.00.

OAC 165:5-3-1(b)(1)(E) is amended to increase the amount of the permit to drill $175.00.

OAC 165:5-3-1(b)(1)(F) is amended to increase the amount of an emergency walk-through permit to drill to $500.00.

OAC 165:5-3-1(b)(1)(H) is amended to charge the amount of $100.00 for a permit for a one-time land application of water based fluids.

OAC 165:5-3-1(b)(1)(I) is amended to charge the amount of $200.00 for a permit for a one-time only emergency walk-through for a land application of water based fluids.

OAC 165:5-3-1(b)(2)(A) is amended to increase the amount of the application fee to $100.00.

OAC 165:5-3-1(b)(2)((B)(VI) is amended to increase the application fee to $500.00.

OAC 165:5-3-1(b)(2)(B)(iii) is amended to increase the application fee to $350.00.

OAC 165:5-3-1(b)(2)(B)(vi) is amended to charge an International Fuel Tax Agreement reinstatement fee of $100.00

OAC 165:5-3-1(b)(2)(B)(vii) is amended to charge a trailer registration processing fee of $2.00 per trailer registered through the IRP System.

OAC 165:5-3-1(b)(2)(B)(5) is amended to increase the application fee for an enforcement action to $100.00.

OAC 165:5-7-9 is amended to add language to refer to a location of a well's exit from the common source of supply.

OAC 165:5-15-6 is amended to add language to refer to directionally drilled wells as to the entry to and the exit from the common source of supply.
CONTACT PERSON:
Sally Shipley @ 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 3. FEES

PART 1. GENERAL PROVISIONS

165:5-3-1. Fees

(a) **General.**

(1) **Exceptions to filing fees.** For each initial application in each category listed in (b) of this Section, a filing fee shall be paid by the person seeking to file or submit the document, unless the document is filed under authorization of and in the name of an instrumentality of the State of Oklahoma.

(A) Filing fees shall not apply to any emergency application, subsequent pleading, or amended application except a Form 1000 required in OAC 165:10-3-1(b)(A) and (B) and OAC 165:10-3-1(c).

(B) No filing fee shall be required for any application filed pursuant to OAC 165:10-21, Applications for Tax Exemptions.

(C) No filing fee shall be required for any application filed pursuant to OAC 165:5-3-31, Use of vacuum.

(D) No filing fee applicable to the conservation docket shall be required for any Notice of Intent to Mediate filed with the Office of Administrative Proceedings pursuant to OAC 165:5-23-1 et seq. A per participant fee provided in OAC 165:5-3-1(b)(1)(G)

shall be charged for any informal dispute resolution procedure that commences.

(E) No filing fee shall be paid by a party filing a protest to an adverse action of the Commission pursuant to the International Fuel Tax Agreement ("IFTA") or the International Registration Plan ("IRP").

(F) No filing fee shall be paid by a party filing a Consumer Complaint against a public utility.

(2) **Filing fees.** Any filing fee assessed by this Section shall be due and paid at the time of filing of the document. Neither the Court Clerk's Office nor any division of the Commission shall accept an application subject to a filing fee until the required fee is paid. No filing fee shall be refundable.

(3) **Other fees.** Any other fee assessed by this Section shall be due and payable at the time the service is requested. No service shall be rendered before payment of the prescribed fee. No such filing fee shall be refundable.

(4) **Negotiable instruments.** Fees paid by negotiable instruments shall be made payable to the "Oklahoma Corporation Commission." Negotiable instruments include personal checks, cashier checks, certified checks, and money orders. Foreign checks must be payable through a United States bank in United States funds.

(5) All fees pertaining to the Petroleum Storage Tank Division are listed in OAC 165:5-3-2.

(b) **Schedule of filing fees.**

(1) **Oil and gas fees.**

(A) Commercial disposal well application - $1,000.00

(B) Commercial earthen pit application - $1,000.00

(C) Commercial soil farming site application - $1,000.00

(D) Conservation docket and other pollution docket base applications - ~~$35.00~~ $100.00

(E) Permit to drill - ~~$100.00~~ $175.00

(F) Emergency walk-thru permit to drill - ~~$300.00~~ $500.00

(G) Notice of Intent to Mediate pursuant to Chapter 23 of this Chapter - $5.00 per participant

(H) Permit for one-time land application of water based fluids - $100.00

(I) Emergency walk-through of permit for one-time land application water based fluids - $200.00

(2) **Transportation fees.**

(A) Transportation docket application - ~~$35.00~~ $100.00

(B) Other transportation fees:

(i) Intrastate license fees.

(I) Original license application filing fee - $100.00

(II) License sub application filing fee - $100.00

(III) Renewal license application filing fee - $50.00

(IV) License reinstatement application filing fee - $100.00

(V) License name change application filing fee - $50.00

(VI) Earthen or wash pit construction or enlargement application fee - ~~$350.00~~ $500.00.

(ii) Intrastate certificate or permit fees.

(I) Original certificate or permit application filing fee - $100.00

(II) Certificate or permit sub application filing fee - $100.00

(III) Transfer of certificate or permit application filing fee - $100.00

(IV) Certificate or permit temporary authority application filing fee - $100.00

(V) Certificate or permit representative of estate application filing fee - $100.00

(VI) Certificate or permit reinstatement application filing fee - $100.00

(VII) Delinquent certificate or permit annual report fee - $150.00

(VIII) Certificate or permit name change application filing fee - $50.00

(IX) Voluntary suspension or abandonment of certificate or permit application filing fee - $100.00

(X) Tariff modification (requiring hearing) - $350.00

(iii) Intrastate and interstate fees.

(I) Identification device or per vehicle fee - $7.00

(II) Deleterious Substance License Permit application filing fee - $260.00

(iv) Interstate fees.

(I) Exempt application filing fee - $25.00

(II) Exempt name change - $10.00

(v) International Fuel Tax Agreement decal - $2.00 per vehicle per decal set

(vi) International Fuel Tax Agreement reinstatement fee - $100.00

(vii) Trailer registration processing fee per trailer registered through the IRP System - $2.00

(3) **Utility fee.** Public utility docket application - $35.00

(4) **Consumer Services fee.** Consumer Services docket application - $35.00

(5) **Enforcement fee.** Enforcement docket application - ~~$35.00~~ $100.00

(c) **Certified copies.** A fee of $1.00 is charged for each certified copy of an order or other document on file with the Commission, in addition to the fees specified in (d) of this Section.

(d) **Other fees.** The following fees shall be charged and collected at the time of request for same; none of which shall ever be refundable:

(1) Certificate of non-development (maximum of one quarter section) - $10.00

(2) Mail-out copies of any file or order - flat fee to cover research, copying and postage not to exceed 30 pages.

(A) 1 to 15 pages - $5.00
(B) 16 to 30 pages - $10.00
(C) Documents exceeding 30 pages - $0.25 per page plus postage
(3) Microfilmed images from coin-operated microfilm reader (coin box) - $0.25
(4) Batch reproduction on continuing basis (per page) - $0.25
(5) Copy of any document prepared in OCC offices (per page) - $0.25
(6) Copy of any Chapter of Commission rules and regulations - $10.00
(7) Copy of Oil and Gas Conservation rules - $20.00
(8) Current ownership/lienholder information - $1.00 per vehicle record page
(9) Computer generated title history - $5.00 per vehicle
(10) Manual title history - $7.50 per vehicle
(11) Copy of lien release - $7.50 per vehicle
(12) Certified copy of lien release - $10.00 per vehicle
(13) Certified copy of title history - $10.00 per vehicle

(e) **Computer data processing documents.** Reproduction of documents or informational searches involving computer data processing services will be in accordance with the rates established by the Oklahoma Office of State Finance, Information Services Division.

(f) **Document search fee.** Except where provided otherwise by law, where the request for document copying and/or mechanical reproduction is solely for commercial purpose or clearly would cause excessive disruption of the Commission's essential functions, then a fee of $7.00 per hour (minimum of one hour) shall be charged to recover the direct cost of document search.

(g) **Fax.** A service charge of $5.00 plus $1.00 per page will be assessed for all outgoing faxes. All incoming faxes for persons not associated with the Commission shall be assessed a copy fee of $0.25 per page including the cover page when not submitted for filing with the Court Clerk's Office.

SUBCHAPTER 7. COMMENCEMENT OF CAUSE

PART 3. OIL AND GAS

165:5-7-9. Well location exception

(a) Notice of hearing for an order authorizing a well to be drilled for oil or gas into any common source of supply at a requested location therein other than that prescribed by a rule or order of the Commission shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail upon the operator of each well located in an adjoining or cornering tract of land or drilling and spacing unit, currently producing from the same common source of supply, toward which the well location is proposed to be moved and the same notice also shall be required if the requested well location would be closer to the wells producing from those adjoining or cornering tracts of land or drilling and spacing units than would be permitted at a legal location. Provided, however, if the applicant, or any entity to be named operator of the requested well location, is the operator of any of the wells in an adjoining or cornering tract of land or drilling and spacing unit, identified herein above, then the applicant shall serve each working interest owner in such well by regular mail. All applications and notices for location exception shall specify the surface location of the well, and if the well is to be directionally drilled, then the application and notice shall also include the intended bottom-hole location and the location of the well's entry into and the location of the well's exit from the common source of supply for which the location exception is requested, expressed in feet from the two nearest boundaries of the drilling and spacing unit, or, if no drilling and spacing unit has been established, from the two nearest boundaries of the mineral estate(s) upon which the well will be drilled. Provided that, at the time of hearing, the well's surface location, the location of the well's entry into the common source of supply, the location of the well's exit from the common source of supply, and/or the bottom-hole location, as set out in the notice of hearing, may be changed to another location which is not closer to the offsetting well or to the drilling and spacing unit or tract boundary described in the notice of hearing.

(b) If at the time of the hearing, the applicant does not have the results of the well survey required by 165:10-3-27, then the Administrative Law Judge shall hear the cause and recommend the issuance of an order granting or denying the application and, if granting the application, assess any penalties based on the potential locations of the common sources of supply for which the order is sought. All potential locations shall be considered in the order.

(c) In the event a well is directionally drilled as described by 165:10-3-27 at an off-pattern surface location, according to 165:10-1-21 and 165:10-1-24 for well locations for spaced and unspaced common sources of supply, with the intended ~~bottom-hole~~ location of the well's entry into and exit from the common source of supply being a legal location, the operator shall comply with 165:10-3-27 regarding the well survey. If the well survey indicates the bottom-hole location of the well, upon its completion, is off-pattern, then the applicant shall file an application for location exception and provide notice in compliance with this Section.

(d) Notice of hearing for an order authorizing a well to be drilled for oil or gas at a location other than that prescribed by a rule or order of the Commission shall be published pursuant to 165:5-7-1(n)(2).

SUBCHAPTER 15. ORDERS

165:5-15-6. Location exception orders

A location exception order shall terminate if the relief granted is not undertaken within one (1) year from the order's date of issuance, unless otherwise provided in the order. For directionally drilled wells, the location of the entry into and

exit from the common source of supply must be included based on the directional survey.

[OAR Docket #07-1216; filed 5-25-07]

TITLE 165. CORPORATION COMMISSION CHAPTER 10. OIL AND GAS CONSERVATION

[OAR Docket #07-1217]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Administration
Part 1. General Provisions
165:10-1-2. Definitions [AMENDED]
Subchapter 3. Drilling, Developing, and Producing
Part 1. Drilling
165:10-3-1 Required approval of notice of intent to drill, deepen, re-enter, or recomplete; Permit to drill [AMENDED]
165:10-3-2 Notification of spudding of new well [AMENDED]
Part 3. Completions
165:10-3-16. Operation in hydrogen sulfide areas [AMENDED]
Part 5. Operations
165:10-3-25. Completion Reports [AMENDED]
165:10-3-27. Deviation from the vertical [AMENDED]
Part 7. Production
165:10-3-36. Multiple zone completions [AMENDED]
165:10-3-37. Control of multiply completed wells [AMENDED]
165:10-3-39. Commingling of production [AMENDED]
Subchapter 7. Pollution Abatement.
Part 3. Storage and Disposal of Fluids
165:10-7-16. Use of noncommercial pits [AMENDED]
165:10-7-17. Surface discharge of fluids [AMENDED]
165:10-7-31. Seismic and stratigraphic operations [AMENDED]
Subchapter 12. Procedures for the Seeping Natural Gas Program [NEW]
165:10-12-1. Purpose [NEW]
165:10-12-2. Coordination of Seeping Natural Gas Program [NEW]
165:10-12-3. Jurisdiction and scope [NEW]
165:10-12-4. Administration of the fund [NEW]
165:10-12-5. Definitions [NEW]
165:10-12-6. Notice requirements for seeping natural gas occurrences [NEW]
165:10-12-7. Commission Rapid Action Assessment Team [NEW]
165:10-12-8. Standard procedure for the Rapid Action Assessment Team [NEW]
165:10-12-9 Assistance to owners of property [NEW]
165:10-12-10. Reimbursement of expenditures [NEW]
Subchapter 17. Gas Well Operations and Permitted Production
165:10-17-7. Well tests [AMENDED]
Subchapter 21. Applications for Tax Exemptions
Part 6. Production Enhancement Projects
165:10-21-21. General [AMENDED]
165:10-21-22. Definitions [AMENDED]
Part 7. Re-Establishment of Production from an Inactive Well
165:10-21-36. Definitions [AMENDED]
Part 8. Deep Wells
165:10-21-45. General [AMENDED]
Part 9. New Discovery Wells
165:10-21-55. General [AMENDED]
Part 11. Horizontally Drilled Producing Wells
165:10-21-66. Definitions [AMENDED]
165:10-21-69. Time periods for exemption from gross production tax levied on horizontally drilled producing wells [AMENDED]
Part 13. Incremental Production from Enhanced Recovery Projects
165:10-21-76. Definitions [AMENDED]
165:10-21-78. Recovery of costs allowed as payback factors [AMENDED]
165:10-21-80. Expiration of exemption for incremental production [AMENDED]
Part 14. Production of Oil, Gas or Oil and Gas from Any Well Located Within Boundaries of Three-Dimensional Seismic Shoot [AMENDED]
165:10-21-82. General [AMENDED]
165:10-21-82.2. Qualification procedure [AMENDED]
165:10-21-82.3. Rebates - Refund procedure [AMENDED
AUTHORITY:
Oklahoma Corporation Commission
Article IX, §§ 18, 19, Oklahoma Constitution
17 Okla. Stat. § 151 et seq.
DATES:
Comment Period:
February 22, 2007 through March 26, 2007
Public Hearing:
March 26, 2007
Adoption:
March 26, 2007
Submitted to the Governor:
March 29 2007
Submitted to the House:
March 29, 2007
Submitted to Senate:
March 29, 2007
Gubernatorial approval:
May 4, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 24, 2007.
Final Adoption:
May 24, 2007
Effective Date:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 12. Procedures for the Seeping Natural Gas Program [NEW]
165:10-12-1. Purpose [NEW]
165:10-12-2. Coordination of Seeping Natural Gas Program [NEW]
165:10-12-3. Jurisdiction and scope [NEW]
165:10-12-4. Administration of the fund [NEW]
165:10-12-5. Definitions [NEW]
165:10-12-6. Notice requirements for seeping natural gas occurrences [NEW]
165:10-12-7. Commission Rapid Action Assessment Team [NEW]
165:10-12-8. Standard procedure for the Rapid Action Assessment Team [NEW]
165:10-12-9 Assistance to owners of property [NEW]
165:10-12-10. Reimbursement of expenditures [NEW]
Gubernatorial approval:
October 4, 2006
Register publication:
24 Ok Reg 183
Docket number:
06-1376
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
OAC 165:10-1-2 is amended to add the terms "Multi-Well System" and "Primary Well" and "Service Well" and their definitions.

OAC 165:10-3-1 is amended to add "Deepening an existing well" to the list of reasons for an Operator receiving a permit to drill.

OAC 165:10-3-2 is amended to add language that refers to the base of treatable water and to add language of what office to notify when spudding a new well.

OAC 165:10-3-16 is amended to clarify the section on vapor safety, and the section on signs.

OAC 165:10-3-25 is amended to define amending completion reports for a primary well in a multiple well system.

OAC 165:10-3-27 is amended to clarify well location for purposes of well spacing.

OAC 165:10-3-36 is amended to delete language in the rule for multiple completion of a well.

OAC 165:10-3-37 is amended to delete language of who shall file a report and make recommendations.

OAC 165:10-3-39 is amended to add language that defines what a party should do at the Commission if they have an objection to a commingling permit.

OAC 165: 10-7-16 is amended to add language prohibiting the discharge of produced water into a category 4 pit.

OAC 165:10-7-17 is amended to include rules and definitions of discharging water from reserve pits.

OAC 165:10-7-31 is amended to revise the definitions and rules for drilling seismic and stratigraphic operations; and to add rules for issuing stratigraphic test permitting.

OAC 165:10-12-1 NEW to define the purpose of the procedures for the Seeping Natural Gas Program.

OAC 165:10-12-2 NEW to define the coordination of Seeping Natural Gas Program.

OAC 165:10-12-3 NEW to define the jurisdiction and scope of the Seeping Natural Gas Program.

OAC 165:10-12-4 NEW defines the administration of the fund of the Seeping Natural Gas Program.

OAC 165:10-12-5 NEW defines the definitions of the terms of the Seeping Natural Gas Program.

OAC 165:10-12-6 NEW to describe the notice requirements for Seeping Natural Gas Program.

OAC 165:10-12-7 NEW defines the Commission Rapid Action Assessment Team for the Seeping Natural Gas Program.

OAC 165:10-12-8 NEW defines the standard procedure for the Rapid Action Assessment Team for the Seeping Natural Gas Program.

OAC 165:10-12-9 NEW defines the assistance to owners of property who have an occurrence under Seeping Natural Gas Program.

OAC 165:10-12-10 NEW describes how to receive reimbursement of expenditures that have been spent for the Seeping Natural Gas Program.

OAC 165:10-17-7 amended to define an extension of time in order to recover fluids introduced into a well; and defines the test exemptions for Coal Bed Methane wells and certain minimum wells.

OAC 165:10-21-21 amended to extend the date to July 1, 2009.

OAC 165:10-21-22 amended to extend the date to July 1, 2009.

OAC 165:10-21-36 amended to extend the date to June 30, 2009.

OAC 165:10-21-45 amended to extend the date to June 30, 2009.

OAC 165:10-21-55 amended to extend the date to July 1, 2009.

OAC 165:10-21-66 amended to extend the date to July 1, 2009.

OAC 165:10-21-69 amended to extend the date to July 1, 2009.

OAC 165:10-21-76 amended to extend the date to July 1, 2009, and to change the word "properties" to "projects".

OAC 165:10-21-78 amended to extend the date to July 1, 2009.

OAC 165:10-21-80 amended to extend the date to July 1, 2009.

OAC 165:10-21-82 amended to extend the date to July 1, 2009.

OAC 165:10-21-82.2 amended to extend the date to July 1, 2009.

OAC 165:10-21-82.3 amended to extend the date to July 1, 2009.

CONTACT PERSON:

Sally Shipley @ 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 1. ADMINISTRATION

PART 1. GENERAL PROVISIONS

165:10-1-2. Definitions

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

"Agent" means any person authorized by another person to act for him.

"Aquifer" means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

"Area of exposure" means an area within a circle constructed with the point of escape of poisonous gas (hydrogen sulfide) as its center and the radius of exposure as its radius.

"Associated gas" means any gas produced from a Commission ordered combination oil and gas reservoir in which allowed rates of production are based upon volumetric withdrawals.

"BS&W" means basic sediment and water which is that portion of fluids and/or solids that settle in the bottom of storage tanks and/or treating vessels and is unsaleable to the first purchaser in its present form. BS&W usually consists of water, paraffin, sand, scale, rust, and other sediments.

"Barrel" means 42 (U.S.) gallons at 60 F at atmospheric pressure.

"Basic sediment pit" means a pit used in conjunction with a tank battery for storage of basic sediment removed from a production vessel or from the bottom of an oil storage tank.

"Blowout" means the uncontrolled escape of oil or gas, or both, from any formation.

"Blowout preventer" means a heavy casinghead control fitted with special gates and/or rams which can be closed around the drill pipe or which completely closes the top of the casing.

"Blowout preventer stack" means the assembly of well control equipment including preventers, spools, valves, and nipples connected to the top of the casinghead.

"Carrier", or **"transporter"**, or **"taker"** means any person moving or transporting oil or gas away from a lease or from any common source of supply.

"Casing pressure" means the pressure within the casing or between the casing and tubing at the wellhead.

"Choke manifold" means an assembly of valves, chokes, gauges, and lines used to control the rate of flow from the well when the blowout preventers are closed.

"Closure" means the practice of dewatering, trenching, filling, leveling, terracing, and/or vegetating a pit site after its useful life is reached in order to restore or reclaim the site to near its original condition.

"Commercial disposal well" means a disposal well which:

(A) Is operated primarily for profit from the disposal of salt water and/or other deleterious substances for a fee; and

(B) Disposes of salt water and/or other deleterious substances transported by truck to the facilities used in conjunction with said disposal well or is a disposal well for which none of its owners is an owner in any of the oil and gas wells which produce the salt water and/or other deleterious substances which will be disposed into said disposal well.

"Commercial pit" is a disposal facility which is authorized by Commission order and used for the disposal, storage, and handling substances or soils contaminated by deleterious

substances produced, obtained, or used in connection with drilling and/or production operations. This does not include a disposal well pit.

"Commercial soil farming" means the practice of soil farming or land applying drilling fluids and/or other deleterious substances produced, obtained, or used in connection with the drilling of a well or wells at an off-site location. Multiple applications to the same land are likely.

"Commission" means the Corporation Commission of the State of Oklahoma.

"Common source of supply" or **"pool"** means "that area which is underlaid or which, from geological or other scientific data, or from drilling operations, or other evidence, appears to be underlaid by a common accumulation of oil and/or gas; provided that, if any such area is underlaid, or appears from geological or other scientific data or from drilling operations, or other evidence, to be underlaid by more than one common accumulation of oil or gas or both, separated from each other by strata of earth and not connected with each other, then such area shall, as to each said common accumulation of oil or gas or both, shall be deemed a separate common source of supply." [52. O.S.A. §86.1(c)].

"Completion/fracture/workover pit" means a pit used for temporary storage of spent completion fluids, frac fluids, workover fluids, drilling fluids, silt, debris, water, brine, oil scum, paraffin, or other deleterious substances which have been cleaned out of the wellbore of a well being completed, fractured, recompleted, or worked over.

"Condensate" means a liquid hydrocarbon which:

(A) Was produced as a liquid at the surface,

(B) Existed as gas in the reservoir, and

(C) Has an API gravity greater than or equal to fifty degrees, unless otherwise proven.

"Conductor casing" means a casing string which is often set and cemented at a shallow depth to support and protect the top of the borehole from erosion while circulating and drilling the surface casing hole.

"Conservation Division" means the Division of the Commission charged with the administration and enforcement of the rules of this Chapter.

"Contingency plan" is a written document which provides for an organized plan of action for alerting and protecting the public within an area of exposure following the accidental release of a potentially hazardous volume of poisonous gas such as hydrogen sulfide.

"Contractor" means any person who contracts with another person for the performance of prescribed work.

"Cubic foot of gas" means the volume of gas contained in one cubic foot of space at an absolute pressure of 14.65 pounds per square inch and at a temperature of 60°F. Conversion of volumes to conform to standard conditions shall be made in accordance with Ideal Gas Laws corrected for deviation from Boyle's Law when the pressure at point of measurement is in excess of 200 pounds per square inch gauge.

"Date of completion" means:

(A) For an oil well, the date that the well first produces oil into the lease tanks through permanent wellhead equipment.

(B) For a gas well, the date of completion of a gas well is the date that gas is capable of being delivered to a pipeline purchaser.

(C) For a well, which does not produce either oil or gas, is the date on which attempts to obtain production from the well cease.

"Day" means a period of 24 consecutive hours. For reporting purposes, it shall be from 7:00 a.m. to 7:00 a.m. the following day.

"Deleterious substances" means any chemical, salt water, oil field brine, waste oil, waste emulsified oil, basic sediment, mud, or injurious substance

produced or used in the drilling, development, production, transportation, refining, and processing of oil, gas and/or brine mining.

"Design mud weight" means the planned drilling mud weight to be used. This mud weight is used in the design of the casing strings.

"Design wellhead pressure" means the maximum anticipated wellhead pressure which is expected to be experienced on the inside of the casing string and on wellhead equipment. This pressure is used to design the casing string and to select wellhead equipment with sufficient working pressure rating.

"Development" means any work which actively looks toward bringing in production, such as erecting rigs, building tankage, drilling wells, etc.

"Directional drilling" means intentional changing of the direction of the well from the vertical.

"Director of Conservation" means the person in official charge of the Conservation Division.

"Discharge" means the release or setting free by any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of substances.

"Distressed well" means a well authorized by Commission order to produce at an unrestricted rate in the interest of public safety due to technical difficulties which temporarily cannot be controlled.

"Diverter" means a device attached to the wellhead to close the vertical access and direct any flow into a line away from the rig. Diverters differ from blowout preventers in that flow is not stopped but rather the flow path is redirected away from the rig.

"Duly authorized representative" means, for the purpose of underground injection well applications, that person or position having a responsibility for the underground injection well.

"Emergency pit" means a pit used for the storage of excessive or unanticipated amounts of fluids during an immediate emergency situation in the drilling or operation of a well, such as a well blowout or a pipeline rupture. This does not include a spill prevention structure required by local, state, or federal regulations.

"Enhanced recovery operation" means the introduction of fluid or energy into a common source of supply for the purpose of increasing the recovery of oil therefrom according to a plan which has been approved by the Commission after notice and hearing.

"Enhanced recovery well" means a well producing in an enhanced recovery operation in accordance with Commission order.

"Exchangeable Sodium Percentage (ESP)" is the relative amount of the sodium ion present on the soil surface, expressed as a percentage of the total Cation Exchange Capacity (CEC). Since the determination of CEC is time consuming and expensive, a practical and satisfactory correlation between the Sodium Adsorption Ratio (SAR) and ESP was established. The SAR is defined elsewhere in this Section. ESP can be estimated by the following empirical formula:

$$\mathrm{ESP} = \frac{100\ (-0.0126 + 0.01475 \times \mathrm{SAR})}{1 + (-0.0126 + 0.01475 \times \mathrm{SAR})}$$

"Exempted aquifer" means an aquifer or its portion that meets the criteria in the definition of "underground source of drinking water" or in the definition of "treatable water", but which has been exempted according to the procedures in 165:5-7-28 and 165:10-5-14.

"Facility" means, for the purposes of 165:10-21-15, any building(s), parts of a building, equipment, property, or vehicles that are actively engaged in the reuse, recycling, or ultimate destruction of deleterious substances pursuant to 68 O.S. Supp. 1986, §2357.14-§2357.20.

"Field" means the general area underlaid by one or more common sources of supply.

"Flare pit" means a pit which contains flare equipment and which is used for temporary storage of liquid hydrocarbons which are sent to the flare but are not burned due to equipment malfunction. Flare pits may be used in conjunction with tank batteries or wells.

"Flowing well" means any well from which oil or gas is produced naturally and without artificial lifting equipment.

"Fresh water strata" means a strata from which fresh water may be produced in economical quantities.

"Gas" means any petroleum hydrocarbon existing in the gaseous phase.

(A) Casinghead gas means any gas or vapor, or both, indigenous to an oil stratum and produced from such stratum with oil.

(B) Dry gas or dry natural gas means any gas produced in which there are no appreciable hydrocarbon liquids recoverable by separation at the wellhead.

(C) Condensate gas means any gas which is produced with condensate as defined as "condensate".

"Gas allowable" or **"allowable gas"** means the amount of natural gas authorized to be produced from any well by order of the Commission or as provided by statute.

"Gas lift" means any method of lifting liquid to the surface by injecting gas into the well bore from which production is obtained.

"Gas repressuring" means the injection of gas into a common source of supply to restore or increase the gas energy of a reservoir.

"GOR (Gas/Oil Ratio)" means the ratio of the gas produced in standard cubic feet to one barrel of oil produced during any stated period. Condensate and load oil excepted under 165:10-13-6 shall not be considered as oil for purposes of determining GOR.

"Hardship well" means a well authorized by Commission order to produce at a specified rate because reasonable cause exists to expect that production below said rate would damage the well and cause waste.

"Hydrogen sulfide gas (H_2S)" means a toxic poisonous gas with a chemical composition of H_2S which is sometimes found mixed with and produced with fluids from oil and gas wells.

"Hydrostatic head" or **"hydrostatic pressure"** means the pressure which exists at any point in the wellbore due to the weight of the column of fluid or gas above that point.

"Illegal gas" means gas which has been produced within the State from any well or wells in violation of any rule, regulation, or order of the Commission, as distinguished from gas produced within the State not in violation of any such rule, regulation, or order which is "legal gas".

"Illegal oil" means oil which has been produced within the State from any well or wells in violation of any rule, regulation or order of the Commission, as distinguished from oil produced within the State not in violation of any such rule, regulation, or order which is "legal oil".

"Intermediate casing" means the casing string or strings run after setting the surface casing and prior to setting the production string or liner.

"Kick" means the intrusion of formation liquids or gas that results in an increase in circulation pit volume. Without corrective measures, this condition can result in a blowout.

"Land application" is the application of deleterious substances and/or soils contaminated by deleterious substances to the land for the purpose of disposal or land treatment; also known as soil farming.

"Lease allowable" means the total of the allowables of the individual wells on the lease.

"Liner" means a length of casing used downhole as an extension to a previously installed casing string to case the hole for further drilling operations and/or for producing operations.

"Meter" means an instrument for measuring and indicating or recording the volumes of gases or liquids.

"Mud" means any mixture of water and clay or other material as the term is commonly used in the industry.

"Multi-well system" means two or more wells that have intersecting well-bores or laterals.

"Multiple zone completion" means the completion of any well so as to permit the production from more than one common source of supply, with such common sources of supply completely segregated.

"Noncommercial pit" means an earthen pit which is located either on-site or off-site and is used for the handling, storage, or disposal of deleterious substances or soils contaminated by deleterious substances produced, obtained, or used in connection with the drilling and/or operation of a well or wells, and is operated by the generator of the waste. This does not include a disposal well pit.

"Normal pressure" means a formation pore pressure, proportional to depth, which is roughly equal to the hydrostatic pressure gradient of a column of salt water (.465 psi/ft).

"Off-site reserve pit" means a pit located off-site which is used for the handling, storage, or disposal of drilling fluids and/or cuttings.

"Oil" or **"crude oil",** means, for purposes of these regulations, any petroleum hydrocarbon, except condensate, produced from a well in liquid form by ordinary production methods.

"Oil allowable" or **"allowable oil"** means the amount of oil authorized to be produced from any well by order of the Commission.

"Operator" means the person who is duly authorized and in charge of the development of a lease or the operation of a producing property.

"Overage" means the oil or gas delivered to a carrier, transporter, or taker in excess of the allowable set by the Commission for any given period.

"Owner" means the person or persons who have the right to drill into and to produce from any common source of supply, and to appropriate the production either for himself, or for himself and others.

"Person" means any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, and shall include the plural.

"Plug" means the closing off, in a manner prescribed by the Commission, of all oil, gas, and waterbearing formations in any producing or nonproducing wellbore before such well is abandoned.

"Pollution" means the contamination of fresh water or soil, either surface or subsurface, by salt water, mineral brines, waste oil, oil, gas, and/or other deleterious substances produced from or obtained or used in connection with the drilling, development, producing, refining, transporting, or processing of oil or gas within the State of Oklahoma.

"Pool" See "common source of supply".

"Potential" means the properly determined capacity of a well to produce oil or gas, or both, under conditions prescribed by the Commission.

"Primary well" means a wellbore that, as part of a multi-well system, serves as the conduit through which oil and gas is produced to the surface.

"Producer" See "Operator" or "Owner".

"Production casing" means the casing string set above or through the producing zone of a well which serves the purpose of confining and/or producing the well production fluids.

"Productivity index" means the daily production of oil in barrels per unit pressure differential between the static reservoir pressure and the stabilized flowing pressure during flow at a stated rate.

"Proration period" means:

(A) The proration period for any well, other than an unallocated gas well, shall be one calendar month which shall begin at 7 a.m. on the first day of such month and end at 7 a.m. on the first day of the next succeeding month unless otherwise specified by order of the Commission.

(B) The proration period for any unallocated gas well shall be one calendar year which shall begin at 7:00 a.m. the first day of such year and end at 7:00 a.m. on the first day of the next succeeding year unless otherwise specified by order of the Commission.

"Public area" means a dwelling place, a business, school, hospital, school bus stop, government building, a public road, all or any portion of a park, city, town, village, or other similar area that can be expected to be populated.

"Public street" or **"road"** means any federal, state, county, or municipal street or road owned or maintained for public access or use.

"Purchaser" or **"transporter"** means any person who acting alone or jointly with any person or persons, via his own, affiliated or designated carrier, transporter, or taker, shall directly or indirectly purchase, take, or transport by any means whatsoever or otherwise remove from any lease, oil or gas, and/or other hydrocarbons produced from any common source of supply in this State, excepting royalty portions from leases owned by that person.

"Radius of exposure" means that radius constructed with the point of escape of poisonous (hydrogen sulfide) gas as its starting point and its length calculated by use of the Pasquill-Gifford equations.

"Reclaimer" or **"reclamation plant"** includes any person licensed by the Oklahoma Tax Commission pursuant to 68 O.S.§1015.1 who reclaims or salvages or in any way removes or extracts oil from waste products associated with the production, storage, or transportation of oil including, but not limited to BS&W, tank bottoms, pit and waste oil, and/or waste oil residue.

"Recomplete" or **"recompletion"** means any operation to:

(A) Convert an existing well from an injection well or disposal well, to a producing well, or

(B) Add or change common sources of supply in an existing well.

"Recycling" is the reuse, processing, reclaiming, treating, neutralizing, or refining of materials and by-products into a product of beneficial use which, if discarded, would be deleterious substances.

"Recycling/reuse pit" means a pit which is used for the recycling or reuse of deleterious substances, is located off-site, and is operated by the generator of the waste.

"Re-enter" or **"re-entry"** is the act of entering a plugged well for the purpose of utilizing said well for the production of oil or gas, for the disposal of fluids therein, for a service well, or for the salvaging of tubing or casing therefrom.

"Remediation pit" means a pit which is used for the handling, storage, or disposal of deleterious substances and/or soils contaminated by deleterious substances which are relocated to the pit for the purpose of remediating a site which is known to be or suspected to be causing pollution.

"Reserve pit" or **"circulation pit"** means a pit located either on-site or off-site which is used in conjunction with a drilling rig for the handling, storage, or disposal of drilling fluids and/or cuttings.

"Reservoir" See "common source of supply".

"Reservoir pressure" means the static or stabilized pressure in pounds per square inch existing at the face of the formation of an oil or gas well.

"Reuse" is the introduction (or reintroduction) into an industrial, manufacturing, or disposal process of a material which would otherwise be classified as a deleterious substance. A material will be considered "used or reused" if it is either:

(A) Employed as an ingredient (including use as an intermediate) in an industrial, manufacturing, or disposal process to make or recover a product.

(B) Employed in a particular function or application as an effective substitute for a commercial product or non-deleterious substance.

"Rotating head" means a rotating, pressure sealing device used in drilling operations utilizing air, gas, foam, or any other drilling fluid whose hydrostatic pressure is less than the formation pressure.

"Secretary" means the duly appointed and qualified Secretary of the Commission or any person appointed by the Commission to act as such Secretary during the absence of the Secretary, his inability, or disqualification to act.

"Separator" means any apparatus for separating oil, gas, and water as they are produced from a well at the surface.

"Service well" means a well that, as part of a multi-well system, is used for drilling laterals, stimulation, or maintenance, or functions in any capacity other than as a conduit to the surface for the production of oil and gas.

"Slick spot" means a small area of soil having a puddled, crusted, or smooth surface and an excess of exchangeable sodium. The soil is generally silty or clayey, is slippery when wet, and is low in productivity.

"Sodium Adsorption Ratio (SAR)" means the index which indicates the relative abundance of sodium ions in solution as compared to the combined concentration of calcium and magnesium ions. It is calculated as follows:

$$\mathrm{SAR} = \frac{(\mathrm{Na\ ppm}/23.0)}{\text{sq. root of } [\{(\mathrm{Ca\ ppm}/20.02) + (\mathrm{Mg\ ppm}/12.16)\}/2]}$$

where
Na=Sodium
Ca=Calcium
Mg=Magnesium

"Soil farming" means the application of oilfield drilling or produced wastes to the soil for the purpose of disposing of the waste without being a detriment to water or land; also known as land application.

"Spill containment pit" mean a permanent pit which is used for the emergency storage of oil and/or saltwater spilled as a result of any equipment malfunction.

"Subnormal pressure" means the formation pore pressure, proportional to depth, which is less than a hydrostatic pressure gradient of .465 psi/ft.

"Sulfide stress cracking" means the cracking phenomenon which is the result of corrosive action of hydrogen sulfide on susceptible metals under stress.

"Surface casing" means the first casing string designed and run to protect the treatable water formations and/or control fluid or gas flow from the well.

"Tank bottoms" means the liquids and/or solids in that portion of a storage facility below the sales line or connection that are unsaleable to the crude oil first purchaser in its present form. Tank bottoms may consist of a combination of several elements including, but not limited to, oil, BS&W, and treating fluids.

"Treatable water" means, for purposes of setting surface casing and other casing strings, subsurface water in its natural state, useful or potentially useful for drinking water for human consumption, domestic livestock, irrigation, industrial, municipal, and recreational purposes, and which will support aquatic life, and contains less than 10,000 mg/liter total dissolved solids or less than 5,000 ppm chlorides. Treatable water includes, but is not limited to, fresh water.

"Trenching" means the practice of constructing trenches in or adjacent to a pit for the purpose of relocating all or a portion of the solids so as to facilitate closure.

"Ultimate destruction" means the treatment of a deleterious substance such that both its weight and volume remaining for disposal have been substantially reduced, and there is no demonstrated process or technology commercially available to further reduce its weight and volume and remove or reduce its harmful properties, if any. For the purposes of demonstrating a substantial reduction in weight and volume, any aqueous portion separated from the balance of a waste that meets drinking water standards or is evaporated into the ambient air shall count toward the weight and volume reduction.

"Underage" means the volume of allowable oil or gas not actually delivered to a carrier, transporter, or taker during any given proration period.

"Underground Source of Drinking Water (USDW)" means an aquifer or its portion which:

(A) Supplies any public water system; or

(B) Contains a sufficient quantity of ground water to supply a public water system; and

(i) Currently supplies drinking water for human consumption; or

(ii) Contains fewer than 10,000 mg/l total dissolved solids; and

(C) Is not an exempted aquifer.

"Unit operations" means a unit consisting of a portion of a lease, a lease, or more than one lease or portions thereof which covers contiguous lands containing one or more common sources of supply which has been approved by Commission order as a unit for the purpose of unitized management, after notice and hearing.

"Vacuum" means pressure below the prevailing pressure of the atmosphere.

"Waste" means:

(A) As applied to the production of oil, in addition to its ordinary meaning, "shall include economic waste, underground waste, including water encroachment in the oil or gas bearing strata; the use of reservoir energy for oil producing purposes by means or methods that unreasonably interfere with obtaining

from the common source of supply the largest ultimate recovery of oil; surface waste and waste incident to the production of oil in excess of transportation or marketing facilities or reasonable market demands." [52 O.S.A., 86.2]

(B) As applied to gas, in addition to its ordinary meaning, shall include economic waste; "the inefficient or wasteful utilization of gas in the operation of oil wells drilled to and producing from a common source of supply; the inefficient or wasteful utilization of gas in the operation of gas wells drilled to and producing from a common source of supply; the production of gas in such quantities or in such manner as unreasonably to reduce reservoir pressure or unreasonably to diminish the quantity of oil or gas that might be recovered from a common source of supply; the escape, directly or indirectly, of gas from oil wells producing from a common source of supply into the open air in excess of the amount necessary in the efficient drilling, completion or operation thereof; waste incident to the production of natural gas in excess of transportation and marketing facilities or reasonable market demand; the escape, blowing, or releasing, directly or indirectly, into the open air, of gas from well productive of gas only, drilled into any common source of supply, save only such as is necessary in the efficient drilling and completion thereof; and the unnecessary depletion or inefficient utilization of gas energy contained in a common source of supply." [52 O.S.A. §86.3]

(C) The use of gas for the manufacture of carbon black or similar products predominately carbon, except as specifically authorized by the Commission, shall constitute waste.

(D) The flaring of tail gas at gasoline, pressure maintenance, or recycling plants where a market is available.

"Waste oil" shall include, but not be limited to, crude oil or other hydrocarbons used or produced in the process of drilling for, developing, producing, or processing oil or gas from wells, oil retained on cuttings as a result of the use of oil-based drilling muds, or any residue from any oil storage facility on a producing lease or on a commercial disposal operation or pit. The term "waste oil" shall not include any refined hydrocarbons to which lead has been added.

"Waste oil residue" means that portion of waste oil remaining after treatment and after the saleable liquids and water have been extracted. Waste oil residue is a type of waste oil.

"Well log" or **"well record"** means a systematic, detailed and correct record of formations encountered in the drilling of a well.

SUBCHAPTER 3. DRILLING, DEVELOPING AND PRODUCING

PART 1. DRILLING

165:10-3-1. Required approval of notice of intent to drill, deepen, re-enter, or recomplete; Permit to Drill

(a) **Permit to Drill.**

(1) Except as provided in (1) of this Section, on temporary authorization to commence, the operator shall obtain for the well a Permit to Drill approved by the Conservation Division before:

(A) Spudding a well for the exploration for and production of oil or gas.

(B) Spudding a well for use as an injection, disposal, or service well.

(C) Re-entry into a plugged well.

(D) Recompletion of a well.

(E) Deepening an existing well.

(2) A Permit to Drill shall be valid only for each common source of supply listed on the permit.

(3) Any operator who drills, deepens or reenters a well without a permit to drill shall be subject to a fine of $1,000.00.

(b) **Amended or additional Form 1000 requirements.**

(1) **When required.** If the Conservation Division has issued a Permit to Drill for a well, the operator of the well shall submit an amended Form 1000 for the well and obtain an amended Permit to Drill before:

(A) Completing the well in a common source of supply which is not listed on the current unexpired Permit to Drill for the well.

(B) Recompleting the well in a common source of supply which is not listed on the current unexpired Permit to Drill for the well.

(C) Installing less surface casing than the amount approved on the unexpired Permit to Drill for the well.

(D) Deviating from an alternative casing and cementing procedure which the Conservation Division approved on the unexpired Permit to Drill for the well.

(E) Completing a well in a common source of supply at a subsurface location which does not correspond with the surface location on the most recently issued Permit to Drill for the well.

(2) **Effect of amended or additional Permit to Drill on prior Permit to Drill.** Each approved, amended, or additional Permit to Drill for a well cancels any previously issued Permit to Drill for the well.

(c) **Expired or revoked Permit to Drill.** If a Permit to Drill for a well expires or is revoked, the operator shall be subject to the requirements of (a) of this Section.

(d) **Casing and cementing requirements.** Each Permit to Drill shall list the minimum amount of surface casing to be used or an approved alternative casing and cementing program under 165:10-3-4.

(e) **Spud report and well spacing requirements.** In addition to complying with the requirement of obtaining a Permit to Drill, the operator shall comply with the following:

(1) The spud report requirement of 165:10-3-2.

(2) Any well spacing requirements applicable by order or rule of the Commission. Well spacing requirements do not apply to injection or disposal wells.

(f) **Disposal of drilling fluids.**

(1) The operator shall indicate on Form 1000 the proposed method(s) for disposal of drilling fluids. These methods shall include, but not be limited to:

(A) Evaporation/dewatering and leveling of the reserve pit.

(B) Soil farming.

(C) Recycling.

(D) Commercial off-site earthen pit disposal.

(E) Annular injection.

(F) Hauling to a facility or location other than a commercial earthen pit.

(2) If the method in (1)(F) in this subsection is used, the operator shall provide the location to which the drilling fluids are to be hauled.

(3) Issuance of the Permit to Drill shall not be construed as constituting approval of the disposal method(s) indicated. An operator who desires to dispose of drilling fluids through either evaporation/dewatering and leveling of the reserve pit, soil farming, commercial earthen pit disposal, or annular injection must comply with 165:10-7-16, 165:10-7-19 or 165:10-9-2, 165:10-9-1, or 165:10-5-13 respectively.

(4) If the proposed method for drilling fluid disposal is changed, the operator shall notify the appropriate District Office of the Conservation Division, either by telephone or in writing, within a reasonable time after the change. An amended Form 1000 for the well shall not be required for a change in disposal method.

(g) **Notice to surface owners.**

(1) The operator shall include on each Form 1000 submitted to the Conservation Division, the name and address of each surface owner of record for the wellsite.

(2) For each Permit to Drill other than a Permit to Drill for a recompletion, the Conservation Division shall mail by regular U.S. mail a copy of the Permit to Drill to each surface owner listed on the Form 1000.

(h) **Disapproval for noncompliance with Commission order.** If an operator is not in compliance with an enforceable order of the Commission, the Conservation Division shall not issue any Permit to Drill for the operator, until the operator complies with the order.

(i) **Erroneous approval.** Erroneous issuance of a Permit to Drill shall not excuse noncompliance with any order or rule of the Commission.

(j) **Expiration.**

(1) **Six-month period.** Except as provided in (2) of this subsection for expiration after submission of a completion report, a permit to drill shall expire six months from the date of issuance, unless drilling operations are commenced and thereafter continued with due diligence to completion.

(2) **Six-month extension.** A six month extension may be granted without fee providing the Conservation Division staff determines that no material change of condition has occurred, if written request for such extension is received from the operator prior to the expiration of the original permit. Only one extension may be granted.

(3) **If Form 1002A is filed.** If the operator of the well submits to the Conservation Division a Completion Report (Form 1002A) for the well, the Permit to Drill for the well shall expire on the date the Completion Report is approved by the Conservation Division.

(k) **Posting of Permit to Drill at the wellsite.** During any activity subject to this Section, the operator shall maintain at the wellsite an original or legible copy of the Permit to Drill for inspection by Commission personnel.

(l) **Temporary authorization without approval of a Permit to Drill.** In an emergency, the Manager of the Technical Services Department of the Conservation Division may temporarily authorize commencement of activities without a Permit to Drill for a period up to five working days.

(m) **Limits of authority.** A Permit to Drill does not grant the operator authority to produce, inject or dispose without the required permits or allowable assignment.

165:10-3-2. Notification of spudding of new well

(a) Except as provided in (c) of this Section, the operator of a new well shall file with the Conservation Division a Notice of Spudding of New Well on Form 1001A within 14 days after spudding of the well.

(b) For the purposes of (a) of this Section, spudding of a new well refers to:

(1) The first boring of the portion of the hole intended to penetrate the base of treatable water or a common source of supply, whichever is shallower, in the drilling of a well for the production of oil and gas or for ~~the~~ use as an injection, ~~or~~ disposal or service well.

(2) Reentry into a previously plugged well for purposes of producing oil and gas or for use as an injection, ~~or~~ disposal or service well.

(c) Filing of a Notice of Spudding of a New Well on Form 1001A shall not apply to:

(1) Any workover operation to deepen, plug-back, or recomplete.

(2) An unplugged hole spudded before January 9, 1986.

(3) Recompletion attempts in an unplugged hole for which a Notice of Spudding of New Well has been filed.

(d) In addition to the notification of spudding a new well as required in (b) of this section, the operator shall notify the district office within 14 days of the first boring of the hole for setting conductor pipe used for the sole purpose of near surface stabilization of the borehole when such operations are not continuous with spudding operations as defined in (b) of this section.

PART 3. COMPLETIONS

165:10-3-16. Operation in hydrogen sulfide areas

(a) **Applicability.** Each operator who conducts operations as described in this subsection shall be subject to this Section and shall provide safeguards to protect the general public from the harmful effects of hydrogen sulfide:

(1) Operations including drilling, working over, producing, injecting, gathering, processing, transporting, and storage of hydrocarbon fluids that are part of, or directly related to, field production, transportation, and handling of hydrocarbon fluids that contain gas in the system which has hydrogen sulfide as a constituent of the gas to the extent as specified in (b) of this Section.

(2) This Section shall not apply to:

(A) Operations involving processing oil, gas, or hydrocarbon fluids which are either an industrial modification or products from industrial modifications, such as refining, petrochemical plants, or chemical plants.

(B) Operations involving gathering, storing, and transporting stabilized liquid hydrocarbons.

(C) Operations where the concentration of hydrogen sulfide in the system is less than 100 PPM.

(b) **General provisions.**

(1) Each operator shall determine the hydrogen sulfide concentration in the gaseous mixture in the operation or system. Tests shall be made in accordance with standards as set by ASTM Standard D-2385-81 or other methods approved by the Commission.

(2) For all operations subject to this Section, the radius of exposure shall be determined, except in the cases of storage tanks, by the following Pasquill-Gifford equations or by other methods approved by the Commission such as air dispersion models accepted or approved by the U.S. Environmental Protection Agency:

(A) For determining the location of the 100 ppm radius of exposure: x = [(1.589)(mole fraction H_2S)(Q)] to the power of (.6258).

(B) For determining the location of the 300 ppm radius of exposure: x = [(0.6743) (mole fraction H_2S) (Q)] to the power of (.6258).

(C) For determining the location of the 500 ppm radius of exposure: x = [(0.4546)(mole fraction H_2S)(Q)] to the power of (.6258); **Where: x =** radius of exposure in feet; **Q =** maximum volume determined to be available for escape in cubic feet per day; **H_2S** = mole fraction of hydrogen sulfide in the gaseous mixture available for escape.

(3) The volume used as the escape rate in determining the radius of exposure shall be that specified below as is applicable:

(A) The maximum daily volume rate of gas containing hydrogen sulfide handled by that system for which the radius of exposure is calculated.

(B) For existing gas wells, the current adjusted open flow rate or the operator's estimate of the well's capacity to flow against zero back-pressure at the well head shall be used.

(C) For new wells drilled in developed areas, the escape rate shall be determined by using the current adjusted open-flow rate of offset wells or the field average current adjusted open-flow rate, whichever is larger.

(D) The escape rate used in determining the radius of exposure shall be corrected to standard conditions of 14.65 psia and 60° Fahrenheit.

(4) For drilling of a well in an area where insufficient data exists to calculate a radius of exposure but where hydrogen sulfide may be expected, then a 100 ppm radius of exposure equal to 3,000 feet shall be assumed. A lesser-assumed radius may be considered upon written request setting out the justification for same.

(c) **Storage tank provision.** Storage tanks which are utilized as a part of a production operation, and which are operated at or near atmospheric pressure and where the vapor accumulation has a hydrogen sulfide concentration in excess of 500 ppm, shall be subject to the following:

(1) It shall not be necessary to determine a radius of exposure for storage tanks as described in this Section.

(2) A warning sign shall be posted at the facility. A wind indicator is to be located at the tank battery site so that it may be seen from the entrance to the site and from the storage tanks.

(3) Fencing as a security measure is required when storage tanks are located inside the populated limits of a townsite or city, where conditions cause the storage tanks to be exposed to the public. In other areas where storage tanks may be considered to be a danger the Commission may require a hearing to establish security measures. (See definitions.)

(4) **Vapor safety.**

(A) A ~~vent,~~ flare, or vapor recovery system or H_2S stripping system shall be installed on all tanks over 500 ppm H_2S.

(B) The ~~vent~~flare pipe shall be required to extend a minimum of 25 ft. horizontally from the center of the last tank.

(5) **Sign requirements.** In satisfying the sign requirement of this subsection, the following will be acceptable:

(A) A sign shall be located within 50 feet of the facility and of sufficient size to be readable from the road or at the entrance to the facility.

(B) The warning sign shall state at a minimum that; hydrogen sulfide has been found and could be present.

(C) ~~New signs~~Signs constructed to satisfy this subsection shall use the language **"Caution, Poisonous Gas May Be Present",** using black and yellow colors or **"Danger Poison Gas (Hydrogen Sulfide)",** using red and white colors or equivalent language. Colors shall satisfy Table 1 of American National Standards Institute Standard 253.1-1967. Signs installed to satisfy this subsection are to be compatible with the regulations of the Federal Occupational Safety and Health Administration.

(d) **Drilling, completion, workover and production operations.** All operators whose operations are subject to this Section, and where the 100 ppm radius of exposure is in excess of 50 feet, shall be subject to the following:

(1) **Warning and marker provision.**

(A) For aboveground and fixed surface facilities, the operator shall post, where permitted by law,

clearly visible warning signs on access roads or public streets, or roads which provide direct access to facilities located within the area of exposure.

(B) In populated areas such as townsites and cities where the use of signs is not considered to be appropriate, an alternative warning plan may be approved upon written request to the Commission.

(C) For buried lines subject to this Section, the operator shall comply with the following:

(i) A marker sign shall be installed at public road crossings on both sides of the road as close to the pipeline as possible.

(ii) Marker signs shall be installed along the line, when it is located within a public area or along a public road, at intervals frequent enough in the judgment of the operator so as to provide warning to avoid the accidental rupturing of line by excavation.

(iii) The marker sign shall contain the name of the operator and a 24-hour phone number (including area code), and shall indicate by the use of the words "Warning", "Caution", or "Danger" and "Poison Gas" that a potential danger exists. Markers installed in compliance with the regulations of the Federal Department of Transportation shall satisfy the requirements of this provision. Marker signs installed prior to the June 12, 1987 shall be acceptable provided they are in good condition and indicate the existence of a potential hazard.

(D) In satisfying the sign requirement of this subsection, the following will be acceptable:

(i) Sign of sufficient size to be readable from the road or at the entrance to the facility.

(ii) New signs constructed to satisfy this subsection shall refer to (c) (5) (iii) of this Section.

(2) **Security provision.**

(A) Unattended fixed surface facilities shall be protected from public access when located within one-forth (1/4) mile of a dwelling, place of business, hospital, school, church, government building, school bus stop, public park, town, city, village, or similarly populated area. This protection shall be provided by fencing and locking, or removal of pressure gauges and plugging of valve openings, or other similar means. For the purpose of this paragraph, surface pipeline shall not be considered as a fixed surface facility.

(B) For well sites, fencing as a security measure is required when a well is located inside populated limits of a townsite or city, where conditions cause the well to be exposed to the public. In other areas considered to be a danger, the Commission may require a hearing to establish security requirements.

(C) The fencing provision will be considered satisfied where the fencing structure is a deterrent to public access.

(e) **Control and equipment safety; contingency plan.**

(1) **Applicability; radius of exposure.** All operations subject to (a) of this Section shall be subject to (2) and (3) of this subsection, if any of the following conditions apply:

(A) The 100 ppm radius of exposure is in excess of 50 feet and includes any part of a "public area" except a public road.

(B) The 500 ppm radius of exposure is in excess of 50 feet and includes any part of a "public road".

(C) The 100 ppm radius of exposure is greater than 3,000 feet.

(2) **Control and equipment safety provision.** Operators subject to this subsection shall either install safety devices and maintain them in an operable condition, or shall establish written safety procedures designed to prevent the undetected continuing escape of hydrogen sulfide. Safety devises should be tested annually and a record kept of such tests.

(3) **Contingency plan provision.** A contingency plan provision shall be developed for each drilling, producing, well servicing, and plant operation that could reasonably result in accidental exposure of the public to a concentration of hydrogen sulfide in excess of 300 ppm. The operator should make appropriate contacts with any public agency listed in the contingency plan. The contingency plan shall provide an organized plan of action for alerting and protecting the public. The details of a contingency plan are determined largely by the time required for a potentially hazardous concentration of hydrogen sulfide to reach a public area and by the population density in the public area. A copy of the contingency plan should be maintained at the location which lends itself best to activation of the plan. A copy shall be submitted to the Conservation Division's District Office.

(A) The plan shall include instructions and procedures for alerting the general public and public safety personnel of the existence of an emergency.

(B) The plan shall include procedures for requesting assistance and for follow-up action to remove the public from an area of exposure.

(C) The plan shall include a call list which shall include the following as they may be applicable:

(i) Local supervisory personnel.

(ii) County Sheriff.

(iii) Department of Public Safety.

(iv) City Police.

(v) Ambulance Service.

(vi) Hospital.

(vii) Fire Department

(viii) Contractors for supplemental equipment.

(ix) District Commission Office.

(x) Local Department of Environmental Quality Office.

(xi) Other public agencies.

(D) The plan shall include a plat detailing the area of exposure. The plat shall include the locations of private dwellings or residential areas, public facilities, such as schools, business locations, public roads, or

other similar areas where the public might reasonably be expected within the area of exposure.

(E) The plan shall include provisions for advance briefing of occupied dwellings within the 300 ppm radius of exposure. The following provisions apply;

(i) The hazards and characteristics of hydrogen sulfide.

(ii) The necessity for an emergency action plan.

(iii) the possible sources of hydrogen sulfide within the area of exposure.

(iv) Instructions for reporting a gas leak.

(v) The manner in which the public will be notified of an emergency.

(vi) Steps to be taken in case of an emergency.

(F) In a high density population area, or the case where the population density may be unpredictable, a reaction type of plan, in lieu of advance briefing for public notification, will be acceptable. The reaction plan option must be approved by the Commission.

(G) The plan shall include names and telephone numbers of residents within the area of exposure, except in cases where the reaction plan option has been approved by the Commission.

(H) The plan shall include a list of the names and telephone numbers of the responsible parties for each of the possibly occupied public areas, such as schools, churches, businesses, or other public areas or facilities within the area of exposure.

(f) **Training and requirement provision.** Each operator shall provide appropriate H_2S training for its employees who will be on-site. This training should include:

(1) Hazards and characteristics of hydrogen sulfide.

(2) Effect on metal components of the system.

(3) Operations of safety equipment and life support systems.

(4) First aid in event of an employee exposure.

(5) Use and operation of H_2S monitoring equipment.

(6) Emergency response procedures to include corrective actions, shut-down procedures, evacuation routes, and rescue methods.

(g) **Injection of fluids.** Injection of fluids containing hydrogen sulfide shall not be allowed under the conditions specified in this Section unless first approved by the Commission.

(h) **Venting and flaring.** Venting and flaring of gas shall be conducted in accordance with OAC 165:10-3-15.

(i) **Other requirements.** In addition to any other requirements of this Section, drilling and workover operations and processing plant sites where the 100 ppm radius of exposure is 50 feet or greater shall be subject to the following:

(1) Protective breathing equipment shall be maintained in good operating condition at two or more locations at the site.

(2) Wind direction indicators shall be installed at strategic locations at or near the site and be readily visible from the site.

(3) Automatic hydrogen sulfide detection and alarm equipment that will warn of the presence of hydrogen sulfide gas in harmful concentrations shall be utilized at the site.

(4) The Commission District Office shall be notified of the intention to conduct a drill stem test of a formation containing hydrogen sulfide in sufficient concentration to meet the requirements of this Section.

(j) **Accident notification.** Operators shall immediately notify the appropriate Commission District Office or field inspector of any accidental release of hydrogen sulfide gas of sufficient volume to present a public hazard and hydrogen sulfide related accident resulting in death or hospitalization of personnel.

(k) **Exception provision.** Any application for exception to the provisions of this Section should specify the provisions to which exception is requested, and set out in detail the basis on which the exception is to be requested.

(l) **Referenced organizations and publications.** The following organizations and publications are referenced in this Section:

(1) ANSI - American National Standards Institute 1430 Broadway, New York, New York 10018; Table I, Standard 253.1-1967.

(2) API - American Petroleum Institute 300 Corrigan Tower Building, Dallas, Texas 75201; Publication API RP-55.

(3) ASTM - American Society for Testing and Materials 1916 Race Street, Philadelphia, Pennsylvania 19103; Standard D-2385-81.

(4) EPA - U.S. Environmental Protection Agency, Office or Air Quality Planning and Standards, Technical Support Division, Research Triangle Park, North Carolina 27711; Screen 2 Model User's Guide.

PART 5. OPERATIONS

165:10-3-25. Completion Reports

(a) **Initial Completion Report.** A Completion Report shall be filed with the Commission on Form 1002A within 30 days after completion of operations regardless of whether or not the well was completed as a dry hole, producer, injection, disposal, or service well. An operator who fails to file a complete and correct Form 1002A Completion Report within the allotted time limit shall be subject to a fine of $250.00.

(b) **Amended Completion Report. An** amended Completion Report shall be filed with the Commission on Form 1002A within 30 days after completion of operations to reenter, re-complete and/or convert to injection or disposal well regardless of whether or not the well was completed as a dry hole, producer, injection, disposal, or service well.

(c) **No allowable without Completion Report.** The Conservation Division shall not assign an allowable to a well without an up-to-date Completion Report on file with the Conservation Division.

(d) A completion report for any well in a multi-well system shall reference the primary well. An amended completion report for the primary well in a multi-well system shall reference all other wells in the system.

165:10-3-27. Deviation from the vertical

(a) **Well location for purposes of well spacing.** For purposes of the well spacing requirements of 165:10-1-21 and 165:10-1-24, the location of a well in a common source of supply is the closest point to the unit boundary where the wellbore intersects ~~point at which the wellbore penetrates the top of~~ the common source of supply.

(b) **Presumed bottom hole location.** For purposes of review of Form 1000 applications, the Conservation Division may presume that the location in a common source of supply of a well without a horizontal drainhole is the same as the surface location for the well unless:

(1) The operator submits a bottom hole survey, if the well has been drilled; or

(2) The operator complies with (c)(1) of this Section.

(c) **Permitted and prohibited locations.**

(1) **Offpattern surface location; permitted subsurface location.**

(A) The Conservation Division may approve a Form 1000 for a well to be commenced without a location exception at an offpattern surface location for a common source of supply when:

(i) The Form 1000 lists a subsurface location which is a permitted location for the common source of supply.

(ii) Issuance of a Permit to Drill is conditioned on the operator running a bottom hole survey within 30 days after reaching total depth and on the operator submitting the survey to the Conservation Division within 45 days after the well reaches total depth.

(B) The well shall not receive an allowable for the common source of supply until a bottom hole survey shows that the well is at a permitted location or until the operator obtains a location exception order for the subsurface location.

(2) **Offpattern subsurface location.**

(A) The Conservation Division shall not approve a Form 1000 without a location exception order for an offpattern subsurface location.

(B) Issuance of a Permit to Drill under (1) of this subsection does not permit an operator to have, without a location exception order, an offpattern subsurface location for a common source of supply.

(d) **Required directional and bottom hole surveys.** For good cause, the Commission may order an operator to run directional and/or bottom-hole surveys for a common source of supply in a well:

(1) Upon application, notice, and hearing; or

(2) In any case involving the location of a well, upon motion of an affected party or upon the Commission's own motion.

PART 7. PRODUCTION

165:10-3-36. Multiple zone completions

(a) Each application for the approval of the multiple completion of a well shall be filed on Form 1023 and shall be verified.

(b) A copy of the application shall be mailed or delivered to each operator of a producing leasehold within one-half (1/2) mile of the well location. The applicant shall file an affidavit of delivery or mailing not later than five (5) days after the application is filed.

(c) If a written objection to the application is filed within fifteen (15) days after the application is filed, or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given as the Commission shall direct. If no objection is filed and the Commission does not require a hearing, the matter shall be presented administratively to the Director of Conservation or his designee ~~who shall file his report and make his recommendations~~. If the Conservation Division denies an application, the applicant may request a hearing on said application in accordance with OAC 165:5-7-22.

165:10-3-37. Control of multiply completed wells

(a) Every multiply completed well shall be equipped, operated, produced, and maintained so that there will be no commingling of the production from separate common sources of supply in the well, except as hereinafter provided. The production from each common source of supply shall be separately accounted for or separately stored and measured on the lease. The production shall be measured by either:

(1) A positive displacement dump-type device;

(2) A continuous-flow measuring device; or

(3) A measuring device of any other type authorized by the Commission.

(b) Each application for the approval of production through a multiple choke assembly in a well shall be filed on Form 1023 and shall be verified. The multiple choke assembly must be so designed and located in the wellbore as to prevent commingling within the common sources of supply, but to permit commingling in the tubing string through individual choke orifices. The commingled production shall be measured at the surface and allocated to each common source of supply.

(c) A copy of the application shall be mailed or delivered to each operator of a producing leasehold within one-half (1/2) mile of the well location. The applicant shall file an affidavit of delivery or mailing not later than five days after the application is filed.

(d) If a written objection to the application is filed within 15 days after the application is filed, or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given as the Commission shall direct. If no objection is filed and the Commission does not require a hearing, the matter shall be presented administratively to the Director of Conservation or his designee ~~who shall file his report and make his recommendations~~.

165:10-3-39. Commingling of production

(a) **Commingling ~~order~~ permit required.**

(1) Commingling of production from a well from separate common sources of supply is prohibited without a ~~commingling order~~ permit. A ~~commingling order~~ permit shall be required when production is from more than one source of supply, without segregation of the production in the wellbore, or is produced separately in the wellbore and then combined together downstream of the wellhead prior to measurement. Commingling downstream of the wellhead shall require Form 1024 (Packer Setting Affidavit) and Form 1025 (Packer Leakage Test) to be filed and approved. The Commission shall assess a fine of $500.00 for non-permitted commingling either down hole or downstream prior to measurement.

(2) If a written objection to the application for a commingling permit is filed within 15 days after the application is filed, or if hearing is required by the Commission, the application shall be set for hearing, and notice thereof shall be given as the Commission shall direct. If no objection is filed and the Commission does not require a hearing, the matter shall be presented administratively to the Director of Conservation or his designee. If the Conservation Division denies an application, the applicant may request a hearing on said application in accordance with OAC 165:5-7-24.

(b) **Restrictions.**

(1) Commingling shall only be authorized when it would prevent waste and protect correlative rights.

(2) Commingling shall be prohibited where one producing zone is predominately gas and a second zone is predominately oil, unless the operator can verify in writing, submitted with the application, that no cross flow will occur resulting in reservoir damage.

(c) **Application requirements.** Each application for a commingling ~~order~~ **permit** shall comply with OAC 165:5-7-24.

(d) **Commingled allowables.**

(1) **Single allowable for commingled production.** Common sources of supply commingled under this Section receive a single allowable as if they constituted a single common source of supply in the wellbore.

(2) **Gross daily allowable for commingled production.** The gross daily allowable shall be based on the classification of the well as an oil or gas well for allowable purposes under OAC 165:10-13-2.

(A) **Unallocated oil well (GOR < 15,000:1).** The gross daily allowable shall be based on what would be the allowable if commingled production comes from the deepest commingled common source of supply.

(B) **Unallocated gas well (GOR > 15,000:1).** The gross daily allowable shall be a single unallocated gas allowable, as determined by OAC 165:10-17-11(c). Upon request in a commingling application or in any other appropriate application and upon proper notice thereof, the Commission may designate in ~~the~~ a commingling ~~order~~ permit or other appropriate order the specific gas formation, completed and producing in the applicable well, to which the allowable for such well is to be attributed when the Commission determines that such designation is necessary to prevent waste and to protect correlative rights.

(C) **Special allocated gas pool.** The gross daily allowable shall be based on what would be the allowable if the commingled production came from the special allocated gas pool in the well.

(3) **Operator option if multiple pool rules exist.** If more than one common source of supply under a commingling permit or appropriate order for a gas well is subject to gas pool rules, the order shall designate which set of pool rules is applicable for allowable purposes.

(4) **Net daily allowable.** The net daily allowable is the gross daily allowable under (3) of this subsection:

(A) Reduced accordingly by any penalty against any of the commingled common sources of supply under the permit or appropriate order.

(B) Reduced accordingly by any overage carried forward against a commingled common source of supply.

(C) Increased by any underage carried forward for the well under applicable allocated or special allocated pool rules.

SUBCHAPTER 7. POLLUTION ABATEMENT

PART 3. STORAGE AND DISPOSAL OF FLUIDS

165:10-7-16. Use of noncommercial pits

(a) **Scope.** This Section shall cover the permitting, construction, operation, and closure requirements for any noncommercial pit. A noncommercial pit is an earthen pit which is located either on-site or off-site and is used for the handling, storage, or disposal of drilling fluids and/or other deleterious substances produced, obtained, or used in connection with the drilling and/or operation of a well or wells, and is operated by the generator of the waste. This does not cover disposal well pits. (See 165:10-7-20 and 165:10-9-3.)

(b) **Liner requirements.**

(1) **Reserve/circulation and/or completion/fracture/workover pits.**

(A) To assist in determining the construction requirements for a particular proposed reserve/circulation pit, either on-site or an off-site, the operator of the pit shall indicate on Form 1000 the type of mud system(s) to be used, the maximum and average anticipated chloride concentration of the mud (based on drilling records in the area), whether or not pit fluids will be segregated, and shall furnish other information required by this Section or requested by the Commission's Technical Department.

(B) The Commission's Technical Department shall evaluate the site based upon Oklahoma Geological Survey maps and other pertinent information and shall assign one of the following categories to any proposed reserve/circulation pit, designating same

on Form 1000 and indicating whether or not a liner is required:

(i) **Category 1A - Geomembrane liner.**

(I) **Water based drilling fluid containment and/or water-based completion/fracture/workover fluid containment located over a alluvial deposit or in a near surface static water level environment.** Any pit used to contain water-based drilling fluids, cuttings and/or completion/ fracture/ workover fluids located in alluvial deposit area or an area where the static water table is within 10 feet of the surface shall utilize a geomembrane liner for all drilling fluids and cuttings and/or completion/ fracture/ workover fluids.

(II) **Water-based drilling fluid containment and/or water-based completion/fracture/workover fluid containment located within a wellhead protection area.** Any pit used to contain water-based drilling fluids, cuttings and/or completion/fracture/workover fluids located within a wellhead protection area (WPA) as identified by the Wellhead Protection Program (42 U.S.C. Section 300h-7, Safe Drinking Water Act), or within one mile of an active municipal water well for which the WPA has not been delineated, shall be required to have a geomembrane liner.

(ii) **Category 1B - Soil liner or geomembrane liner.**

(I) **Water-based drilling fluid containment and/or water-based completion/fracture/workover fluid containment located over a terrace deposit.** Any pit used to contain water-based drilling fluids, cuttings and/or completion/ fracture/ workover fluids located over a terrace deposit shall be required to have either a soil liner or a geomembrane liner.

(II) **Water-based drilling fluid containment and/or water-based completion/fracture/workover fluid containment located over a bedrock aquifer or Hydrologically Sensitive Area(HSA).** Any pit used to contain water-based drilling fluids, cuttings and/or completion/ fracture/workover fluids located over any bedrock aquifer or HSA and is used to contain water-based drilling fluids and/or cuttings and/or completion/fracture/workover fluids with chlorides in excess 5,000 mg/l shall be required to have a soil liner or a geomembrane liner. A separate unlined pit may be used to contain fluids and/or cuttings with a chloride content of less than of 5,000 mg/l.

(iii) **Category 2 - Water-based/other situations.** Any pit which is used to contain water-based drilling fluids, cuttings and/or completion/fracture/ workover fluids with a set of conditions different from Categories 1A and 1B shall not be required to be lined.

(iv) **Category 3 - Oil-based.** Any pit used to contain oil-based drilling fluids, cuttings and/or completion/fracture/workover fluids shall be required to have a geomembrane liner.

(v) **Category 4 - Air-based.** Any pit used to contain the cuttings from an air-based system shall not be required to be lined. The discharge of produced water into a category 4 pit is prohibited.

(2) **Other type pits.**

(A) Any basic sediment pit shall be required to have a geomembrane liner.

(B) Any emergency pit shall not be required to be lined.

(C) Any flare pit shall not be required to be lined.

(D) Any recycling/reuse pit, spill containment pit, or remediation pit shall conform to the same criteria for determining liner requirements for reserve/circulation and/or completion/fracture/workover pits, pursuant to (b)(1) of this Section.

(3) **Converted pits.** Any pit that is to be converted from one use to another, e.g., reserve pit to completion or fracture pit, shall have the more stringent liner requirements, pursuant to (c)(6) and (c)(7) of this Section.

(4) **Offsite pits.** Any offsite pit shall conform to the liner requirements in this Section and will require a permit. The operator of the proposed pit shall submit Form 1014 in duplicate to the appropriate District Office for review and approval. No offsite reserve pit may be permitted or constructed at a spacing closer than one pit per governmental quarter quarter section and a distance less than 600 feet from any other pit. Any offsite reserve pit may be reclassified or considered as a commercial pit, pursuant to 165:10-9-1, if it is constructed or used at a spacing closer than one reserve pit per governmental quarter quarter section. Closure of any offsite reserve pit shall not warrant the permitting of another offsite reserve pit within the same governmental quarter quarter section. For use of a pit without a permit, the pit operator may be fined up to $1,000.00.

(5) **Variances.** Any variance from the liner requirements of this Section may be granted by the Manager of the Technical Department after receipt of a written request and supporting documentation required by the Department.

(c) **Construction requirements.**

(1) **Field or area rules.** Any noncommercial pit which is to be constructed or used in an area covered by a field or area rule shall be subject to the more stringent requirements of either this Section or the field or area rule.

(2) **Stockpiling of topsoil.** Prior to constructing any noncommercial pit, except an emergency pit, all top soil within the top twelve inches shall be stripped and stockpiled for use as the final cover of fill at the time of closure. The top soil may be stockpiled in the berms, provided it is not mixed with other materials and can be readily distinguishable from other materials at the time of closure.

(3) **Exclusion of runoff water.** Any noncommercial pit shall be constructed and maintained so that runoff water from outside the location is not allowed to enter it.

(4) **Flood protection.** Any noncommercial pit which is constructed in any area subject to frequent flooding according to the Soil Conservation Service County Soil Survey shall have berms substantial enough to prevent overtopping or washing out.

(5) **Constructing on fill.** Any noncommercial pit which requires a liner and is constructed on fill shall be constructed so that the maximum level of the solid contents will be maintained at least three feet below the natural ground level.

(6) **Soil liners.**

(A) Soil materials used or to be used in a soil liner shall undergo permeability testing either before or after construction, unless exempt pursuant to (B) of this paragraph.

(i) Pre-construction permeability testing shall consist of laboratory permeability tests on at least two specimens of representative soil liner materials compacted in the laboratory to approximately 90 percent of the material's Standard Proctor Density (ASTM D-698).

(ii) Post-construction permeability testing shall consist of at least two laboratory permeability tests on undisturbed samples of the completed soil liner or one field permeability test on the completed soil liner. Particular emphasis shall be placed on selecting the location(s) for permeability tests or test samples where nonuniformity in soil texture or color can be observed.

(iii) Laboratory permeability test procedures must conform to one of the methods described for fine-grained soils in the Corps of Engineers Manual EM-1110-2-1906 Appendix VII. In no case shall the pressure differential across the specimen exceed five feet of water per inch of specimen length. Field permeability tests shall be conducted only by the double ring infiltrometer method as described in ASTM D-3385. Permeability tests may be discontinued prior to flow stabilization upon satisfactory evidence that the permeability rate is less than 1.0×10^{-6} cm/sec.

(iv) If permeability testing shows that addition of bentonite or other approved material is needed to assist the native soils in meeting the permeability standard, it shall be applied at a minimum rate specified by the testing or engineering firm. Any bentonite used for liner material shall not have been previously used in drilling muds.

(B) Permeability testing requirements for soil materials may be exempt if laboratory testing of a minimum of two representative samples of the soil materials found throughout the entire depth of the proposed excavation indicates that the plasticity index is greater than 16 (ASTM D-4318) and that the amount passing the No. 200 U.S. standards sieve is greater than 60 percent (ASTM D-1140).

(C) Any soil liner shall be constructed by disturbing the soil to the depth of the bottom of the liner, applying fresh water as necessary to the soil materials to achieve a moisture content wet of optimum, then recompacting it with heavy construction equipment, such as a footed roller, until the required density is achieved, pursuant to (H) of this paragraph.

(D) Any soil liner shall cover the bottom and interior sides of the pit entirely.

(E) Any soil liner shall be installed on a slope no steeper than 3:1 (horizontal to vertical).

(F) Any soil liner shall have a minimum thickness of six inches (after compaction), and shall have a maximum coefficient of permeability of 1.0×10^{-6} cm/sec, unless it conforms to (G) of this paragraph.

(G) A soil liner may have a coefficient of permeability greater than 1.0×10^{-6} cm/sec if it is greater in thickness and constructed in accordance with the following:

(i) A minimum twelve inch compacted soil liner shall have a maximum coefficient of permeability of 2.0×10^{-6} cm/sec.

(ii) A minimum 18 inch compacted soil liner shall have a maximum coefficient of permeability of 3.0×10^{-6} cm/sec.

(iii) A compacted soil liner may not be constructed thicker than 18 inches for the purpose of meeting a coefficient of permeability greater than 3.0×10^{-6} cm/sec.

(iv) Any soil liner with a minimum twelve inch or 18 inch thickness shall be constructed in maximum lifts of six inches (after compaction). Each lift shall be scarified before placement of the next lift and shall conform to (H) of this paragraph.

(H) Any soil liner shall be field tested for compaction, unless a post-construction permeability test is performed, pursuant to (A)(ii) of this paragraph.

(i) A minimum of six compaction tests shall be performed on any soil liner; a minimum of four widely spaced tests in the bottom of the pit and two tests on different slopes of the pit are required, unless otherwise directed by a Field Operations representative. Particular emphasis shall be placed on selecting locations for compaction tests where nonuniformity in soil texture or color can be observed.

(ii) Compaction tests shall be conducted in accordance with ASTM methods D-2922 or D-1556.

(iii) The soil materials of any liner shall be compacted to at least 90 percent of the Standard Proctor Density (ASTM D-698).

(7) **Geomembrane liners.**

(A) Any geomembrane liner that is installed in a reserve/circulation pit, spill prevention pit, or remediation pit, completion/fracture/ workover pit, basic

sediment pit, or recycling/reuse pit shall have a minimum thickness of 20-mil.

(B) Any geomembrane liner used in a noncommercial pit shall be chemically compatible with the type of substances to be contained and shall have ultraviolet light protection.

(C) Any geomembrane liner shall be placed over a specially prepared, smooth, compacted surface void of sharp changes in elevation, rocks, clods, organic debris, or other objects.

(D) Any geomembrane liner shall be continuous, although it may include seams, and shall cover the bottom and interior sides of the pit entirely. The edges shall be securely placed in a minimum twelve inch deep anchor trench around the perimeter of the pit.

(8) **Certification of liner.** The operator of any noncommercial pit that is constructed with a soil or geomembrane liner shall secure an affidavit signed by the installer, certifying that the liner meets minimum requirements and was installed in accordance with Commission rules. It shall be the operator's responsibility to maintain the affidavit and all supporting documentation pertaining to the liner (e.g., permeability and compaction test results, bentonite receipts, and geomembrane liner specifications from the manufacturer), and shall make them available at all times for review by any representative of the Conservation Division.

(d) **Operation and maintenance requirements.**

(1) **Freeboard.** The fluid level of any noncommercial pit shall be maintained at all times at least 24 inches below the lowest elevation on the top of the berm.

(2) **Reserve/circulation pits.** The operator of any reserve/ circulation pit shall limit its contents to the fluids and cuttings from a single well unless authorized by the District Manager.

(3) **Off-site reserve pits.** A waterproof sign shall be posted within 25 feet of any off-site reserve pit and shall bear the name of the operator, legal description to the quarter quarter quarter section, permit number, and emergency telephone number.

(4) **Recycling/reuse pits.**

(A) Any pit permitted for drilling mud recycling or reuse may contain the fluids and cuttings from multiple wells, provided that those wells are operated by the pit operator.

(B) A waterproof sign shall be posted within 25 feet of any recycling/reuse pit and shall bear the name of the operator, legal description to the quarter quarter quarter section, permit number, and emergency telephone number.

(5) **Prevention of pollution.**

(A) All noncommercial pits shall be constructed, used, operated, and maintained at all times so as to prevent pollution. In the event of a nonpermitted discharge from a noncommercial pit, sufficient measures shall be taken by the operator to stop or control the loss of contents, and reporting procedures pursuant to 165:10-7-5(c) shall be followed. Any materials lost from a pit shall be cleaned up as directed by any Field Operations representative. For a willful non-permitted discharge from a noncommercial pit, the operator may be fined up to $2,000.00.

(B) The protection of migratory birds shall be the responsibility of the operator. Therefore, the Conservation Division recommends that to prevent the loss of birds, oil be removed or the surface area covered by the oil be protected from access to birds. [See Advisory Notice 165:10-7-3(c)].

(e) **Closure requirements.**

(1) **Designation of disposal method.** The operator of any reserve/ circulation pit shall indicate the proposed method of disposal of drilling fluids and/or cuttings on Form 1000 as required by 165:10-3-1(f). Options shall be limited to the following, unless written approval is granted by a Field Operations representative:

(A) Evaporation/dewatering and backfilling.

(B) Chemical solidification of pit contents.

(C) Annular injection (requires permit).

(D) Land application (requires permit).

(E) Disposal in permitted commercial pit.

(F) Disposal at permitted commercial soil farming facility.

(G) Disposal at permitted recycling/reuse facility.

(2) **Trenching.**

(A) Before trenching, stirring or otherwise disturbing the bottom of any noncommercial pit, the pit shall be completely dewatered.

(B) Trenching, stirring, or other similar practice shall be prohibited for any lined pit.

(3) **Lined pits.**

(A) When closing any noncommercial pit with a soil or geomembrane liner, extreme care shall be taken to preserve the integrity of the liner.

(B) For any lined reserve/circulation pit, completion/fracture/workover pit, recycling/reuse pit, or basic sediment pit, all free liquids shall be removed or chemically solidified with nonhazardous material.

(C) For any lined oil-based reserve/circulation pit, all cuttings remaining in the pit shall be chemically solidified with nonhazardous material.

(D) Soil cover, pursuant to (5) of this subsection, shall follow.

(4) **Soil cover.** Closure procedures for any noncommercial pit shall include a minimum of three feet of soil cover over any remaining pit contents, with all stockpiled topsoil being applied last. The materials shall be mounded or sloped to encourage runoff. A variance from this provision may be granted by a Field Operations District Office for justifiable cause. A written request and supporting documentation is required. The Field Operations office shall respond in writing within five working days either approving or disapproving the request.

(5) **Erosion control.** Any noncommercial pit shall be closed in such a manner that any future erosion will not

cause the discharge of the pit contents. This may require vegetative cover and/or a diversion terrace(s).

(6) **Notification to District Office.** The operator of any noncommercial pit shall notify the appropriate Field Inspector or District Office at least 48 hours prior to commencing closure, and for reserve/circulation pits shall advise if the disposal method is different from that indicated on Form 1000. The operator shall also notify the Field Inspector or District Office within 48 hours after reclamation of the site has been completed.

(7) **Time limits.** Any noncommercial pit shall be closed within the time limits set forth in this paragraph. Any extension of time for pit closure must be requested by the operator, who shall file an application pursuant to OAC 165:5-7-33. A legal change of operator of any noncommercial pit shall not extend the time limit for closure. If a noncommercial pit is converted from one type of use to another, the last use shall determine the time limit for closure.

(A) Any Category 1A, 1B or ~~3~~ 2 reserve/circulation pit, either on-site or off-site, shall be closed within twelve months after drilling operations cease.

(B) Any Category 3 reserve/circulation pit, either on-site or off-site shall be closed within six months after drilling operations cease.

(C) Any Category 4 pit shall have closure procedures commenced within 30 days and completed within 90 days after drilling operations cease.

(D) **Completion/fracture/workover pits.**

(i) Any reserve/circulation pit converted to a completion/fracture/ workover pit shall be closed within six (6) months after drilling operations cease. Upon request by the operator, a six (6) month extension shall be granted by the Conservation Division, after review by a field inspector to confirm the pit is in compliance with 165:10-7-16 (c) and (d) requirements.

(ii) Any completion/fracture/workover pit not converted from a reserve/circulation pit shall be closed within 60 days after completion, fracture, or workover operations cease.

(E) Any emergency pit shall be emptied of its contents as soon as possible and closed within 60 days after the emergency situation ceases to exist.

(F) Any flare pit shall be closed within 30 days of abandonment of a lease.

(G) Any spill containment pit shall be closed within 30 days of abandonment of a lease.

(H) Any basic sediment pit shall be closed within 60 days after use of the pit ceases.

(I) Any recycling/reuse pit shall be closed within twelve months after operations cease.

(J) Any remediation pit shall be closed immediately after receipt of all contaminated materials.

(8) For failure to comply with any closure requirement, the operator may be fined up to $1,000.00.

(9) **Waiver of closure requirements.** Exemption from closure and transfer of responsibility for any noncommercial pit to the surface owner or other party shall be requested by filing an application pursuant to OAC 165:5-7-34. No approval shall be granted unless the analyses of the fluids show that the following ranges or concentrations are not exceeded:

(A) pH - 6.0-9.5 s.u.

(B) Chlorides - 3500 mg/l

(C) Total Dissolved Solids (TDS) or Total Soluble Salts (TSS)- 7000 mg/l

(D) Chromium (Total) - 10 mg/l

(E) Arsenic - 20 mg/l

165:10-7-17. Surface discharge of fluids

(a) **Scope.** This Section shall cover the surface discharge of hydrostatic test water, storm water from diked areas, and produced water from tanks or other containment vessels.

(b) **Discharge of hydrostatic test water.**

(1) Hydrostatic test water used in the testing of new pipeline segments, new casing, new tubing, new tanks and new vessels, may be discharged as necessary without a permit, notification to the Commission, or adherence to any other provisions of this Section, provided the following conditions are met:

(A) **Low chlorides.** Chloride concentration does not exceed 1000 mg/l.

(B) **Sheen.** There shall be no visible sheen or discoloration as a result of testing; however, certain dyes used to establish mechanical integrity may be approved.

(C) **Notice to District Office.** Any discharges exceeding 1,000 barrels shall require notification to the appropriate District Office.

(2) Hydrostatic test water used in the testing of existing tanks, vessel lines and transmission pipelines may be discharged upon notification to the Oklahoma Corporation Commission appropriate District Office on Form 1014HD provided that the following conditions are met:

(A) **Oil and grease.** The oil and grease content of the discharge water shall not exceed 15 mg/l.

(B) **Sheen.** There shall be no visible sheen or discoloration as a result of testing; however, certain dyes used to establish mechanical integrity may be approved.

(C) **Total Suspended Solids.** The Total Suspended Solids shall not exceed 45 mg/l.

(D) **pH.** The pH shall not be less than 6.5 nor exceed 9 s.u.

(E) **Foreign material.** The discharge must be free from foreign material such as welding scrap tank sediments or sand blasting waste material.

(F) **Soil erosion.** Standard soil erosion prevention procedures shall be required.

(3) Hydrostatic test water that meets the requirements listed in (b) (2) of this Section may be discharged in volumes less than 15 bbls without filing Form 1014HD.

(4) Hydrostatic test water that will be discharged to land and not directly into waters of the state and which may exceed the discharge parameters specified in (b) (2), shall be discharged only upon submission and approval by the Pollution Abatement Department of a plan for one-time discharge.

(5) Hydrostatic test water not covered under (b)(1) from transmission lines and tanks that contain waste products that are listed as hazardous waste under the Resource Conservation and Recovery Act and have not been cleaned or pigged must meet the following discharge requirements in addition to (b)(2) of this Section:

(A) The following parameters may not be exceeded: Benzene, .028 MG/L; toluene, .3 MG/L; phenol, .250 MG/L.

(B) EPA analytical method 8020 shall be used unless approved by the Manager of Pollution Abatement.

(c) **Discharge of storm water.** Storm water accumulations in any diked area built for the containment of tank battery spills may be discharged as necessary without a permit, notification to the Commission, or adherence to any other provisions of this Section, provided the following conditions are met:

(1) **No hydrocarbons.** A visual inspection of the storm water is made and there is no sheen or other visible evidence of hydrocarbons being present.

(2) **Low chlorides.** Chloride concentration does not exceed 1000 mg/l.

(3) **Conditions recorded.** The operator records the conditions required by (1) and (2) in this subsection for each discharge, maintains those records for a period of three (3) years, and makes them available upon request to any representative of the Field Operations Department.

(d) **Discharge of produced water.**

(1) **Site restrictions.** Discharge of produced water shall only occur on land having an Exchangeable Sodium Percentage (ESP) no greater than 15, pursuant to (f)(3) of this Section, and all of the following characteristics as determined by the appropriate Soil Conservation District or by a qualified soils expert:

(A) A maximum slope of five percent.

(B) Depth to bedrock at least 20 inches.

(C) Slight salinity (defined as electrical conductivity less than 4,000 micromhos/cm) in the topsoil or upper six inches of the soil.

(D) A water table deeper than six feet from the soil surface, except a perched water table.

(E) A minimum distance of 100 feet from any stream designated by Oklahoma Water Quality Standards (available for viewing at the Commission's Oklahoma City Office and District Offices) or any fresh water pond, lake, or wetland (designated by the National Wetlands Inventory Map Series, prepared by the U.S. Fish and Wildlife Service and available for viewing at the Commission's Oklahoma City Office).

(2) **Water quality limitations.** A surface discharge permit shall not be issued if the produced water to be discharged exceeds either of the following concentrations:

(A) Total Dissolved Solids (TDS) or Total Soluble Salts (TSS) - 5000 mg/l.

(B) Oil and Grease - 1000 mg/l.

(e) **Sampling requirements.**

(1) **Contact with District Office.** The appropriate District Office shall be contacted at least two working days prior to sampling to allow a Commission representative an opportunity to witness the sampling of the receiving soil and produced water to be discharged. A variance from this provision may be granted by a Field Operations office for justifiable cause. A written request and supporting documentation shall be required. The Field Operations office shall respond in writing within five working days after receipt, either approving or disapproving the request.

(2) **Produced water.** Produced water to be discharged shall be sampled using the following procedure, unless exempt pursuant to (f)(4) of this Section.

(A) Prior to sampling, fresh water shall not be added to any tank or other containment vessel for dilution or any other purpose.

(B) A sample of the produced water to be discharged shall be taken from the bottom of the tank or other containment vessel. A minimum two quart sample shall be placed into a foil or teflon covered, glass container. The container shall be filled completely to exclude air and delivered to the laboratory within seven days. No samples shall be altered in any way.

(C) Another sample of the produced water to be discharged (approximately one pint) shall be properly labeled and delivered or otherwise provided to a Field Operations office or Field Inspector, unless exempt by the District Manager.

(3) **Receiving soil.** Soil samples shall be taken from the proposed discharge area and analyzed, unless exempt pursuant to (f)(4) of this Section. A minimum of 20 representative surface core samples (0-6 inches) must be taken from each sample area, combined and thoroughly mixed, then a minimum one pint composite sample taken and placed in a clean container for delivery to the lab. No sample area shall exceed 40 acres.

(f) **Analysis requirements.**

(1) **Certified laboratory.** The samples of soil and produced water shall be analyzed by a laboratory operated by the State of Oklahoma or certified by the Department of Environmental Quality or in the North American Proficiency Testing System, unless exempt pursuant to (4) of this subsection.

(2) **Parameters for produced water.** Parameters for analysis of the produced water shall include, but not be limited to, Total Dissolved Solids (TDS) or Total Soluble Salts (TSS) and Oil and Grease.

(3) **Parameters for soil.** Parameters for analysis of the receiving soil shall include, but not be limited to, Electrical Conductivity or Total Soluble Salts (TSS) and Exchangeable Sodium Percentage (ESP).

(4) **Exemptions.** A Field Operations office may exempt the analysis of produced water if an analysis of the

produced water from a well located within one mile and producing from the same formation has been previously submitted. Analysis of the receiving soil may be exempt if an analysis of the same soil type(s) within one mile of the proposed discharge site has been previously submitted.

(g) **Application for permit.**

(1) **Permit required.** No person shall discharge produced water from a tank or other containment vessel without applying for and obtaining a permit issued under this subsection. An operator discharging produced water without a permit shall be fined $1,000.00.

(2) **Who may apply.** Only the operator of the well associated with the tank or other containment vessel, the contents of which are sought to be discharged, may apply for a surface discharge permit.

(3) **Required form and attachments.** Each application for surface discharge of produced water shall be submitted to a Field Operations office on Form 1014D in quadruplicate. The forms shall be properly completed and signed. Attached to at least one of the forms shall be the following:

(A) A copy of written notice to the surface owner that the applicant intends to discharge produced water as per 165:10-7-17 to a specific portion of real property as designated by legal description.

(B) If the operator has an agent, a contractual agreement between the parties or an affidavit designating the contractor or agent.

(C) A well prepared map or diagram, drawn to scale, showing the proposed and potential discharge areas.

(D) Site suitability report, pursuant to (d)(1) of this Section, provided by a qualified soils expert (include qualifications).

(E) Analysis of produced water, unless exempt pursuant to (f)(4) of this Section.

(F) Soil analysis, unless exempt pursuant to (f)(4) of this Section.

(G) Other information as required by this Section or requested by a Field Operations office.

(4) **Review period.** The Field Operations office shall review the application, either approve or disapprove it, and return a copy of Form 1014D within five working days of submission of all required or requested information. If approved, a permit number shall be assigned to Form 1014D; if disapproved, the reason(s) shall be given. The applicant may make application for a hearing if it is not approved.

(h) **Maximum application rate.**

(1) **Soil loading standards.** The maximum application rate shall be calculated by the Field Operations office using the following soil loading standards. (Soil loading standards are based upon standards set forth in "Diagnosis and Improvement of Saline and Alkaline Soils," U.S. Agriculture Handbook 60. Pub. U.S. Salinity Laboratory, Riverdale, California, 1954. "Critical Concentrations for Irrigation Water Supplies," Water Quality Criteria, 1972 Ecological Research Series, EPA R2-73033, March, 1973).

(A) Total Soluble Salts - 6,000 lbs/acre (less TSS in soil).

(B) Oil and Grease - 500 lbs/acre.

(2) **Determination of most limiting parameter.** The maximum application rate shall be restricted by the most limiting parameter. It may require more than one application to achieve the maximum application rate while avoiding runoff. The Field Operations office shall indicate on the permit what the maximum application rate shall be after making the following calculations:

PROCEDURE FOR CALCULATING APPLICATION RATE OF TOTAL SOLUBLE SALTS (TSS)

_____ppm TSS in soil[1] × 2 = _____lbs/ac TSS in soil

6000 lbs/ac TSS – _____lbs/ac TSS in soil = Maximum TSS (lbs/ac) to applied

Maximum TSS (lbs/ac_____÷(_____ppm TSS in water[1]×.000001) = Maximum lbs/ac of water to be applied_____

Maximum lbs/ac_____÷_____lbs/bbl[2] = Maximum bbls/ac_____

PROCEDURE FOR CALCULATING APPLICATION RATE OF OIL AND GREASE

500 lbs/ac÷(_____ppm in water×.000001) = Maximum lbs/ac of water to be applied_____

Maximum lbs/ac_____÷_____lbs/bbl[2] = Maximum bbls/ac_____.

[1] Electrical Conductivity (EC expressed in micromhos/cm) may be used to estimate TSS: EC × 0.64 – ppm TSS.
[2] Based on documented weight of composite sample.

(i) **Conditions of permit.** Any discharge of produced water that is done under this Section shall be subject to the following conditions or stipulations of the permit.

(1) **Presence of representative.** A representative of the operator shall be on the discharge site at all times that water is being applied. A variance from this provision may be granted by a Field Operations office for justifiable cause. A written request and supporting documentation shall be required. The Field Operations office shall respond in writing within five working days after receipt, either approving or disapproving the request.

(2) **Weather restrictions.** Surface discharge shall not be done:

(A) During precipitation events or when precipitation is imminent.

(B) When the soil moisture content is at a level such that the soil would not readily take the addition of water.

(C) When the ground is frozen.

(D) By spray irrigation when the wind velocity is such that even distribution of water cannot be accomplished or the buffer zones, pursuant to (3) of this subsection, cannot be maintained.

(3) **Buffer zones.** Surface discharge shall not be done within the following buffer zones:

(A) Fifty feet of a property line boundary.

(B) Fifty feet of any stream not designated by Oklahoma Water Quality Standards.

(C) Three hundred feet of any actively-producing water well used for domestic or irrigation purposes.

(D) Eight hundred feet of any actively-producing water well used for municipal purposes.

(4) **Application rate.** The maximum application rate of produced water stipulated by the permit shall not be exceeded. Application of produced water outside the approved plot shall be prohibited. Accurate records shall be kept as to the quantities discharged and the dates of each discharge.

(5) **Discharge method.** Discharge of produced water shall be uniform over the approved discharge plot and shall be made by spray irrigation or other method approved by the Commission prior to use. The flood irrigation method shall be limited to those fields that normally are irrigated in that manner.

(6) **Runoff or ponding prohibited.** No runoff or ponding of discharged water shall be allowed during application.

(7) **Annual report.** An annual report shall be submitted by April 1 of each year and shall be made on Form 1014P. Attached to the annual report shall be current (within three months) analyses of the produced water and soil from the discharge plot, pursuant to (8) of this subsection.

(8) **Additional testing.** The produced water shall be analyzed annually and the receiving soils shall be sampled and analyzed a minimum of every five (5) years, pursuant to (e)(1) through (e)(3) and (f)(1) through (f)(3) of this Section. When 75 percent of the maximum permitted application volume of TSS or Oil and Grease [(h) of this Section] has been applied or when the ESP exceeds 11, water and soil sampling shall be done quarterly or semiannually as determined by the Field Operations office.

(9) **Expiration of permit.** The permit shall expire by its own terms when testing, pursuant to (8) of this subsection, indicates that the concentration of TSS or Oil and Grease in the water exceeds the limitations of (d)(2) of this Section, or more than 98 percent of the maximum application rate of TSS or Oil and Grease [(h) of this Section] has been applied or the ESP exceeds 15.

(10) **Violations.** If the applicant violates the conditions of the permit or this Section, the surface discharge shall be discontinued and the Field Operations office shall be contacted immediately. The Field Operations office may revoke the permit and/or require the operator to do remedial work. If the permit is not revoked, surface discharge may resume with Field Operations' approval. If the permit is revoked, the operator may make application for a hearing to reinstate it.

(j) **Discharge from reserve pits.** Water accumulation in any reserve pit used for the containment of air drilling cuttings or water-based drilling fluids may be discharged to land provided a permit is obtained from the Commission. Any operator discharging without a permit may be fined $5,000.00.

(1) **Who may apply.** Only the operator of the well or the operator's designated agent may apply for the permit.

(2) **Required form and attachments.** Application for discharge of water to land shall be submitted to the Field Operations Office on Form 1014X. Attached to the application shall be the following:

(A) **Written permission of the surface owner.** For purposes of obtaining this permission, the applicant shall use Form 1014L.

(B) A topographic map(s) with the location of the discharge area.

(C) Analysis of the water.

(D) Copies of all chain of custody forms.

(E) If there is an agent, a notarized affidavit designating the agent, signed by the operator.

(3) **Conditions of permit.**

(A) **Notice to field inspector.** The applicant shall notify the appropriate district office at least 24 hours prior to discharge to allow a Commission representative an opportunity to be present.

(B) **Presence of representative.** A representative of the operator shall be on the discharge site at all times during discharge.

(C) **Condition of water.**

(i) Chloride content must not exceed 1,000 mg/l and TDS must not exceed 1,500 mg/l.

(ii) **Sheen.** There must be no visible sheen or discoloration as a result of drilling operations.

(iii) **pH.** The pH shall not be less than 6.5 nor exceed 9 standard units.

(D) **Foreign material.** The discharge shall be free of foreign material such as debris, sediments, and drilling mud solids.

(E) **Maximum slope.** A maximum slope of 5% if vehicles with a diffusion system are to be used; a maximum slope of 8% if a spray irrigation system is used.

(F) All discharge must be a minimum of 100 feet from any perennial stream, pond, lake or wetland and 50 feet from any intermittent stream. All land applications shall be a minimum of 50 feet from any property line.

(G) **Land application method.** The land application equipment must be approved by the Commission prior to use. The application method must not allow soil erosion to occur. If the irrigation method is to be used, the area must be terraced or appropriate erosion control methods shall be used, such as hay bales. The integrity of the pit wall shall be maintained at all times to avoid the discharge of drilling mud solids.

(H) **Runoff prohibited.** No runoff shall be allowed. Ponding may be allowed as long as practices are in place that will not allow the water to run into creeks or drainage ways.

165:10-7-31. Seismic and stratigraphic operations

(a) **Scope.**

(1) This Section shall cover the permitting, bonding, and plugging requirements for seismic exploration activities and stratigraphic test holes. Check-shots and vertical seismic profiles or other downhole wellbore seismic operations are excluded from this Section.

(2) For the purposes of this Section, seismic operation shall mean the drilling of seismic shot holes and use of surface energy sources such as weight drop equipment, thumpers, hydro pulses and vibrators. This definition does not include surveying of the seismic area or the activity of conducting private negotiations between parties.

(3) For the purposes of this Section, stratigraphic test holes shall mean holes drilled for the sole purpose of obtaining subsurface geological information through direct analysis of cores or cuttings or through the use of geophysical measurements that do not require the use of artificial sources of seismic energy.

(~~3~~4) For the purposes of this Section, technical information and data shall be defined as pre-plats as referenced in (b)(2)(B) and post-plats as referenced in subsection~~(e)~~(b)(5).

(b) **Seismic ~~and stratigraphic test~~ permitting.**

(1) Before commencing any seismic ~~or stratigraphic test hole~~ operations in the State of Oklahoma, ~~those companies who actually do the work in the field, hereinafter referred to as~~ the applicant, shall:

(A) Be duly registered with the Commission, including provision of a permanent address.

(B) Post a financial surety guarantee with the Commission.

(C) Provide to the Commission the name and business or field address of the contractor responsible for the operations being conducted.

(D) Applicants must obtain a permit from the Conservation Division for each seismic operation.

(~~D~~E) Notify all surface owners of property where seismic operations will occur at least fifteen (15) days prior to commencement of operations. It shall be sufficient notice pursuant to this Section when notice is given to the current surface owner(s) as shown by the records of the applicable county treasurer's office. If the applicant has obtained from the surface owner specific written permission to conduct such operations prior to commencement of operations, such action shall be considered sufficient notification for the purposes of this Section and the 15 day notice requirement shall not be required. Notification by U.S. mail shall be sufficient for the purposes of this Section, provided the notice is postmarked at least fifteen (15) days prior to commencement of any seismic ~~or stratigraphic test~~ operations.

(~~E~~F) The notice shall include a copy of the oil or gas lease or seismic permit or other legal instrument of similar nature authorizing the use of the surface for seismic ~~or stratigraphic test hole operation(s)~~ operations and shall contain the following information:

(i) Name of the company ~~for whom the applicantt~~ that is conducting the seismic ~~or stratigraphic test operation(s)~~operation; and

(ii) Anticipated date of commencement of ~~operation(s)~~ operations.

~~(F) Applicants must obtain a permit from the Conservation Division for each seismic or stratigraphic test operation.~~

(2) The applicant shall make application on the Commission's Form 1000S.

(A) The permit shall be valid for only one operation as approved on Form 1000S.

(B) A pre-plat of the operation area shall be attached to the application showing the location of the operation area delineated to the nearest section

(C) Post a performance bond in the amount of $50,000, or other form of surety in an amount as approved by the Conservation Division. The performance bond may be filed for each operation, or may be filed on an annual basis to cover all operations that may be undertaken during the year. If the performance bond is filed for a single operation, the amount may be approved by the Conservation Division for less than $50,000 or in another form of financial surety guarantee, depending on the nature of the seismic ~~or stratigraphic~~ operation involved, the number of shot holes or surface energy source points, the cost of the operation and the size of the applicant's business. The form of surety shall not include letters of credit or financial statements. Such bond(s) or other surety may be released upon request made no sooner than thirty (30) days subsequent to the completion of the applicant's operation(s), which have been permitted under such bond(s) or other surety, upon satisfactory

inspection or review by Conservation Division personnel.

(D) The permit shall expire twelve (12) months from the issue date, unless operations are commenced.

(E) The Conservation Division shall approve or deny the application within thirty (30) days of receipt of the application. The Conservation Division may act upon an application or amended application on an expedited basis.

(F) During any activity subject to this subsection, the applicant shall maintain at the site a copy of the approved permit, Form 1000S, for inspection.

(G) All technical information, excluding the Form 1000S, but including any plats, relative to the permitted operation shall remain confidential or the Conservation Division shall destroy the records. The plats and any other technical data submitted, shall be filed in the Technical Services Department of the Conservation Division. Upon request of the Manager of Field Operations, the technical data may be reviewed by Field Operations to ensure compliance with Commission rules.

(3) The operator shall file with the Conservation Division a written notice of commencement of seismic operations within 14 days after commencement of such operations.

(4) No seismic shot hole blasting shall be conducted within 200 feet of any habitable dwelling, building, or water well without written permission from the owner of the property or within 500 feet of any superfund site or hazardous waste facility.

(~~3~~5) **Plugging and post-plat.** Within 30 days after completing a seismic operation, the applicant receiving the permit shall submit a copy of: the approved Form 1000S certifying the plugging of all seismic shot holes in compliance with this section; and a post-plat or acceptable form of survey showing the actual location of all seismic shot holes. Unless the applicant can demonstrate to the Conservation Division's District Office that another method will provide sufficient protection to groundwater supplies and long term land stability, the following guidelines shall be observed:

(A) Standard plugging method. All holes shall be filled to within four feet from the surface with bentonite, native cuttings, or an appropriate substitute. The remainder of the shot hole shall be filled and tamped with native cuttings or soil.

(B) Special methods. In areas where the standard plugging method has been shown to be inadequate for the prevention of groundwater contamination, the Conservation Division may designate the area as a special problem area. In such event, the Conservation Division will provide to the best of its ability, a clear geographical description of such area and the recommended, or required, hole plugging methods. Should the applicant encounter conditions such that the standard method appears inadequate for the prevention of groundwater contamination, the applicant shall inform the Conservation Division.

(i) Artesian flow. If the standard method is inadequate to stop artesian flow, alternate remedies must be employed to do so.

(ii) Water well conversion. Applicants are prohibited from allowing the conversion of seismic shot holes ~~or stratigraphic test holes~~ to water wells.

(iii) Groundwater protection. Alternative plugging procedures and materials may be utilized when the applicant has demonstrated to the Conservation Division's satisfaction that the alternatives will protect usable quality water.

(iv) Timeliness. All seismic shot holes ~~or stratigraphic test holes~~ shall be plugged as soon as possible and shall not remain unplugged for a period of more than 30 days after the drilling of the hole.

~~(c) No seismic shot hole blasting shall be conducted within two hundred (200) feet of any habitable dwelling, building, or water well without written permission from the owner of the property or within 500 feet of any superfund site or hazardous waste facility.~~

(c) **Stratigraphic test permitting.**

(1) Before commencing any stratigraphic test hole operations, those companies hereinafter referred to as the applicant shall:

(A) Be duly registered with the Commission, including provision of a permanent address.

(B) Post a financial surety guarantee with the Commission in compliance with 165:10-1-10.

(C) Obtain a permit from the Conservation Division for each stratigraphic test operation.

(2) The applicant shall make application on the Commission's Form 1000.

(A) The permit shall be valid for only one operation as approved on Form 1000.

(B) The permit shall expire six (6) months from the issue date, unless operations are commenced.

(C) The Conservation Division shall approve or deny the application within 30 days of receipt of the application.

(D) Notice to surface owners shall be given according to OAC 165:10-3-1(g).

(E) During any activity subject to this subsection, the applicant shall maintain at the site a copy of the approved permit, Form 1000, for inspection.

(F) Any technical data submitted shall be filed in the Technical Services Department of the Conservation Division. Upon request of the Manager of Field Operations, the technical data may be reviewed by Field Operations to ensure compliance with Commission rules.

(G) The operator shall file with the Conservation Division a written notice of spudding of stratigraphic well within 14 days after spudding of the well.

(3) Unless the applicant can demonstrate to the Conservation Division's District Office that another method will provide sufficient protection to groundwater supplies and long term land stability, the following guidelines shall be observed:

(A) Surface casing requirements shall be met according to OAC 165:10-3-4.

(B) Storage and disposal of fluids associated with the drilling of stratigraphic test holes shall meet the requirements of OAC 165:10-7-16.

(C) Duty to plug and abandon shall be according to OAC 165:10-11-3.

(D) The Conservation Division shall be notified prior to commencement of plugging according to OAC 165:10-11-4.

(E) **Plugging.** Stratigraphic test holes shall be plugged according to OAC 165:10-11-6 and certification submitted on Form 1003 in compliance with OAC 165:10-11-7.

(d) Any person, firm, corporation or entity which conducts any seismic or stratigraphic test hole operations without a permit as provided in this Section, or in any other manner violates the rules of the Commission governing such operation shall be subject to a penalty up to One Thousand Dollars ($1,000.00) per violation per day after completion of the informal complaints procedure provided in OAC 165:10-7-7 and notice and hearing pursuant to the Commission's contempt proceedings.

~~(e) Within 30 days after completing a seismic or stratigraphic test hole operation, the applicant receiving the permit shall submit a copy of the approved Form 1000S certifying the plugging of all seismic shot holes or stratigraphic test holes in compliance with Section (b)(3)(A) or Section (b)(3)(B) above. In addition to the Form 1000S, a post plat or acceptable form of survey showing the actual location of all seismic shot holes or all stratigraphic test holes shall be included.~~

(~~f~~e) **Complaints.** A complaint alleging violations of this Section may be filed with the Commission against any person, firm or corporation conducting seismic and stratigraphic operation(s). The Commission may determine if and when a complaint has been adequately resolved, pursuant to the informal complaints process of OAC 165:10-7-7, and, if an environmental complaint, pursuant to the citizen complaint procedure of OAC 165:5-1-25.

SUBCHAPTER 12. PROCEDURES FOR THE SEEPING NATURAL GAS PROGRAM

165:10-12-1. Purpose

The purpose of this Subchapter is to provide the Oklahoma Corporation Commission ("Commission") rules to govern responses to occurrences concerning the Seeping Natural Gas Program. All procedural rules necessary to initiate, regulate and administer the Seeping Natural Gas Program are contained in this Subchapter.

165:10-12-2. Coordination of Seeping Natural Gas Program

The Commission shall coordinate response efforts when notified of an occurrence of seeping natural gas. The Commission shall enlist private industry, state, county, municipal, and local government official entities as needed. These entities will aid the Commission with investigating, identifying and abating the hazard. If the Commission has determined that the applicable utility may be responsible for the problem, even though the utility initially advised the Commission it was not, the Commission can require the utility to run further tests to re-evaluate the occurrence as to the utility's lines and equipment. These rules do not supersede OAC 165:45-11-11 (a)(9).

165:10-12-3. Jurisdiction and scope

Pursuant to 17 O.S. 2006, Section 180.10 (C) the Commission is directed to promulgate and enforce rules, and issue and enforce orders relating to seeping natural gas. The rules of this Subchapter shall be known as the Commission Procedures for the Seeping Natural Gas Program, and shall be cited as OAC 165:10-12-1 *et seq.*

(1) The rules of this Subchapter shall govern all proceedings concerning the Seeping Natural Gas Program.

(2) The Commission retains the authority to grant an exception, for good cause shown, to any rule contained herein unless otherwise precluded by law.

(3) The rules of this Subchapter establish procedures for the investigation of seeping natural gas and the administration of the Seeping Natural Gas Fund for the purpose of providing funding to eligible property owners for the mitigation of seeping natural gas on their property, in those cases in which the Commission is unable to abate the hazard of a seeping natural gas occurrence by issuing an order to a responsible person or by plugging a well.

165:10-12-4. Administration of the fund

(a) The Commission will appoint the Director of Administration of the Commission as the Seeping Natural Gas Fund Administrator.

(b) The Administrator is expressly authorized to bring actions before the Commission to enforce provisions of this Subchapter.

(c) The Administrator shall act under the supervision of the Commission, to administer the Seeping Natural Gas Fund in accordance with the rules and procedures approved by the Commission and consistent with this Subchapter. The Administrator is authorized to enforce, implement, and administer applicable rules and orders of the Commission.

(d) The Administrator's general duties shall include but not be limited to:

(1) Providing disbursements from the Fund;

(2) Managing the daily operations and affairs of the Fund;

(3) Engaging annual audits of the expenditures of the Fund and of the distribution from the Fund to property owners who receive payment from the Fund;

(4) Resolving disputes related to issues addressed in this Subchapter;
(5) Reviewing all applications for assistance from property owners;
(6) Performing any other duties as directed by the Commission.

165:10-12-5. Definitions

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

"Hazardous gas concentration" means a concentration that presents or causes a risk of accident or fire.

"Natural gas" means a highly compressible, highly expansible mixture of hydrocarbons having a low specific gravity and occurring naturally in gaseous form. Besides hydrocarbon gases, natural gas may contain appreciable quantities of nitrogen, helium, carbon dioxide, hydrogen sulfide, and water vapor.

"Person" means any individual, business association or corporation, partnership, governmental or political subdivision, public corporation, body politic and corporate public authority, trust or any other legal entity.

"Responsible party" means any person or persons responsible for a facility which is found to be causing a seeping natural gas occurrence.

"Seeping natural gas" means natural gas which has migrated into, under or around a structure at hazardous concentrations.

165:10-12-6. Notice requirements for seeping natural gas occurrences

(a) Upon identification of a possible occurrence of seeping natural gas, a utility shall notify the Pipeline Safety Department of the Commission. If the Pipeline Safety Department determines that the seeping gas occurrence is not caused by a pipeline under its jurisdiction, Pipeline Safety will contact the Consumer Services Division and the Oil and Gas Conservation Division.
(b) Upon a utility's initial determination that hazardous gas seepage is not from its system, the utility shall provide the property owner with a brochure explaining the situation and providing the impacted property owner with information about available assistance, including pertinent Commission telephone numbers. For assistance, the property owner or an authorized representative of the property owner shall contact the Commission.
(c) The District office of the Oil and Gas Conservation Division will contact the local Fire Marshall/Fire Chief and the utility to inform them that the Rapid Action Assessment Team has been activated.
(d) The Field Operations Department of the Oil and Gas Conservation Division will assess and evaluate the situation and act accordingly.

165:10-12-7. Commission Rapid Action Assessment Team

(a) The Oil and Gas Conservation Division shall form a Rapid Action Assessment Team to handle any seeping natural gas occurrence that occurs within the State after determining that it is not caused by a pipeline regulated by the Pipeline Safety Act or a utility.
(b) The Rapid Action Assessment Team will be equipped with qualified personnel and the proper and necessary equipment to handle investigations of seeping natural gas occurrences.
(c) Each Commission District Office will have access to designated trained personnel and equipment prepared for investigating a seeping natural gas occurrence.
(d) No person entering upon the land to investigate or abate the hazards pursuant to the authority of the Commission will be held responsible for future abatement work on the land or be liable for damages or otherwise for conditions subsequently arising or in connection with the land.

165:10-12-8. Standard procedure for the Rapid Action Assessment Team

As soon as the Oil and Gas Conservation Division is notified of an unknown gas surface seep in or around a structure that the utility has determined is not leaking from its lines, except in situations where the Oklahoma Emergency Management Plan is activated, Commission personnel will respond as follows:

(1) The Field Inspector from the Oil and Gas Conservation Division will respond with gas detection equipment and notify the Field Supervisor and District Manager.
(2) The District Manager will activate the local Rapid Action Assessment Team and notify local officials and the following Commission offices in Oklahoma City: Consumer Services, Field Operations and Public Information.
(3) The District Office will research well data, aerial photos and maps on file with the Oil and Gas Conservation Division.
(4) The Oil and Gas Field Supervisor and Field Inspector will coordinate with any responsible party in the locality and will research any available maps and records.
(5) If no known oil or gas wells are present, the Rapid Action Assessment Team will number and set soil gas monitoring probes at strategic locations in the area and initiate a gas monitoring program to measure the concentration and sample the composition of gas and log results at monitored locations.
(6) If the source of gas can be identified and there is a responsible party, the Rapid Action Assessment Team will request a Commission order directing the responsible party to abate the hazard.
(7) If no known responsible party is located, the Rapid Action Assessment Team will position the monitoring system to allow for measurement of concentration and dissipation of the gas.
(8) Upon the completion of the mitigation process, the Commission shall notify the utilities in writing.

(9) Upon notification by the Commission that the mitigation process has been completed, the utility shall verify that the hazard has been abated prior to establishing or resuming gas service.

(10) If the utility believes it should not establish or resume service, it shall file an emergency application with the Commission to show cause why service should not be established or resumed. The Commission shall hear such application with or without notice. At the time of the hearing, the Commission shall receive exhibits and recommendations as required by OAC 165:5-7-39(c). The Commission shall rule on the request as it deems appropriate.

165:10-12-9. Assistance to owners of property

(a) An owner of property who has a seeping natural gas occurrence as defined by 165:10-12-5 may file an application with the Commission to receive assistance with installing a system to divert natural gas away from the structure or to abate the hazard.

(b) After the Oil and Gas Conservation Division and the Consumer Services Division have completed their review of the property owner's application, they will forward it to the Director of Administration of the Commission, and the Director of Administration will recommend the application for Commission action.

(c) The Commission shall determine the eligibility of the owner of a structure for assistance based on the nature and extent of the hazard, whether the owner is unable to inhabit the structure, the financial need of the owner of the structure and other relevant factors dependent upon the Oklahoma Legislature's current and future approval of and appropriation for the Natural Gas Seep Program.

(d) If the property owner's application is approved, the Commission may expend, pursuant to the Oklahoma Central Purchasing Act, Title 74 O.S. 85.1 *et. seq.*, up to $20,000 from the Seeping Natural Gas Fund to engage the services of a contractor to install a system to divert natural gas away from a structure or to otherwise abate the hazard,

165:10-12-10. Reimbursement of expenditures

(a) The Commission may seek reimbursement of expenditures made by the Commission from a responsible party. Any monies received as reimbursement shall be deposited to the credit of the Commission Gas Seep Fund.

(b) The Rule shall not relieve any person or persons otherwise legally responsible from any obligation to properly abate hazards associated with seeping natural gas.

SUBCHAPTER 17. GAS WELL OPERATIONS AND PERMITTED PRODUCTION

165:10-17-7. Well tests

(a) **Wells in special allocated pools.**

(1) An initial test shall be filed for each newly completed gas well in each special allocated pool. The well shall be tested into a pipeline no later than 30 days after the date of the first sale of gas. Test procedures shall be those specified in the applicable pool rules subject to the uniform requirements of 165:10-17-6.

(2) An annual test shall be filed in accordance with the requirements of the applicable pool rules, subject to the following provisions specific to the Guymon-Hugoton special allocated pool.

(3) **Wells in the Guymon-Hugoton special allocated pool.**

(A) The Conservation Division staff will not be required to witness any well test on any well in the Guymon-Hugoton special allocated gas pool unless requested to do so by an offset operator. Operators have a right to witness any well test on any well offsetting said operator's well in the pool. Operators of offsetting wells will be given sufficient prior notice of testing to allow for a representative to be present to witness testing, and will be provided access to the designated witness throughout testing.

(B) Wells in the Guymon-Hugoton special allocated gas pool which are not capable of producing 450 Mcf/day will be exempt from biannual deliverability tests. Operators shall have the right to elect to receive the minimum allowable by deciding not to conduct well deliverability tests on any such wells in the pool. No well shall be exempt from the annual wellhead shut-in pressure test requirements. For the purpose of the annual wellhead shut-in pressure test, the shut-in pressure shall be measured after the well has been shut-in for approximately 48 hours. In no case shall the well have been shut-in for less than 44 hours at the time the shut-in pressure is taken.

(b) **Wells in unallocated pools.**

(1) **Testing of newly completed wells.**

(A) An initial test shall be submitted to the Conservation Division for each newly completed gas well in an unallocated gas pool under 165:10-17-2. The well shall be tested into a pipeline no later than 30 days after the date of first sale of gas into a pipeline. The flow period for the initial test shall be 24 hours. It shall not be necessary for the operator to submit the initial flow potential test for an unallocated well with a calculated open flow of less than 2,000,000 cubic feet per day, only the wellhead shut-in pressure taken for a minimum of 24 hours for the well is required, unless requested by the Commission. All tests and initial shut-in pressures shall be submitted to the Conservation Division on Form 1016 and, at the operator's discretion, in digital magnetic form in a format prescribed by the Commission. The form shall contain complete and accurate information.

(B) If said initial test is taken between the first day of January and the thirty-first day of July of the calendar year, the test shall be used for allowable purposes for the calendar year unless the operator later submits a retest which is accepted by the Conservation Division. A request to extend the time to test may be

granted by the Conservation Division in order to recover fluids introduced into the well. The request shall be submitted in writing to the Conservation Division with the expected test date.

(C) The well shall also be tested during the annual test period between the first day of May and the thirty-first day of October, but no sooner than three months after the initial test. Said test shall be used for the annual test to determine permitted production for the following calendar year unless the well is later retested.

(D) If the test used for the following year cannot be submitted during the annual test period, the Conservation Division may grant administratively a written extension of time up to 30 days beyond the thirty-first day of October for running the test.

(2) **Annual test period for other wells.** An annual potential test shall be run on each gas well in each unallocated pool between May 1, and November 30, and must be accepted by the Commission no later than December 15, except for wells exempt under (4) of this subsection. The annual potential test shall be effective January 1 of the succeeding calendar year (annual accounting period) unless superseded by a later test. The Director of Conservation may require additional tests at any time. Retests become effective the first day of the month following acceptance of the test by the Conservation Division.

(3) **One-point tests.** The potential test required for each gas well in each unallocated pool shall use the one-point back pressure method and an assumed flow characteristic of 0.85 shall be used in establishing the wellhead absolute open flow. The test shall be governed by the requirements of OAC 165:10-17-6.

(4) **Minimum well exemption from annual tests.** Each gas well in each unallocated pool having a tested potential of 2,000,000 cubic feet of gas per day, or less, shall thereafter be exempt from the annual potential test, and the operator of the well shall report annually the results of an annual wellhead shut-in pressure test taken for a minimum of 24 hours on Machine Accounting Form 1007A and, at the operator's discretion, in digital magnetic form in a format prescribed by the Commission unless the Director of Conservation waives in writing the pressure test requirement. Machine Accounting Form 1007A, when received by the operator, shall be used to report shut-in pressure tests and gas sales from the previous calendar year on wells in unallocated pools. Wellhead shut-in pressure just for minimum wells may be taken any time during the year, but must be taken at least six months after the test submitted for the prior year.

(5) **Retests.** Retests may be run at any time and shall become effective the first day of the month following acceptance of the test by the Conservation Division. Retests submitted during the unallocated gas well testing period of May 1, through October 31, will also be classified as annual-status tests to establish the allowable for the following year.

(6) **Test exemptions for coal bed methane wells and certain minimum wells.**

(A) The following types of gas wells shall be exempt from initial and annual potential and shut-in tests:

(i) Gas wells producing exclusively from coal bed methane formations.

(ii) Minimum gas wells producing exclusively from shale formations. (iii) Minimum gas wells using down hole pumps for artificial lift of produced liquids. If this status occurs subsequent to initial completion, the operator may file Form 1016 with the OCC stating in the comment section it is now a pumping well and is in exempt status.

(B) For these exempt wells operators shall report the initial stabilized rate of flow on Form 1002A "Completion Report" in lieu of reporting an initial test on Form 1016 "Backpressure test for Natural Gas Wells".

(~~6~~7) **Minimum compliance.** Each operator shall be responsible for conducting and submitting the required potential tests on the applicable form and for the annual reporting of all required information on Machine Accounting Form 1007A and, at the operator's discretion, in digital magnetic form in a format prescribed by the Commission. All submitted tests and 1007A forms must contain complete and accurate information. Permitted production rates will be granted only to those wells which meet this requirement and all other rules or orders of the Commission.

SUBCHAPTER 21. APPLICATIONS FOR TAX EXEMPTIONS

PART 6. PRODUCTION ENHANCEMENT PROJECTS

165:10-21-21. General

Exemption from the levy of gross production tax on the incremental production which results from a production enhancement project with a project beginning date on or after July 1, 1994, and prior to ~~July 1, 2006~~July 1, 2009 shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and Oklahoma Tax Commission pursuant to 68 O.S. Section 1001(M)(1).

165:10-21-22. Definitions

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

"Base production" means the average monthly amount of production for the twelve-month (12) period immediately prior to the commencement of the project or the average monthly amount of production for the twelve-month period

immediately prior to the commencement of the project less the monthly rate of production decline for the project for each month beginning one hundred eighty (180) days prior to the commencement of the project. The monthly rate of production decline shall be equal to the average extrapolated monthly decline rate for the twelve-month period immediately prior to the commencement of the project based on the production history of the well. If the well or wells covered by the application had production for less than the full twelve-month period prior to the filing of the application for the production enhancement project, the base production shall be the average monthly production for the months during that period that the well or wells produced.

"Effective date" means the project beginning date for the production enhancement project.

"Exemption period" means a period of twenty-eight (28) months from the date of first sale after completion of the production enhancement project.

"Incremental production" means the amount of crude oil, natural gas or other hydrocarbons which are produced as a result of the production enhancement project in excess of the base production.

"Production enhancement project" means: for production enhancement projects having a project beginning date prior to July 1, 1997, any workover as defined in this Section, recompletion as defined in this Section, or fracturing of a producing well; for production enhancement projects having a project beginning date on or after July 1, 1997, and prior to ~~July 1, 2006~~July 1, 2009, "production enhancement project" means any workover as defined in this Section, recompletion as defined in this Section, reentry of plugged and abandoned wellbores, or addition of well or field compression.

"Recompletion" means: for production enhancement projects having a project beginning date prior to July 1, 1997, any downhole operation in an existing oil or gas well that is conducted to establish production of oil or gas from any geological interval not currently completed or producing in such existing oil or gas well; for production enhancement projects having a project beginning date on or after July 1, 1997, and prior to ~~July 1, 2006~~July 1, 2009, "recompletion" means any downhole operation in an existing oil or gas well that is conducted to establish production of oil or gas from any geologic interval not currently completed or producing in such existing oil or gas well within the same or a different geologic formation.

"Workover" means any downhole operation in an existing oil or gas well that is designed to sustain, restore or increase the production rate or ultimate recovery in a geologic interval currently completed or producing in said existing oil or gas well. For production enhancement projects having a project beginning date prior to July 1, 1997, "workover" includes, but is not limited to, acidizing, reperforating, fracture treating, sand/paraffin removal, casing repair, squeeze cementing, or setting bridge plugs to isolate water productive zones from oil or gas productive zones, or any combination thereof. For production enhancement projects having a project beginning date on or after July 1, 1997, and prior to ~~July 1, 2006~~July 1, 2009, "workover" includes, but is not limited to, the following: acidizing; reperforating; fracture treating; sand/paraffin/scale removal or other wellbore cleanouts; casing repair; squeeze cementing; installation of compression on a well or group of wells or artificial lifts on oil and/or gas wells, including plunger lifts, rod pumps, submersible pumps and coiled tubing velocity strings; downsizing existing tubing to reduce well loading; downhole commingling; bacteria treatments; upgrading the size of pumping unit equipment; setting bridge plugs to isolate water production zones; or any combination thereof. "Workover" shall not mean the routine maintenance, routine repair, or like-for-like replacement of downhole equipment such as rods, pumps, tubing, packers, or other mechanical devices.

PART 7. RE-ESTABLISHMENT OF PRODUCTION FROM AN INACTIVE WELL

165:10-21-36. Definitions

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

"Effective date" means the date on which the reestablishment of production has occurred.

"Exemption period" means a period of twenty-eight (28) months from the date upon which production from an inactive well is reestablished.

"Inactive well" means a well which may be defined under one (1) of the following three (3) categories:

(A) A well which after July 1, 1997 experiences mechanical failure or loss of mechanical integrity, as defined by the Corporation Commission, including but not limited to, casing leaks, collapse of casing or loss of equipment in a wellbore, or any similar event which causes cessation of production, shall be considered an inactive well. For use within this sub-paragraph "mechanical failure" means a well which experiences mechanical failure or loss of mechanical integrity because of, but not limited to, casing leaks, collapse of casing or loss of equipment in a wellbore, or any similar event which results in a workover of the well and cessation of production as evidenced by the use of a workover rig or other mechanical device being placed over the well to repair the well or equipment.

(B) A well on which work to reestablish production commenced on or after July 1, 1997, and on or before ~~June 30, 2006~~June 30, 2009, that has not produced oil, gas or oil and gas for a period of not less than one (1) year as evidenced by the appropriate forms on file with the Oklahoma Corporation Commission reflecting the well.

(C) A well on which work to reestablish production commenced on or after July 1, 1994, and on or before June 30, 1997, that has not produced oil, gas or oil and gas for a period of not less than two (2) years as evidenced by the appropriate forms on file with the

Oklahoma Corporation Commission reflecting the well's status.

PART 8. DEEP WELLS

165:10-21-45. General

(a) **General provisions.** Exemption from the levy of gross production tax on the production of gas, oil, or gas and oil from wells certified as being "Deep Wells" set out in 68 O.S. § 1001(H) shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and the Oklahoma Tax Commission pursuant to 68 O.S. § 1001(M)(1).

(b) **Definitions.** For purposes of qualifying for the exemption, "**depth**" means the length of the maximum continuous string of drill pipe utilized between the drill bit face and the drilling rig's kelly bushing.

(c) **Exemption for wells spudded between July 1, 1994, and June 30, 1997, to a depth of fifteen thousand (15,000) feet or greater.** Deep wells spudded between July 1, 1994, and June 30, 1997, and drilled to a depth of fifteen thousand (15,000) feet or greater shall be exempt from the gross production tax, beginning from the date of first sale, for a period of twenty-eight (28) months.

(d) **Exemption for wells spudded between July 1, 1997, and June 30, 2002, to a depth of twelve thousand five hundred (12,500) feet.** Deep wells spudded between July 1, 1997, and June 30, 2002, and drilled to a depth of twelve thousand five hundred (12,500) feet or greater shall be exempt from the gross production tax, beginning from the date of first sale, for a period of twenty-eight (28) months.

(e) **Exemption for wells spudded on or after July 1, 2002.** Deep wells spudded on or after July 1, 2002, shall be eligible for an exemption from the gross production tax which shall begin from the date of first sale, and vary as to duration in relation to the depth of the well.

(1) **12,500 to 14,999 feet and spudded between July 1, 2002 and ~~June 30, 2006~~June 30, 2009.** The duration of the exemption for wells drilled to this depth is twenty-eight (28) months.

(2) **15,000 to 17,499 feet and spudded between July 1, 2002 and June 30, 2008.** The duration of the exemption for wells drilled to this depth is forty-eight (48) months.

(3) **17,500 feet or greater and spudded between July 1, 2002 and June 30, 2008.** The duration of the exemption for wells drilled to this depth is sixty (60) months.

PART 9. NEW DISCOVERY WELLS

165:10-21-55. General

(a) Exemption from the levy of gross production tax on the production of gas, oil, or gas and oil from wells spudded or reentered between July 1, 1995 and ~~July 1, 2006~~July 1, 2009, which qualify as a new discovery well pursuant to Title 68, Section 1001(I), shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and the Oklahoma Tax Commission pursuant to Title 68, Section 1001(M)(1).

(b) **"New discovery"** means production of oil, gas or oil and gas from:

(1) A well spudded or reentered ~~prior to~~ on or after July 1, 1997, which discovers crude oil in paying quantities and is located more than one mile from the nearest oil well producing from the same ~~interval~~ producing formation.

(2) A well, spudded or reentered on or after July 1, 1997, and prior to ~~July 1, 2006~~ July 1, 2009, which discovers crude oil in paying quantities and is located more than one mile from the nearest oil well producing from the same producing interval of the same formation.

(3) A well, spudded or reentered prior to July 1, 1997, which discovers crude oil in paying quantities beneath current production in a deeper producing formation located more than one mile from the nearest oil well producing from the same deeper ~~interval~~ producing formation.

(4) A well, spudded or reentered on or after July 1, 1997, and prior to ~~July 1, 2006~~July 1, 2009, which discovers crude oil in paying quantities beneath current production in a deeper producing interval located more than one mile from the nearest oil well producing from the same deeper ~~interval~~ producing interval.

(5) A well, spudded or reentered, prior to July 1, 1997, which discovers natural gas in paying quantities and is located more than two miles from the nearest gas well producing from the same producing ~~interval~~ formation.

(6) A well, spudded or reentered, on or after July 1, 1997, and prior to ~~July 1, 2006~~July 1, 2009, which discovers natural gas in paying quantities and is located more than two miles from the nearest gas well producing from the same producing interval.

(7) A well, spudded or reentered, prior to July 1, 1997, which discovers natural gas in paying quantities beneath current production in a deeper producing ~~interval~~ formation that is more than two miles from the nearest gas well producing from the same deeper ~~interval~~ producing formation.

(8) A well, spudded or reentered, on or after July 1, 1997, and prior to ~~July 1, 2006~~July 1, 2009, which discovers natural gas in paying quantities beneath current production in a deeper producing interval that is more than two miles from the nearest gas well producing from the same deeper producing interval.

PART 11. HORIZONTALLY DRILLED PRODUCING WELLS

165:10-21-66. Definitions

In addition to terms defined in 165:10-1-2, the following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise:

"Angle of deviation" means that angle in which a wellbore may deviate from the vertical.

"Date of completion of a gas well" means the date that gas is capable of being delivered to a pipeline purchaser.

"Date of completion of an oil well" means the date that the well first produces into the lease tanks through permanent well head equipment.

"Effective date" means that the first production must have commenced after July 1, 1995 and before ~~July 1, 2006~~July 1, 2009.

"Horizontal displacement" means that distance drilled into the pay zone of a formation at an angle exceeding seventy (70) degrees.

"Horizontally drilled payout" means the point at which gross working interest revenue from the horizontally drilled well equals the cost of drilling and completing such well.

"Horizontally drilled well" means an oil, gas, or oil and gas well drilled or completed in a manner which encounters and subsequently produces from a geological formation at an angle in excess of seventy (70) degrees from the vertical and which laterally penetrates a minimum of one hundred and fifty (150) feet into the pay zone of the formation.

"True vertical depth" means that depth measured from the surface perpendicular to the surface.

165:10-21-69. Time periods for exemption from gross production tax levied on horizontally drilled producing wells

(a) **General provisions.** The exemption for horizontally drilled wells qualified pursuant to this Part shall be determined from the project beginning date until project payback is achieved, and are limited in duration to the time periods set out in this Section.

(b) **Twenty-four (24) month exemptions.** For production described in this subsection, duration of the exemption may not exceed a period of twenty-four (24) months commencing with the date of initial production from the horizontally drilled well.

(1) **Production prior to July 1, 1994.** Any incremental production which results from a horizontally drilled well producing prior to July 1, 1994.

(2) **Production prior to July 1, 2002, which commenced after July 1, 1995.** Any horizontally drilled well producing prior to July 1, 2002, which production commenced after July 1, 1995.

(c) **Forty-eight (48) month exemption.** For a horizontally drilled well producing prior to ~~July 1, 2006~~July 1, 2009 which production commenced after July 1, 2002, the duration of the exemption may not exceed a period of forty-eight (48) months commencing with the date of initial production from the horizontally drilled well. [See: 68 O.S. Supp. 2002, Section 1001(E)(1)]

PART 13. INCREMENTAL PRODUCTION FROM ENHANCED RECOVERY PROJECTS

165:10-21-76. Definitions

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

"Base production amount" means the average monthly amount of productions for the twelve (12) month period immediately prior to the project beginning date minus the monthly rate of production decline for the project or property for each month beginning one hundred eighty (180) days prior to the project beginning date.

"Completion date" means the date a well is first capable of being used for the injection of liquids, gases or other matter, or is capable of producing crude oil or other liquid hydrocarbons through permanent wellhead equipment.

"Enhanced recovery project costs" means the incremental project costs that are allowed as payback factors in determining the exemptions from the levy of gross production tax of project incremental production.

"Existing tertiary recovery project" means, for purposes of the exemption described in 68 O.S. Section 1001(D)(1), a tertiary recovery project whose beginning date is prior to October 16, 1987.

"Incremental production" means the amount of crude oil or other liquid hydrocarbons which are produced during an approved enhanced oil recovery operation and which are in excess of the base production amount of crude oil or other liquid hydrocarbons.

"Incremental working interest revenue" means the gross value of the incremental production, less the royalty interest therein.

"Monthly rate of production decline" means a rate equal to the average extrapolated monthly decline rate for the twelve (12) month period immediately prior to the project beginning date as determined by the Commission, based on the production history of the field, its current status, and sound reservoir engineering principles.

"New enhanced recovery project" means, for purposes of the exemption described in 68 O.S. Section 1001(D)(1), a secondary or tertiary recovery project whose beginning date is on or after October 16, 1987.

"Project beginning date" means the date on which the injection of liquids, gas or other matter begins on an enhanced recovery project.

"Project payback or payout" means that point at which the incremental working interest revenue from the enhanced recovery project equals the enhanced project costs.

"Secondary recovery ~~properties~~projects" means secondary recovery ~~properties~~projects approved or having an initial project beginning date on or after July 1, 2000 and before ~~July 1, 2006~~July 1, 2009, such that any incremental production attributable to the working interest which results from such secondary recovery ~~property~~project shall be exempt from the gross production tax levied pursuant to 68 O.S. Section 1001 for a period not to exceed five (5) years from the initial project beginning date or for a period ending upon the termination of the secondary recovery process, whichever occurs first. [Applicant may omit payback report for such secondary recovery ~~properties~~projects.]

165:10-21-78. Recovery of costs allowed as payback factors

(a) **Enhanced recovery project, project beginning date between October 17, 1987 and June 30, 1990.** For any enhanced recovery project with a project beginning date between October 17, 1987, and June 30 1990, allowed enhanced recovery costs shall include only incremental capital costs and incremental operating expenses associated with enhanced recovery operations.

(b) **Enhanced recovery project, project beginning date between July 1, 1990 and June 30, 1993.** For any enhanced recovery project with a project beginning date between July 1, 1990, and June 30, 1993, allowable enhanced recovery project costs shall be limited to the incremental capital costs of project start up, including the cost of completing any well necessary to the project and of converting any existing well to handle secondary or tertiary injection of liquids, gas or other matter. With respect to completing or converting a well, no expenditure after completion or conversion for enhanced recovery purposes shall be included.

(c) **Secondary recovery project, project beginning date on or after July 1, 1993 and before July 1, 2000.** For any secondary recovery project with a project beginning date on or after July 1, 1993, and before July 1, 2000, allowed enhanced recovery project costs shall include only incremental capital costs and fifty percent (50%) of incremental operating expenses, provided however that the period for project payback shall not exceed a period of ten (10) years from the project beginning date.

(d) **Tertiary enhanced recovery project, project beginning date on or after July 1, 1993 and before ~~July 1, 2006~~July 1, 2009.** For any tertiary enhanced recovery project with a project beginning date on or after July 1, 1993, and before ~~July 1, 2006~~July 1, 2009, allowable enhanced recovery project costs shall include only incremental capital costs and incremental operating expenses, excluding administrative expenses. The capital expenses of pipelines constructed to transport carbon dioxide to a tertiary recovery project shall not be included in determining project payback. The period for project payback shall not exceed ten (10) years from the project beginning date.

(e) **Excluded costs.** The cost of tank batteries, meters, pipelines or other external equipment shall not be included in allowable enhanced recovery project costs. Allowable costs shall be determined using generally accepted accounting principles such as outlined in the "Council of Petroleum Accountants Society (COPAS) - Accounting Procedure Form for Joint Operations" and "COPAS Bulletin No. 16", or subsequent revisions thereto.

165:10-21-80. Expiration of exemption for incremental production

For secondary recovery projects approved prior to July 1, 2000, and tertiary recovery projects approved prior to ~~July 1, 2006~~July 1, 2009, once the gross working revenue equals the enhanced recovery project cost, the exemption of incremental production shall end and the Oklahoma Tax Commission shall resume collection of the Gross Production Tax thereon.

PART 14. PRODUCTION OF OIL, GAS OR OIL AND GAS FROM ANY WELL LOCATED WITHIN BOUNDARIES OF THREE-DIMENSIONAL SEISMIC SHOOT

165:10-21-82. General

Exemption from the levy of gross production tax on the production of oil, gas or oil and gas from a well, drilling of which is commenced on or after July 1, 2000, and prior to ~~July 1, 2006~~July 1, 2009, located within the boundaries of a three-dimensional seismic shoot and drilled based on three-dimensional seismic technology, shall be determined according to the provisions of this Part.

165:10-21-82.2. Qualification procedure

(a) **Applicable wells.** The provisions of this Section establish criteria for determining if an operator producing oil, gas or oil and gas from a well, drilling of which is commenced on or after July 1, 2000, and prior to ~~July 1, 2006~~July 1, 2009, located within the boundaries of a three-dimensional seismic shoot and drilled based on three-dimensional seismic technology, has met the required conditions to qualify the production from such a well for the exemption from the Gross Production Tax. [See: 68 O.S. §1001(J)]

(b) **Administrative approval and determination.** An operator seeking an exemption of the gross production tax on production from a well located within the boundaries of a three-dimensional seismic shoot and drilled based on such technology, shall make application to the Oklahoma Corporation Commission on a Form 1534 for a determination that the well qualifies for such exemption, as provided in 68 O.S. 2000 Supp. §1001(J).

(1) If the application is administratively approved, a copy shall be forwarded to the operator.

(2) To obtain the tax exemption, the operator shall forward a copy of the approved application to the Oklahoma Tax Commission, together with any other data required by that agency pursuant to OAC 165:10-21-82.3.

(3) Any data, maps and other information submitted with the Form 1534 for determination that a well qualifies for the exemption provided in this paragraph shall be held as confidential information by the Conservation Division and/or Commission, and shall be returned to the applicant or destroyed upon approval of the application.

165:10-21-82.3. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Commission grants the application, the well operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Audit Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) Corporation Commission order approving such application and containing a determination that the well meets the criteria of the statute insofar that its drilling was

commenced on or after July 1, 2000, and prior to ~~July 1, 2006~~July 1, 2009, that it is located within the boundaries of a three-dimensional seismic shoot and was drilled based on such technology, and indicating whether the seismic shoot was shot either prior to or on or after July 1, 2000.

(2) A schedule of production, by month, of the gross amounts of oil, gas or oil and gas produced, and the gross values thereof, from the date of first sale until the date application is made to the Tax Commission.

(3) OTC Form 320A, 320C, and 320U, as are necessary, to set up the OTC Production Units, to request merge numbers, and to show the entity who will remit taxes.

(4) If the refund request is filed by any person other than the party named in the application, a notarized affidavit, signed by the party named in the application must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for prior periods; claim limitation after July 1, 2003.** Approval of a "Three-Dimensional Incentive" for production periods prior to July 1, 2003 shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax. Effective July 1, 2003, claims for rebate filed with the Oklahoma Tax Commission shall be subject to a time limitation pursuant to Title 68 O.S., Section 1001(L).

(c) **Method of appeal.** If the refund is denied, the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

[OAR Docket #07-1217; filed 5-25-07]

TITLE 165. CORPORATION COMMISSION CHAPTER 30. MOTOR CARRIERS

[OAR Docket #07-1214]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
165:30-1-2. Definitions [AMENDED]
Subchapter 3. Intrastate Motor Carriers
Part 3. License Requirements
165:30-3-12. Identification device [AMENDED]
165:30-3-13. Deleterious Substance Transport Permit [AMENDED]
Part 5. Conducting Operations
165:30-3-31. Compliance with laws and regulations [AMENDED]
Part 9. Violations
165:30-3-76. Contempt complaint [AMENDED]
Subchapter 10. Interstate Motor Carriers [NEW]
Part 1. Compliance [NEW]
165:30-10-1. USDOT number required [NEW]
165:30-10-2 [RESERVED]
165:30-10-3. Liability insurance [NEW]
165:30-10-4 [RESERVED]
165:30-10-5. Deleterious Substance Transport Permit [NEW]
165:30-10-6 [RESERVED]
165:30-10-7. Hazardous waste transportation [NEW]
Part 3. Conducting Operations [NEW]
165:30-10-11. Lease agreement [NEW]
165:30-10-13. Shipping documentation [NEW]
165:30-10-14 [RESERVED]
165:30-10-15. Compliance with laws and regulations [NEW]
165:30-10-16 [RESERVED]
165:30-10-17. Loading Capacity [NEW]
165:30-10-18 [RESERVED]
165:30-10-19. Pollution abatement [NEW]
Part 5. Violations [NEW]
165:30-10-31. Contempt complaint [NEW]
Part 7. Interstate Motor Carriers Operating in Intrastate Commerce [NEW]
165:30-10-41. Intrastate authority required [NEW]
165:30-10-42 [RESERVED]
165:30-10-43. Exceptions to intrastate renewal requirements [NEW]
165:30-10-44 [RESERVED]
165:30-10-45. Miscellaneous [NEW]
Subchapter 12. Unified Carrier Registration [NEW]
165:30-12-1. Unified Carrier Registration [NEW]
Subchapter 15. Intrastate Private Carriers
Part 3. Obtaining a Private Carrier License and License Requirements
165:30-15-4. Obtaining a license [AMENDED]
165:30-15-6. Insurance [AMENDED]
Subchapter 17. Hazardous Waste Transporters
Part 3. Applying for Hazardous Waste Registration and Permit
165:30-17-12. Obtaining a hazardous waste registration and permit [AMENDED]
Subchapter 19. Registration Pursuant to the International Registration Plan
165:30-19-3. Registration [AMENDED]
165:30-19-5. Established Place of Business [AMENDED]
165:30-19-8. Maintenance and Availability of Operational Records [AMENDED]
165:30-19-10. Renewal Applications [AMENDED]
Subchapter 21. International Fuel Tax Agreement
165:30-21-5. Application for License [AMENDED]
165:30-21-7. Application Processing [AMENDED]
165:30-21-12. Denial, Revocation, and Reinstatement [AMENDED]
Subchapter 23. Motor License Agents [NEW]
165:30-23-1. Responsibility for errors in application and computation [NEW]
165:30-23-2 [RESERVED]
165:30-23-3. Responsibility for agency shortages [NEW]
AUTHORITY:
Oklahoma Corporation Commission
Article IX, §§ 18, 19, Oklahoma Constitution
17 Okla. Stat. § 151 et. seq.
DATES:
Comment Period:
February 6, 2007 through March 26, 3007
Public Hearing:
March 26, 2007
Adoption:
March 26, 2007
Submitted to the Governor:
March 29, 2007
Submitted to the House:
March 29, 2007
Submitted to Senate:
March 29, 2007
Gubernatorial approval:
May 4, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 24, 2007.
Final Adoption:
March 24, 2007
Effective Date:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
Amendments to existing agency rules in Chapter 30 Motor Carrier Rules were needed to address concerns of Commission staff in regard to inconsistencies between language in the rules and language in federal or state statutes, as well as language in the Uniform Carrier Registration Act. Additions to the existing agency rules were necessary to implement provisions of the Uniform Carrier Registration Act and to update certain transportation fees.

CONTACT PERSON:
Kathy Nelson @ 522-1638.

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

SUBCHAPTER 1. GENERAL PROVISIONS

165:30-1-2. Definitions

In addition to terms defined in 47 O.S., Sections 161 through 180m et seq. and the Motor Carrier Act of 1995, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Alliance" means the Alliance for Uniform Hazardous Material Transportation Procedures, a confederation of state, local industry and environmental representatives for the purpose of administering and enforcing a uniform hazardous materials transporters program as established by HMTUSA.

"Authority" means a general term referring to permission issued by the Commission to a motor carrier to perform operations under the jurisdiction of the Commission. The term authority is not applicable to vehicle registrations or fuel permits.

"Base state" means the state selected by a motor carrier according to the procedures established by a uniform program.

"CFR" means the Code of Federal Regulations.

"COD" means collect on delivery.

"Commission" means the Oklahoma Corporation Commission.

"Corporate family" means a group of corporations consisting of a parent corporation and all subsidiaries in which the parent corporation owns directly or indirectly one hundred percent (100%) interest.

~~**"Deleterious substance"** means any substance transported, which by its inherent nature, either in its raw state or compounded, in any quantity or volume, is harmful to livestock, crops or croplands.~~

"Environmental restoration" means restitution for loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This includes the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish and wildlife.

"Exceeding authority" means a motor carrier operating outside or beyond the purview of an issued license, certificate, permit, registration or other authority issued by the Commission or a reciprocal state.

"FMCSA" means the Federal Motor Carrier Safety Administration.

"Gross Combination Weight Rating" (GCWR) means the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

"Gross Vehicle Weight" (GVW) means the registered weight of the vehicle or any lawful registered combination weight (Gross Combination Weight or GCW).

~~**"(GVWR)"**~~ **"Gross Vehicle Weight Rating" (GVWR)** means the value specified by the manufacturer as the loaded weight of a single vehicle (gross vehicle weight rating) and may include any lawful combination.

"Hazardous waste" means any material that is subject to the Hazardous Waste Manifest Requirements of the United States Environmental Protection Agency specified in Title 40, CFR, Part 262.

"Hazardous waste permit" means the document issued by a participating state which represents a specific motor carrier's registration to transport hazardous waste in states that participate in the uniform hazardous waste program.

"HMTUSA" means the Hazardous Materials Transportation Uniform Safety Act of 1990.

"ICC" means the Interstate Commerce Commission/Federal Highway Administration.

"Identification device" means an annual, fee-paid, non-transferable device issued by the Commission to be carried in each and every vehicle.

"Intercorporate hauling" means the transportation of property, passengers or household goods by motor vehicle, for compensation, by a carrier which is a member of a corporate family, as defined in this Section, when said transportation for compensation is provided for other members of the corporate family.

"Interstate" means a shipment having an origin or destination into, out of or through two or more states.

"Interstate Registration Certificate (IRC)" means a document issued by the Commission granting permission to operate as a motor carrier upon the highways of the State of Oklahoma in ICC exempt interstate commerce.

"Intrastate" means a shipment having an origin and destination wholly within one state.

"IRC" means an Interstate Registration Certificate.

"IRP" means the International Registration Plan as administered by the Oklahoma Tax Commission or other states.

"Letter of filing" means a document issued by the Commission to a motor carrier as evidence of temporary compliance with the hazardous waste uniform program.

"Motor carrier" means a for-hire motor carrier or a private motor carrier operating in interstate or intrastate commerce.

"Motor carrier of household goods" means a person holding a valid certificate or permit requiring public convenience and necessity transporting for hire used personal effects and property of a dwelling.

"NAIC" means the National Association of Insurance Commissions.

"Participating state" means a state electing to participate in a uniform program by entering into a base state agreement.

"PIN" means personal identification number.

"Principal place of business" means a single location that serves as the motor carrier's or private carrier's headquarters and where it maintains or can make available its operational records.

"Private motor carrier" means a person who operates a commercial motor vehicle and is not a for-hire motor carrier.

"Process agent" means a representative upon whom court papers may be served in any proceeding brought against a motor carrier, broker, or freight forwarder.

"Public convenience and necessity" means a determination of fact arrived at by the Commission in its expertise and discretion based upon evidentiary proceedings. It denotes a need for transportation service which may be less than absolute, but more than simple convenience or desire of shippers or consignees of freight. It presupposes a present or definite future requirement not already adequately met or will be met. The Commission's determination of fact is whether a proposed transportation service will serve a useful public purpose, responsive to a public demand or need, and whether this purpose can and will be served by the proposed service without unnecessarily endangering or impairing the operations of existing services contrary to the public interest as it applies to motor carriers of household goods.

"Registration" means the identification of hazardous waste transporters through a national base state system.

"Reciprocal state" means a jurisdiction with which the Commission has entered into a reciprocal agreement regarding the uniform registration, licensing or permitting of motor carriers.

"Trip permit" means a temporary authorization issued by the Commission granting permission to conduct operations as a motor carrier in intrastate and/or interstate commerce.

"Truck yard pit" means any pit used to store or catch fluids or wash fluids in a truck terminal or maintenance facility as the result of transportation related activities.

"Uniform application" means a uniform motor carrier registration, licensing or permit application form established under a uniform program.

"Uniform program" means any law, rule, policy, practice and/or all combinations thereof which pertain to the regulation of motor carriers by motor vehicle operating in interstate or intrastate commerce over the highways of Oklahoma and is recognized, adopted and enforced or administered by the Transportation Division only when in concert and reciprocal whit one or more states which adopt, recognize, administer and enforce the exact same rule, law, policy, practice and/or all combinations thereof.

"Unprocessed agricultural commodities" means all products raised or produced by tillage and cultivation of the soil, pasture grasses, orchard products, trees in their raw state and products produced by livestock (such as milk, wool, eggs, honey and manure). The term also includes those products embraced within the above definition which have been processed for purposes of handling, storage, preservation or transportation (such as washing, cleaning, wrapping, packaging, boxing, baling, trimming, drying, sorting, sizing, grading, cooling, spraying and fumigating). The term does not include those products embraced within the above definition which, as a result of some treatment or processing, have been so changed that they are no longer in their natural or raw state, but possess new forms, qualities, or properties or result in combinations.

"USDOT" means the United States Department of Transportation.

SUBCHAPTER 3. INTRASTATE MOTOR CARRIERS

PART 3. LICENSE REQUIREMENTS

165:30-3-12. Identification device

(a) Every motor carrier operating upon the public highways of the State of Oklahoma shall purchase and place within ~~or upon~~ each power unit operated by said motor carrier an identification device issued by this Commission, and make available for inspection upon request.

(1) Only one (1) identification device is required for each power unit.

(2) The annual fee for each identification device will be as prescribed by law or Commission rule.

(3) Identification devices shall expire simultaneously with the expiration date of the annual license issued to the motor carrier.

(b) No identification device may be sold or otherwise transferred; except if such motor carrier provides a newly acquired vehicle in substitution therefor, each identification device on the discontinued vehicle, if such device is still in the possession of the motor carrier, may be transferred to the substitute vehicle or any subsequently substituted vehicle.

(c) Identification devices found to be in the possession of a carrier not authorized will be confiscated and returned to the Commission by a motor carrier enforcement officer.

(d) No identification devices will be issued to any motor carrier who does not meet all statutory, regulatory and Commission requirements.

(e) Identification device(s) must be purchased prior to the expiration of each annual expiration of a multiple year renewal license to extend the motor carrier license. Failure to timely purchase the identification device(s) will cause the motor carrier license to expire. Failure to purchase the identification device(s) within 30 days of the expiration of the license will cause the motor carrier license to automatically expire and subject to reinstatement rules as prescribed in OAC 165:30-3-103.

165:30-3-13. Deleterious Substance Transport Permit

(a) No person, motor carrier or private carrier shall transport any deleterious substance(s) in any quantity over twenty (20) gallons, without a Deleterious Substance Transport Permit, to be issued by the Commission. The Deleterious Substance Transport Permit shall be required in addition to a motor carrier license as prescribed by this Chapter, when required.

(b) No person, motor carrier or private carrier shall dump, disperse or otherwise release deleterious liquids or substances described herein upon a public highway, on private property, or at any place except as authorized by law.

(c) No motor vehicle used to transport salt water or other deleterious substances shall be equipped with a release device which can be operated in any manner from within the cab of any motor vehicle.

(d) The Commission may issue the permit upon applicant fulfilling all requirements. If issued, a copy of the permit must be carried in each motor vehicle at all time. Motor carriers must maintain valid liability insurance on file with this Commission in accordance with OAC 165:30-3-11. Failure to do so shall subject the permit to revocation.

(e) Notice of the application and hearing thereon shall not be required, unless the Commission shall so direct.

(f) Every person, motor carrier or private carrier holding a Deleterious Substance Transport Permit shall maintain an accurate register in numerical order at the principal place of business and retain for inspection by Commission personnel at all times. The register shall consist of the shipping document or criteria as provided in (g) of this Section.

(g) Every vehicle transporting deleterious substances shall carry an individual shipping document for each load containing the information as follows:

(1) Vehicle identification
(2) Driver name
(3) Shipper name
(4) Legal description of the origin of the load
(5) Volume and description of substance
(6) Legal description of the destination of the load

(h) The shipping documentation may be transferred to the register. The register shall be maintained in numerical order by the permit holder and retained for inspection by Commission personnel at all times.

(i) Failure to maintain and preserve the records provided herein shall be grounds for revocation of the permit.

PART 5. CONDUCTING OPERATIONS

165:30-3-31. Compliance with laws and regulations

(a) All intrastate motor carriers and private carriers, where applicable, shall conduct their operations in accordance with all applicable laws of the State of Oklahoma and all applicable rules of this Chapter. All licenses heretofore or hereafter granted by the Commission are subject to applicable provisions of law and of this Chapter as fully as if those laws and rules were set forth verbatim therein.

(b) No intrastate motor carrier or private carrier shall operate or allow to be operated on the public highways of the State of Oklahoma any equipment that does not comply with safety criteria established by the USDOT, the rules of this Commission; or, the statutes of the State of Oklahoma. No motor carrier or private carrier shall permit any person to operate a motor vehicle in violation of any size or weight limits established by this Chapter, of OAC 595:30 or of the statutes of the State of Oklahoma. Every person operating vehicles upon the public highways of this State shall meet the minimum safety standards as established by the USDOT and the statutes of the State of Oklahoma. Any vehicle which fails to meet safety criteria, or size and weight standards, or which is operated by any person in violation of this subsection shall be prevented from continued use of the public highways of the State of Oklahoma.

(c) The Commission adopts the oversize and overweight provisions of the rules as adopted by the Oklahoma Department of Public Safety in OAC 595:30.

PART 9. VIOLATIONS

165:30-3-76. Contempt complaint

In addition to the procedures set forth in the Oklahoma Statutes and in the Commission's Rules of Practice, OAC 165:5 regarding the procedure in proceedings as for contempt, the following procedures may be followed for violations ~~under Subchapters 3, 5, 9, 11, 13, 15, 17, 19, and 21~~ of this Chapter, and applicable statutes of Title 47 and Title 68:

(1) An enforcement officer/compliance inspector/rate field agent (hereinafter referred to as officer) of the Transportation Division may issue in the field a contempt citation for any violation of this Chapter or any applicable state statute. The officer shall furnish a copy of the citation to the person.

(2) The citation shall be in the form prescribed by the Commission's Transportation Division.

(3) A person served with a contempt citation may post bond or be released by the complaining officer upon personal recognizance as provided herein. The person shall indicate a plea on the citation, and sign the citation in the presence of the complaining officer. A person served with a citation may elect to change this plea to the citation at any time prior to and including the hearing date before the Administrative Law Judge. Any person electing to plead not guilty shall appear at the time and date set forth on the citation for a hearing on the matter before the Administrative Law Judge and, if not appearing, forfeit the bond posted. All Rules of Practice, OAC 165:5, of the Oklahoma Corporation Commission regarding procedures for hearing shall apply to the hearings provided for herein, except that the Administrative Law Judge may issue either an oral or written recommendation to the Commission en banc on the matter.

(A) The Commission shall accept bond payment of a fine in the form of cash, certified check, cashier's check, certified or guaranteed bank check, postal or commercial money order, guaranteed arrest bond certificate or any other form of payment accepted by the Commission. Such payment shall be in full satisfaction of the violation asserted in the complaint and the allegations and charges therein will be taken as confessed. The guaranteed arrest bond certificate must have been issued by either a trucking services club or surety company, officially authorized to issue such bonds for trucking violations in Oklahoma by the State Insurance Commission, or a trucking association authorized to transact business in Oklahoma by the State Insurance Commission. The guaranteed arrest bond certificate shall be signed by the person

to whom it is issued and shall contain a printed statement that such surety company, trucking association or trucking services club guarantees to pay the fine imposed on such person.

(B) Any person may be released by the complaining officer on personal recognizance if the person is unable to post a bond and the person has been issued a valid license to operate the motor vehicle they are operating, by Oklahoma, or by another state jurisdiction within the United States, or by any party jurisdiction of the Nonresident Violator Compact; and the complaining officer is satisfied as to the identity of the person receiving the citation. A person released on personal recognizance shall post a bond with the Commission within ten (10) days of the writing of the citation. Failure to do so may result in detention of equipment or revocation of authority.

(C) The failure to timely appear at the hearing at the time and date set forth on the citation may result in a request for suspension of the person's driver's license in Oklahoma, or in the nonresident's home state pursuant to the Nonresident Violator Compact. The Commission's Transportation Division shall report all such requests for suspension to the Department of Public Safety which shall proceed as provided for by the provisions of Section 1115.5 of Title 22 of the Oklahoma Statutes.

(D) The violations for which fines shall be accepted and amounts thereof shall be as follows:

(i) Operating as a motor carrier without proper authority:

(I) First violation within a 12-month period - $300.00

(II) Second violation within a 12-month period - $400.00

(ii) Operating without carrying /producing a valid copy of the authority, permit, vehicle registration, fuel license, oversize or overweight permit, or display of fuel decal or identification device:

(I) First violation within a 12-month period - $125.00

(II) Second violation within a 12-month period - $200.00

(iii) Operating as a motor carrier carrying or producing an altered authority, oversize or overweight permit, vehicle registration or fuel license~~:~~

~~(I) First violation within a 12-month period - $500.00~~

~~(II) Second violation within a 12-month period~~ - $500.00

(iv) Operating a commercial vehicle in excess of its ~~legal~~ registered weight by two thousand one (2,001) pounds or more or violating special permit - amount as specified ~~in the Oklahoma Bond Schedule pursuant to 22 O.S. § 1115.3~~ by state statute.

(v) Transportation of a deleterious substance(s) without a current deleterious substance transport permit:

(I) First violation within a 12-month period - $300.00

(II) Second violation within a 12-month period - $400.00

(vi) Operating a vehicle without proper registration:

(I) First violation within a 12-month period - $175.00

(II) Second or third violation within a 12-month period - ~~$250.00~~ the amount as shown in (vi) above plus an amount as reflected in 47 O.S. § 1133

(vii) Operating motor vehicle without proper markings on vehicle:

(I) First violation within a 12-month period - $175.00

(II) Second violation within a 12-month period - $250.00

(viii) Operating a commercial motor vehicle without a valid fuel permit:

(I) First violation within a 12-month period - ~~$125.00~~ $175.00

(II) Second violation within a 12-month period - ~~$200.00~~ $250.00

(ix) Operating motor vehicle without valid lease agreement in vehicle:

(I) First violation within a 12-month period - $125.00

(II) Second violation within a 12-month period - $200.00

(x) Operating motor vehicle without proper shipping or cargo ownership documentation in vehicle:

(I) First violation within a 12-month period - $125.00

(II) Second violation within a 12-month period - $200.00

(xi) Failure to yield for inspection:

(I) First violation within a 12-month period - $150.00

(II) Second violation within a 12-month period - $200.00

(xii) Operating as an interstate motor carrier while placed out of service by a federal agency:

(I) First violation within a 12-month period - $300.00

(II) Second violation within a 12-month period - $400.00

(xiii) Operating as a transporter of hazardous waste without proper registration/permit:

(I) First violation within a 12-month period - $350.00

(II) Second violation within a 12-month period - $500.00

(xiv) Operating as an interstate motor carrier, freight forwarder, broker or leasing company without paying the appropriate UCR fee:

(I) First violation within a 12-month period - $300.00

(II) Second violations within a 12-month period - $400.00

(xv) Operating as an interstate motor carrier, freight forwarder, leasing company or broker without an active USDOT number:

(I) First violation within a 12-month period - $300.00

(II) Second violations within a 12-month period - $400.00

(xvi) Operating as an interstate motor carrier, freight forwarder, leasing company or broker without proper federal authority:

(I) First violation within a 12-month period - $300.00

(II) Second violations within a 12-month period - $400.00

(xvii) Operating as motor carrier, carrier, freight forwarder, leasing company or broker without proper insurance on file:

(I) First violation within a 12-month period - $300.00

(II) Second violations within a 12-month period - $400.00

(xviii) Operating oversize without a proper oversize permit; operating as an escort service without proper certification or violating its certification; failure to secure load; or failure to carry or produce a valid insurance security verification form:

(I) First violation within a 12-month period - amount as set by state statute

(II) Second violation within a 12-month period - amount as set by state statute plus $100.00

(xix) Refusal to weigh vehicle - $500.00

(xx) Operating a commercial vehicle in excess of its legal weight; violating a special permit or a variance permit - amount as specified by state statute.

(~~xiv~~ xxi) Other violations, unless otherwise specified by the Oklahoma Statutes or by the Oklahoma Bond Schedule:

(I) First violation within a 12-month period - $175.00

(II) Second violation within a 12-month period - $250.00

(~~xv~~ xxii) The third conviction within a twelve-month period of units (i) through ~~(xiv)~~ (xviii) of the subparagraph, unless otherwise specified by the Oklahoma Statutes or the rules of this Subchapter, shall result in a contempt fine of $500.00. In addition, the Commission may suspend or revoke a motor carrier's authority, registration or permit.

(E) Every officer is authorized to serve process in motor carrier, private carrier and other Commission related matters.

SUBCHAPTER 10. INTERSTATE MOTOR CARRIERS

PART 1. COMPLIANCE

165:30-10-1. USDOT number required

(a) All motor carriers engaged in interstate commerce, operating a commercial motor vehicle as defined by 49 C.F.R. 390.5, must obtain its USDOT number prior to commencing operations.

(b) Motor carriers required to obtain a USDOT number may not engage in interstate commerce within, into or out of Oklahoma without having an active USDOT number.

(c) All motor carriers engaged in interstate commerce shall comply with all provisions of 49 C.F.R. 390.21 with regard to vehicle markings.

165:30-10-2. [RESERVED]

165:30-10-3. Liability insurance

(a) All interstate motor carriers shall have valid insurance on file with FMCSA, as required by FMCSA.

(b) All interstate motor carriers not required to file insurance with FMCSA, shall carry a copy of its current and valid liability insurance security verification form in each vehicle and present it to an officer upon his/her request.

165:30-10-4. [RESERVED]

165:30-10-5. Deleterious Substance Transport Permit

An interstate carrier transporting a deleterious substance(s) shall comply with all provisions of OAC 165:30-3-11 and OAC 165:30-3-13.

165:30-10-6. [RESERVED]

165:30-10-7. Hazardous waste transportation

An interstate carrier transporting hazardous waste shall comply with all provisions of OAC 165:30-17.

PART 3. CONDUCTING OPERATIONS

165:30-10-11. Lease agreement

An interstate motor carrier shall comply with all provisions of 49 C.F.R. 376.11 with regard to lease agreements.

165:30-10-12. [RESERVED]

165:30-10-13. Shipping documentation

(a) An interstate motor carrier shall be required to carry at all times documentation that provides legal possession of the cargo and shipment information.

(b) Shipment information must contain, but is not limited to, a description of the cargo and the origin and destination of the cargo.

165:30-10-14. [RESERVED]

165:30-10-15. Compliance with laws and regulations

(a) An interstate motor carrier engaged in operations regulated by the FMCSA must comply with all FMCSA regulations.

(b) An interstate motor carrier shall conduct its operations in accordance with all applicable laws of the State of Oklahoma and all applicable rules of the Commission.

(c) No motor carrier engaged in interstate commerce shall operate or allow to be operated on the public highways of the State of Oklahoma any equipment that does not comply with safety criteria established by the USDOT, the rules of this Commission; or, the statutes of the State of Oklahoma. No motor carrier or private carrier shall permit any person to operate a motor vehicle in violation of any size or weight limits established by this Chapter, of OAC 595:30 or of the statutes of the State of Oklahoma. Every person operating vehicles upon the public highways of this State shall meet the minimum safety standards as established by the USDOT and the statutes of the State of Oklahoma. Any vehicle which fails to meet safety criteria, or size and weight standards, or which is operated by any person in violation of this subsection shall be prevented from continued use of the public highways of the State of Oklahoma.

(d) Violation of the rules of this Subchapter may result in the motor carrier being prohibited from using the public highways of the State of Oklahoma or any other penalties deemed appropriate by the Commission pursuant to authority granted to the Commission.

165:30-10-16. [RESERVED]

165:30-10-17. Loading capacity

An interstate motor carrier shall comply with all provisions of OAC 165:30-3-71.

165:30-10-18. [RESERVED]

165:30-10-19. Pollution abatement

An interstate motor carrier shall comply with all provisions of OAC 165:30-3-92.

PART 5. VIOLATIONS

165:30-10-31. Contempt complaint

In addition to the procedures set forth in the Oklahoma Statutes and in the Commission Rules of Practice, OAC 165:5, regarding the procedure in proceedings as for contempt, the procedures set forth in 165:30-3-76 may be followed for violation for any requirement or provision of law or the rules of this Subchapter.

PART 7. INTERSTATE MOTOR CARRIERS OPERATING IN INTRASTATE COMMERCE

165:30-10-41. Intrastate authority required

An interstate motor carrier must obtain intrastate authority from the Commission prior to commencing intrastate operations.

165:30-10-42. [RESERVED]

165:30-10-43. Exceptions to intrastate renewal requirements

An interstate carrier with intrastate authority must continue to conduct its operations in accordance with OAC 165:30-3 or OAC 165:30-15, with the exception of the following:

(1) An interstate motor carrier with valid intrastate authority, issued pursuant to OAC 165:30-3 or OAC 165:30-15, shall not be required to comply with OAC 165:30-3-3 or OAC 165:30-15-5.

(2) An interstate motor carrier with valid intrastate authority, issued pursuant to OAC 165:30-3 or OAC 165:30-15, shall not be required to renew its identification devices annually, after the first year of the license has elapsed.

(3) An interstate motor carrier with valid intrastate authority, issued pursuant to OAC 165:30-3 or OAC 165:30-15, shall not be required to carry a copy of its intrastate license with current identification device annually, after the first year of the license has elapsed.

165:30-10-44. [RESERVED]

165:30-10-45. Miscellaneous

(a) An interstate motor carrier with valid intrastate authority issued pursuant to OAC 165:30-3 or OAC 165:30-15, must maintain liability insurance on file as prescribed in OAC 165:30-3-11 or OAC 165:30-15-6, to retain its intrastate authority.

(b) If a motor carrier's authorization to operate interstate is canceled, whether voluntary or involuntary, the motor carrier must immediately make application to the Commission for intrastate authority renewal and identification devices. Failure to make application within sixty (60) days shall cause the motor carrier's intrastate license to expire.

SUBCHAPTER 12. UNIFIED CARRIER REGISTRATION

165:30-12-1. Unified Carrier Registration

(a) The Commission shall comply with the provisions of the procedures adopted by the UCR Board.

(b) An interstate motor carrier, freight forwarder, leasing company or broker subject to UCR shall be known as a UCRant.

(c) A UCRant shall pay its applicable UCR fee to its base state, in accordance with the UCR procedures.

(d) Failure of a UCRant to pay its applicable UCR fee to its base state shall subject the UCRant to contempt complaint proceedings.

SUBCHAPTER 15. INTRASTATE PRIVATE CARRIERS

PART 3. OBTAINING A PRIVATE CARRIER LICENSE AND LICENSE REQUIREMENTS

165:30-15-4. Obtaining a license

(a) No intrastate private carrier, utilizing equipment with ~~a GVWR~~ an actual weight, registered weight or GVWR in excess of 26,000 pounds and/or GCWR in excess of 26,000 pounds when the trailer's GVWR is greater than 10,000 pounds, shall operate upon any street, road, public highway or dedicated public thoroughfare of this State for the transportation of property without first obtaining from the Commission a license as provided in this Section. A private carrier license is not required for a bona fide farmer transporting commodities from farm to market or market to farm; registered and valid non-profit organizations or any private carrier operating equipment leased or rented from a company that leases or rents vehicles on a commercial scale, provided the lease or rental contract is for thirty-one (31) days or less and a copy of the contract is carried in the vehicle. A license issued under this Subchapter shall not include transportation as a for-hire motor carrier. For-hire motor carriers must comply with Subchapter 3 and/or Subchapter 13 of this Chapter.

(1) An applicant for a private carrier license shall file with the Commission a written application on the appropriate form prescribed by the Commission (TDF 1), and shall tender with the application a filing fee as prescribed by law or by Commission rule.

(2) The application shall be assigned a personal identification number (PIN), which shall be the permanent identification number for all matters relating to the license granted therein. Any application thereafter filed to amend the license by the same applicant shall be filed in the same cause under the original PIN, and otherwise shall be governed by the provisions of this Subchapter relating to an application for license. Each subsequent application shall also bear a sub-number in sequence.

(3) A license shall be personal to the holder thereof, and shall be issued only to an individual, a corporation, a limited liability corporation, a partnership or some other legally recognized entity.

(4) The filing of an application for a license does not of itself authorize any private carrier operations by the applicant. Such operations are prohibited until after all requirements have been met, and a license has been issued. All requirements for compliance with this Subchapter shall be met within sixty (60) days from date of application recommending the license be issued. Failure to comply may result in dismissal of the application for a license. Licenses issued shall be valid for a maximum of one year and may be renewed after application has been filed as provided by this Chapter.

(5) No license for private carrier intrastate operations shall be issued until applicant has a satisfactory USDOT safety rating or the applicant has demonstrated its ability to conduct operations in a safe and reasonable manner and applicant is in compliance with all applicable rules and laws of the State of Oklahoma; has furnished proper proof of all insurance required by this Subchapter and all applicable state statutes.

(6) The notarized application shall require the following:

(A) Name, a single trade name (if any), mailing address, physical address, telephone number and domicile county of the applicant.

(B) The type of applicant (indicating if sole proprietorship, partnership, corporation or other legal entity), specifying the names of all officers, if any, and listing the addresses of each.

(C) The type of operations the applicant is applying for.

(D) The name and address of the motor carrier's process agent in Oklahoma (if the motor carrier does not maintain its principal place of business in Oklahoma).

(E) Declaration of its USDOT number, safety rating and a safety summary report which details its safety program and lists all safety violations identified within the prior twelve (12) months. Carriers without a USDOT number must attach a copy of its previously submitted application for a USDOT number. The applicant shall notify the Commission in writing of its USDOT number once issued, unless the USDOT number is issued by the Commission.

(F) A size and weight summary report which details its size and weight compliance program and lists all size and weight violations identified within the prior twelve (12) months.

(G) A listing of all power vehicles and trailers to be used, detailing the model, make and capacity of each vehicle and denoting whether each vehicle is owned or leased.

(H) A description of all terminal, dock or motor pool facilities.

(I) A declaration that the Applicant is in full compliance with all other state laws, rules and regulations.

(J) Any other information the Commission deems necessary.

(7) Every person operating under the Motor Carrier Act of 1995 and the rules of this Commission shall possess a copy of this Chapter governing the operations of motor carriers and private carriers.

(8) A private carrier desiring to modify its license shall file a sub application (TDF 1). Sub applications to include hazardous materials must comply with the provisions in this Section. Sub applications to modify other types of operations shall be exempt from (6)(D)-(G) of this subsection.

(9) A copy of the current license under which a carrier operates shall be carried at all times in each power unit by the private carrier.

(b) Applicant may be issued a provisional intrastate license not to exceed ninety (90) days from the date application is filed, provided all requirements, with the exception of the educational compliance requirements, for the intrastate license have been met. Applicant must provide a written request for the provisional intrastate license. If the provisional intrastate license is issued, a copy of the provisional intrastate license must be carried in each vehicle operated by the Applicant.

(c) No intrastate private carrier license shall be issued to an applicant until all outstanding fines or judgments due the Commission or other state(s) regulatory agencies have been satisfied.

(d) An intrastate private carrier additionally conducting intrastate motor carrier operations under a valid motor carrier license, certificate or permit need not obtain a private carrier license.

(e) If a hearing is held, the applicant shall have the burden of establishing its ability to conduct operations in a safe and reasonable manner and in compliance with all applicable rules and laws of the State of Oklahoma and that it has furnished or will furnish proper proof of all insurance required by this Chapter and all applicable state statutes. The Commission may grant or deny the application or may impose conditions, stipulations and limitations on the license.

(f) All proceedings subsequent to the application, and the conduct of the hearing, shall be governed by applicable provisions of the Commission's Rules of Practice, OAC 165:5.

165:30-15-6. Insurance

(a) No intrastate private carrier required to obtain a private carrier license whose principal place of business is in Oklahoma shall conduct any operations in this State unless such operations are covered by a valid primary bond or insurance policy issued by an Oklahoma State Insurance Commission authorized provider or a self insurance certificate issued by the Oklahoma State Insurance Commission or a state commission certified by the National Association of Insurance Commissioners (NAIC) or by the Oklahoma Department of Public Safety pursuant to 47 O.S. § 7-503. No private carrier required to obtain a private carrier license shall conduct any operations in this State unless such operations are covered by a valid bond or insurance policy issued by a NAIC certified state insurance commission licensed provider or a self insurance certificate issued by a state commission certified by NAIC or by the Oklahoma Department of Public Safety pursuant to 47 O.S. § 7-503. No holder of a license shall conduct any operations before a proper certificate of insurance(s) or self insurance has been filed with, and approved by the Commission. A surety bond containing all obligations provided by this Section may be substituted for an insurance policy.

(b) With the exception of private carriers filing self insurance certificates, every intrastate private carrier of property ~~using vehicles with a GVWR greater than 26,000 pounds~~ is required to obtain a private carrier license, and shall file with, and must be approved by, the Commission a certificate on Form E or G certifying that there is in effect a valid bond or insurance policy covering operations in Oklahoma to protect the public against loss of life, injury and property damage in minimum amounts, of combined single limits, for bodily injuries to or death of all persons injured or killed in any accident, and loss or damage in any one accident to property or other (excluding cargo), as follows:

(1) Transporting non-hazardous commodities or commodities not mentioned in (B)-(C) of this subsection - $350,000.

(2) Transporting deleterious substances - $750,000.

(3) Transporting hazardous waste, materials, substances, explosives, poison gas or highway controlled radioactive materials as defined in and as required by 49 CFR, Parts 100 through 399.

(c) Every intrastate private carrier utilizing a self insurance certificate shall file with the Commission a certificate of self insurance covering operations in this state. In the event an authorized agency cancels a certificate of self insurance, the carrier must immediately notify the Commission.

(d) The Commission may by order grant authority to operate or to continue operating as a private carrier conditional upon carrying insurance coverage in amounts larger than prescribed by (b) of this Section.

(e) No certificate of insurance or surety bond filed with the Commission pursuant to this Section shall be canceled, unless the authorization to conduct operations has been canceled, except after thirty (30) days written notice made to the Commission, on Form K or L, which notice shall be effective only upon actual receipt thereof by the Commission.

(f) Insurance certificates or surety bonds may be canceled without the thirty (30) days written notice on Form K or L only when the authorization to operate has previously expired or cancelled, the carrier provides an affidavit stating no operations have been conducted and the effective date of the cancellation notice is not before the date the cancellation notice is received in the Commission.

(g) Insurance certificates or surety bonds not properly cancelled or expired shall be considered expired one year after the carrier's authorization to operate has been cancelled or expired.

(h) Insurance certificates, certificates of self insurance, or surety bonds approved by this Commission shall be replaced by more recent insurance certificates, certificates of self insurance, or surety bonds. The liability of the retiring insurer or surety shall be terminated as of the effective date of the

replacement insurance certificate or surety bond provided the replacement is approved by this Commission.

(i) No certificate of insurance or certificate of self insurance shall be filed with the Commission which contains a provision to the effect that liability thereunder may be limited or avoided because of the culpability, the recklessness, or the condition of the driver of the vehicle involved or any other restriction relating to the driving or operation of the vehicle.

(j) Every certificate of insurance or certificate of self insurance filed with the Commission shall automatically provide that the public is protected from damage sustained through operations of any and all vehicles operated by the private carrier insured, whether or not listed or identified in the policy; and that liability is not limited by the description of any particular vehicle or route which may be traveled by the motor vehicle in transporting passengers or property under the license.

(k) Every certificate of insurance filed with the Commission shall be executed by an officer or authorized agent of the insurance company; and if executed by an agent, a copy of his written authority or power of attorney to execute the same shall be attached to the certificate.

(l) When insurance is provided by more than one insurer in order to aggregate security limits for private carriers, a separate insurance certificate and endorsement is required of each insurer.

(m) Every private carrier shall maintain in force at all times all insurance required by state laws and by this Section. Failure for any cause to maintain any required insurance in force or self insurance certificate on file with the Commission shall automatically and without notice suspend the license of a private carrier until proper insurance is filed.

(n) Whenever the license of a private carrier is suspended for failure to maintain in force insurance required by this Section or self insurance certificate on file with the Commission, the carrier must file, within sixty (60) days after commencement of the suspension, proper certificate(s) of insurance or self insurance as provided in this Section and a sufficient showing, by affidavit or otherwise, that no operations were conducted during the period that insurance was not in force (TDF 18).

(o) Whenever a private carrier fails to provide proper certificates of insurance or self insurance within sixty (60) days after suspension thereof as provided in this Section, the private carrier's license shall be cancelled by operation of law, and without notice. A license so cancelled shall not be reinstated or otherwise made operative except upon proper showing, at a hearing, that the private carrier was actually covered by proper insurance or proper certificate of self insurance during the suspension or cancellation period, and that failure to file with the Commission was not due to the private carrier's own negligence.

(p) Any private carrier conducting operations under a suspended or cancelled license, shall not be eligible to apply for a new license for a period of not less than one hundred eighty (180) days. The one hundred eighty (180) day period shall be determined by either the date insurance on file expires or the date a violation is discovered, whichever occurrence is later.

SUBCHAPTER 17. HAZARDOUS WASTE TRANSPORTERS

PART 3. APPLYING FOR HAZARDOUS WASTE REGISTRATION AND PERMIT

165:30-17-12. Obtaining a hazardous waste registration and permit

(a) A motor carrier with its principal place of business in Oklahoma, or that designates Oklahoma as its base state, shall register as a hazardous waste transporter with and obtain a permit from the Commission before transporting a hazardous waste in or through Oklahoma. A motor carrier that designates another participating state as its base state shall register as a hazardous waste transporter and obtain a permit from that state before transporting a hazardous waste in or through the state of Oklahoma.

(b) A motor carrier who engages in interstate or intrastate transportation of a hazardous waste and who is required to register its hazardous waste transportation in Oklahoma shall file parts I, II and IV of the uniform application (UPW) with the Commission and pay the prescribed fees for registration and permits for its Oklahoma waste transportation as well as fees for reciprocal states.

(c) Upon a motor carrier's compliance with this Subchapter, the Commission shall issue a Hazardous Waste Registration and/or Permit to the motor carrier within ninety (90) days. Motor carriers must maintain valid liability insurance on file with this Commission in accordance with OAC 165:30-3-11. Failure to do so shall subject the registration or permit to revocation.

(d) The Commission shall not issue a registration or permit to a motor carrier if the Commission determines that a motor carrier's conduct would constitute grounds for suspension or revocation under this Subchapter. The Transportation Division may elect to request additional information from the motor carrier to support the motor carrier's application for registration and/or permit. Additional information requested shall be based upon the motor carrier's compliance with the federal motor motor carrier safety regulations.

(e) A registration is valid for one year and a permit is valid for three years unless the motor carrier fails to renew its registration, the permit is suspended or revoked or there is a substantial change in the motor carrier's operations during the permitting period.

(f) Each motor carrier shall file a Part I - Registration of the uniform application (UPW - Part I) on an annual basis. However, for the first year after the effective date of this Subchapter, the Transportation Division may stagger the registration date for motor carriers. Registration fees shall be apportioned for any quarterly time frame exceeding one year.

(g) Each motor carrier shall additionally file a Part II - Permitting of the uniform application (UPW - Part II) every three years. However, for the first year after the effective date of this Subchapter, the Transportation Division may divide the total pool of applicants to be granted a uniform permit into three classes. The first class may be granted uniform permits with

a term of one year; the second class may be granted uniform permits with a term of two years; and the third class may be granted uniform permits for three years. Permit fees shall be apportioned for any permit time not equaling a three-year time frame.

(h) Each uniform registration and permit application shall contain a certification by a responsible official of the applicant who is authorized to certify applications for registrations and permits on behalf of the applicant. Such certification shall contain the following statement, "I certify that, to the best of my knowledge and after due investigation, the information contained in this application is true, accurate, and complete" and shall contain the name, title, and telephone number of the official certifying the application. Such certification must be signed and dated by the official certifying the application.

(i) No registration or permit shall be issued to a motor carrier with outstanding fines owed to another state agency.

(j) A registered and permitted motor carrier shall maintain a copy of ~~the~~ its valid registration and permit for Hazardous Waste in each vehicle ~~it uses to transport a~~ when transporting a hazardous waste.

(k) The hazardous waste registration and permit are non-transferable.

SUBCHAPTER 19. REGISTRATION PURSUANT TO THE INTERNATIONAL REGISTRATION PLAN

165:30-19-3. Registration

(a) **General requirements for registration.** Before a vehicle can be proportionally registered in the state of Oklahoma the registrant must:

(1) Have an established place of business located in Oklahoma or satisfy the requirements for registration as an owner-operator;

(2) Complete the application, all required schedules, and provide backup documentation required by the Commission to verify the information submitted by the applicant;

(A) The application must include the mailing address and telephone number of the applicant, for verification purposes.

(B) If the application is signed by someone other than the registrant, pursuant to a power of attorney, the name or names of the individuals to whom such authority is granted must be included in the power of attorney executed by the applicant.

(3) Provide proof of payment (or suspension from levy) of Federal Heavy Vehicle Use Tax;

(4) Provide proof of financial responsibility pursuant to 47 O.S. § 7-602 (liability insurance);

(5) ~~Except in the case of private carriers, provide proof of operating authority~~ Motor vehicles operated by a motor carrier with valid liability insurance on file with FMCSA or this Commission are exempt from subsection (a) (4) of this Section;

(6) Provide proof of ownership;

(7) Provide proof of payment of prior registration fees, if the vehicle was registered pursuant to the IRP in another jurisdiction; and

(8) Pay all applicable fees to complete registration.

(9) Provide both (where different) the USDOT numbers of the registrant and the motor carrier responsible for safety on the IRP application.

(b) **Registration periods.** Application for registration may be made at any time during a registration year.

(c) **Where to make application.** Application for registration may be submitted through the mail to the IFTA/IRP Section, Transportation Division, Oklahoma Corporation Commission, P.O. Box 52948, Oklahoma City, Oklahoma, 73152-2948, or by applying in person at ~~409 N.E. 28th Street~~ 2101 N. Lincoln Blvd., in Oklahoma City. A list of other locations where application may be submitted is available from the IFTA/IRP Section or the Commission website under the Transportation Division (hhtp://www.occeweb.com).

(d) **Incomplete applications.** No application for proportional registration shall be processed unless the applicant has submitted the documentation required in (a) of this Section. Failure to submit the required documentation shall result in denial of the application.

(e) **IRP Plan Compliance.** Since registration with the Plan can effect other jurisdictions' registration fees and tax receipts, the Transportation Division must be diligent in ensuring that those registrants with Oklahoma as their base jurisdiction are indeed entitled to base in Oklahoma.

(1) If after approval of the application and during the registration year, the Transportation Division has reason to believe that critical account information submitted on an application has changed, the Transportation Division shall allow the registrant 30 days to provide the updated information. If the information is not provided within that time or is deemed insufficient, the Transportation Division shall revoke the registrants' credentials in accordance with OAC 165:5-25.

(2) If after approval of the application and during the registration year the Transportation Division has evidence that critical account information submitted on an application was submitted erroneously or falsely, the Transportation Division shall revoke the registrants' credentials in accordance with OAC 165:5-25.

165:30-19-5. Established place of business

(a) **General provisions.** To verify a registrant's established place of business in Oklahoma, the registrant must provide proof of a physical structure, designated by a street number or road location and open during normal business hours, which contains within it:

(1) A telephone or telephones publicly listed in the name of the fleet registrant;

(2) A person or persons conducting the fleet registrant's business; and

(3) The operational records of the fleet, unless such records can be made available in accordance with the provisions of Section 1602 of the International Registration Plan.

(b) **Specific compliance provision (IRP Decis. 99-4).** An established place of business as utilized in these rules and in Sections 210 and 218 of the International Registration Plan cannot be provided for the registrant by or in the form of a registration agent or other third party.

(c) **Physical structure.** A physical structure, owned, leased, or rented by the registrant, wherein operational records of the fleet can be made available for audit purposes, must be evidenced by:

(1) A current real estate tax bill;

(2) Photocopies of rent receipts or mortgage payments which indicate the business address;

(3) A current real estate rental contract and an original power of attorney conforming with Section 20 of Title 16 of the Oklahoma Statutes, if the contract is signed by someone other than the registrant; or,

(4) Proof of insurance coverage.

(d) **Publicly listed telephone.** A telephone or telephones, located in the structure, which is publicly listed in the name of the fleet registrant, must be evidenced by one of the following:

(1) A telephone bill in the registrant's name, indicating the business address; or

(2) A copy of a current listing in the current telephone book, or verification of a current, active directory listing for the registrant's business address from a telephone company.

(e) **Specific compliance provision (IRP Decis. 99-4).** A registrant may not utilize a telephone listing indicating the same telephone number as that of any other person in this state as a qualifying telephone listing under subsection (d).

(f) **Person or persons conducting registrant's business.** The person conducting the trucking-related business of the registrant must be in the permanent employment of the registrant, as evidenced by submission of the registrant's federal employer's identification or other identification number and verification by the Commission that the registrant is an employer for the purposes of Oklahoma Withholding.

(g) **Specific compliance provision (IRP Decis. 99-4).** A registrant may not utilize a registration agent or its employees to satisfy the requirement of the presence of a person or persons in this state conducting the registrant's business.

(h) **Use of registration agent.** Nothing in this Section shall be construed as prohibiting a registration agent from preparing or filing proportional registration applications or other documents for a registrant who meets the requirements set forth in this Section.

(i) **Resubmission of documentation.** Registrants with accounts in good standing may not be required to resubmit the established place of business indicia each year, provided that the established place of business remains unchanged since previously documented to the satisfaction of the Commission. To avail itself of this provision, the registrant must certify to the Commission under penalties of perjury that the registrants' established place of business has not changed. Nothing herein shall prevent the Commission from periodically requiring registrants to re-submit documentation of their established place of business. Registrants will periodically be required to resubmit established place of business documentation in accordance with the schedule established by the Commission.

(j) **False or fraudulent submission.** Applicants who knowingly provide false or fraudulent information or abuse the provisions of 165:30-19-3 shall have their registration credentials immediately revoked and will be denied further application.

165:30-19-8. Maintenance and availability of operational records

(a) **Retention of records.** Operational records must be maintained for a period of three (3) years after the close of the registration year for which the records were included in the application. Failure to maintain the required records may result in an assessment of up to 100 percent Oklahoma registration fees, additional fees due other states, and/or denial of apportion privilege.

(b) **Availability of records.** Failure to make records available upon proper request may result in mileage adjustment evidenced by an assessment of up to One Hundred percent (100%) Oklahoma registration fees, additional fees due other states, and/or denial of apportion privilege.

(c) **Electronic records.** Registrants or licensees selected for audit whose fleet size exceeds 200 vehicles are required to submit the detailed records required to conduct the audit in the electronic format established by the Commission.

165:30-19-10. Renewal applications

When an application for renewal of proportional registration is not received on or before the first day of the month of expiration, the applicant cannot be assured that a registration cab card and plate will be issued for display of credentials prior to the enforcement date. Registrants whose renewal application is not received on or before the expiration date must renew all vehicles in their fleet unless disposition of these vehicles is provided. Registrants whose renewal application is not received on or before the expiration date shall be subject to enforcement for display of credentials on the day following the expiration date.

SUBCHAPTER 21. INTERNATIONAL FUEL TAX AGREEMENT

165:30-21-5. Application for license

A person shall file an application for licensing with the Commission on the prescribed form. The fuel tax license application shall have the following specified content:

(1) The account identification number specified in IFTA Procedures Manual Section P200;

(2) Name and social security number of owner(s), partners or corporate officers;

(3) Legal business name (if different from the name given above);

(4) Physical location of the business;

(5) Mailing address of the business;

(6) Signature and date;
(7) Number of IFTA decals required by licensee;
(8) Decal fee, as set forth in OAC 165:5;
(9) Statement of existence of bulk storage in all member jurisdictions;
(10) A statement that the applicant agrees to comply with reporting, payment, recordkeeping, and license display requirements as specified in the International Fuel Tax Agreement. The applicant further agrees that base jurisdiction may withhold any refunds due if applicant is delinquent on payment of fuel taxes due any member jurisdiction. Failure to comply with these provisions shall be grounds for revocation of license in all member jurisdictions; and
(11) A statement to the effect that the applicant certifies with his or her signature that, to the best of his or her knowledge, the information is true, accurate, and complete and any falsification subjects him or her to appropriate penalties of perjury.
(12) The USDOT number of the applicant.

165:30-21-7. Application processing

(a) Upon receipt of an IFTA fuel tax license application from a new or renewing applicant, the Commission shall check all entries on the application to ensure that they are complete. If the Commission feels more information is required, the licensee should immediately be contacted requesting the required information. Upon being satisfied that the application is correct and all fees prescribed by law or Commission rule have been paid, the Commission shall issue the fuel tax credentials for the fleet.
(b) The Transportation Division may withhold issuing requested decals if fulfilling the request would result in the licensee having over 25% more decals in their possession than their fleet size. If the Division withholds decals under this provision, it will only withhold that portion of the decal request that causes the licensee's decal inventory to exceed the 25% figure.

165:30-21-12. Denial, revocation, and reinstatement

(a) The Administrator of the IFTA Section may deny the issuance of a motor carrier's IFTA license based upon the motor carrier's failure to provide IFTA returns and/or remittances to other member jurisdictions, or to prove it is qualified to obtain a IFTA license, or may revoke an IFTA license issued under 68 O.S. § 607(E) if he determines a motor carrier has:
(1) Made a knowing falsification of a material fact in a uniform application;
(2) Failed to timely file a quarterly IFTA tax return;
(3) Failed to timely pay in full a liability indicated on a quarterly IFTA tax return;
(4) Failed to timely pay in full a liability determined by an audit of the motor carrier's records;
(5) Paid any amount due under the IFTA program with a check drawn on an account with insufficient funds;
(6) Any other just cause to protect the interests of the state of Oklahoma and/or the IFTA member jurisdictions.
(b) The Administrator of the IFTA Section may reinstate or deny reinstatement of an IFTA license if the following conditions exist:
(1) A suspended motor carrier license may be reinstated if the motor carrier remedies the action that caused the suspension and pays the reinstatement fee of $100.
(2) If a bond is required, a suspended motor carrier license shall not be reinstated until the motor carrier has provided said bond.
(3) A suspended motor carrier license may be denied reinstatement for habitual violations of this Section.
(4) In lieu of requiring a bond, the Administrator may reinstate a license if the licensee agrees to make future remittances in certified funds.
(5) A licensee may be suspended for their failure to make remittances under (4) in certified funds.
(c) A motor carrier who wishes to contest a denial, revocation, or a reinstatement denial is entitled to a hearing under the procedures contained in the Commission's Rules of Practice, OAC 165:5.

SUBCHAPTER 23. MOTOR LICENSE AGENTS

165:30-23-1. Responsibility for errors in application and computation

(a) A motor license agent shall be responsible for errors in tax application, computations, and/or fee computations and collections while performing registration of vehicles pursuant to Section 1120 of Title 47 of the Oklahoma Statutes.
(b) Upon demand for payment, the motor license agent must, within 15 days, remit the full amount of any error determined to be due, or if unable to pay the full amount, the agent may make a written request to the Commission for consideration of an extension of time to remit monies due.

165:30-23-2. [RESERVED]

165:30-23-3. Responsibility for agency shortages

(a) A motor license agent shall be responsible for paying any balance determined to be due pursuant to Section 1120 of Title 47 of the Oklahoma Statutes as a result of a field audit conducted by the Commission.
(b) Upon demand for payment, the motor license agent must, within 15 days, remit the full amount of any shortage determined to be due, or if unable to pay the full amount, the agent may make a written request to the Commission for consideration of an extension of time to remit monies due.

[OAR Docket #07-1214; filed 5-25-07]

TITLE 165. CORPORATION COMMISSION CHAPTER 35. ELECTRIC UTILITY RULES

[OAR Docket #07-1215]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 34. Competitive Procurement
165:35-34-3. RFP Competitive Bidding Procurement Process [AMENDED]
Subchapter 37. Integrated Resource Planning
165:35-37-4. Integrated Resource Plan Reviews [AMENDED]
Subchapter 39. Minimum Filing Requirements [NEW]
165:35-39-1. Purpose and Scope of this Subchapter [NEW]
165:35-39-2. Definitions and Acronyms [NEW]
165:35-39-3. Confidential Information [NEW]
165:35-39-4. Initiation of Fuel Audit or Prudence Review [NEW]
165:35-39-5. Actual Fuel and Purchased Power Expenses [NEW]
165:35-39-6. Fuel Purchase and Power Procurement Practices [NEW]
165:35-39-7. Fuel, Purchased Power and Fuel-Related Contracts [NEW]
165:35-39-8. Fuel Transportation Agreements [NEW]
165:35-39-9. Disclosure of all Fuel Related and Purchased Power Affiliate Transactions [NEW]
165:35-39-10. Material Public Filings and Disclosures [NEW]
165:35-39-11. Generator Availability and Dispatch [NEW]
165:35-39-12. Eligible Fuel Costs [NEW]
165:35-39-13. Sunset Provisions [NEW]
AUTHORITY:
Oklahoma Corporation Commission; Article IX, Section 18, Oklahoma Constitution; 17 Okla. Stat. §§ 152
DATES:
Comment Period:
February 14, 2007 through March 30, 3007
Public Hearing:
March 26, 2007
Adoption:
March 26, 2007
Submitted to the Governor:
March 30, 2007
Submitted to the House:
March 30, 2007
Submitted to Senate:
March 30, 2007
Gubernatorial approval:
May 4, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 24, 2007.
Final Adoption:
May 24, 2007
Effective Date:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
OAC 165:35-34-3 is amended to establish a time period prior to the drafting of a request for proposal in which a soliciting utility must notify the Commission of its intent to engage in a competitive bidding process. Further, it changes the retention of an Independent Evaluator by the Commission in the competitive bidding process from being mandatory to permissive, at the Commission's discretion, except for in three specific instances being when (i) an affiliate of the utility is anticipated to participate in the bidding process; (ii) when the RFP is expected to have a material impact on the utilities' cost of providing electricity; or (iii) when it is anticipated that the utility itself may participate as a bidder.

OAC 165:35-37-4 is amended to require a tabular summary to show where each Section's information in the Integrated Resource Plan filing is located which will assist Commission Staff in its review of the filed Integrated Resource Plan.

OAC 165:35 Subchapter 39 is added to Chapter 35 to establish a time certain for the Staff of the Oklahoma Corporation Commission to initiate its annual statutory audit of fuel, purchased power cost recovery, and purchased power supply acquisitions of a utility ("Fuel Audit"), including but not limited to Prudence Reviews; and, to establish the minimum filing requirements ("MFR's") of a utility for the data and information required to be filed in response to a Cause initiated by Commission Staff for such Fuel Audit or Prudence Review.
CONTACT PERSON:
James Myles @ 521-2308.

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 34. COMPETITIVE PROCUREMENT

165:35-34-3. RFP Competitive Bidding Procurement Process

(a) **Competitive Bidding Structure and Process Guidelines.**

(1) The soliciting utility shall notify the Commission of its intent to engage in a competitive bidding process at least 45 days before or as soon as reasonably practicable but not less than 30 days before drafting a request for proposal ("RFP"), as required by subsection (4) below.

(~~1~~2) The soliciting utility shall prepare the initial draft of the ~~request for proposal ("RFP")~~RFP documents, including but not limited to RFP procedures, and a pro forma power purchase agreement that, to the maximum extent practicable, utilizes industry standard contractual terms and contains all expected material terms and conditions and a solicitation schedule (collectively, the "RFP Document").

(~~2~~3) In addition to the information required by (1) of this Section, the RFP and RFP Document, at a minimum, shall identify clearly:

(A) Term;

(B) Amount of megawatts, if applicable, and types of products being solicited;

(C) All price and non-price evaluation factors to be considered;

(D) Respective weight for each price and non-price evaluation factor; and

(E) Utility's preliminary analysis of transmission availability and the utility's plan for evaluation of transmission availability for each proposal received, including, but not limited to:

(i) Description of the role of transmission analysis to be conducted by the utility in the bid evaluation process. This analysis should use publicly available tools provided by the controlling entity, such as the Southwest Power Pool Scenario Analyzer, and

(ii) Role of the transmission analysis to be conducted by the controlling entity, currently the Southwest Power Pool, in the bid evaluation process.

(~~3~~4) The draft of the RFP Document, supporting documentation, and bid evaluation procedures shall be provided to the Commission, Attorney General, and Independent Evaluator for review prior to the planned issue date of the RFP. After receiving input from all interested parties, which may include the Commission, Attorney General, and Independent Evaluator, and holding a technical conference regarding the bidding process, the soliciting utility shall post the draft RFP Document and comments of the Commission, Attorney General, and Independent Evaluator, on the soliciting utility's website or electronic bulletin board, or by some other publicly accessible method and solicit comments from interested parties concerning the draft RFP Document. The soliciting utility will post the final RFP Document on its website or electronic bulletin board, or by other publicly accessible method. RFPs shall include the Southwest Power Pool's time requirements to conduct transmission analyses, i.e. the aggregate study.

(b) **Independent Evaluator.**

(1) The Commission ~~shall~~ may, at its discretion, retain and compensate an Independent Evaluator to monitor the RFP and competitive bidding process. Notwithstanding the foregoing, the Commission shall retain an Independent Evaluator to monitor the RFP and competitive bidding process in the following instances: (i) when an affiliate of the utility is anticipated to participate in the competitive bidding process; (ii) when the RFP and bid resulting therefrom is expected to have a material impact on the utilities' cost of providing electricity to its customers, or (iii) when it is anticipated that the utility may participate as a bidder in the competitive bidding process. The Commission shall establish the minimum qualifications and requirements for an Independent Evaluator and ensure the Independent Evaluator is financially and substantively independent from any soliciting electric utility or affiliate thereof, complaining entity, and any potential bidder.

(2) The Independent Evaluator will report to the Commission and the Attorney General.

(3) If the Independent Evaluator's conclusion is different from the conclusion of the soliciting utility about the winning bidder(s), the Independent Evaluator and utility may attempt to resolve such differences. In the event the Independent Evaluator and utility cannot resolve their differences, the soliciting utility will determine which bid(s) is successful. The Independent Evaluator shall submit its independent evaluation to the Commission.

(4) As part of its contract with the Independent Evaluator, the Commission shall require the Independent Evaluator, to enter into an agreement to keep all information confidential that pertains to the disclosure and use of any models, analytical tools, data, or other materials of a confidential or proprietary nature provided or made available by the soliciting utility in conjunction with the competitive bidding process.

(c) **Affiliate Bidders' Requirements.**

(1) Each soliciting utility affiliate that intends to bid shall disclose publicly, in writing, the names and titles of the members of the affiliate's "Bid Team." Each soliciting utility shall disclose publicly, in writing, the names and titles of the members of its "Evaluation Team." A Bid Team develops the affiliate's bid and, to assure fairness, is not involved, directly or indirectly, in the evaluation or selection of bids. An Evaluation Team evaluates bids, selects the successful bidder and, to assure fairness, is not involved, directly or indirectly, in the development of the affiliate's bid.

(2) Each soliciting utility and bidding affiliate shall assure that the Bid Team and the Evaluation Team and any member of either do not engage in any communications, either directly or indirectly, regarding the RFP or the competitive bidding process. For bidder and Commission assurance, the soliciting utility and bidding affiliate shall execute an acknowledgement that the utility and affiliate have not and will not in the future so communicate, other than to submit and receive the bid at the appropriate time. The Bid Team and Evaluation Team may communicate as part of a bidding technical conference of which potential bidders or all actual bidders, if bids have already been submitted, are given adequate notice and opportunity to attend.

(3) The Evaluation Team shall report to the Independent Evaluator, any contact or communications by any bidder, including the Bid Team, and advise the bidder any future contact must be directed to the Independent Evaluator. Bidders and the Evaluation Team may communicate as part of a bidding technical conference of which potential bidders or all actual bidders, if bids have already been submitted, are given adequate notice and opportunity to attend.

(d) **Evaluation of Responses to the RFP.**

(1) The evaluation of the responses to the RFP will proceed as follows:

(A) The soliciting utility will evaluate all timely submitted bids to determine the lowest reasonable cost for long-term reliable power or reliable long-term fuel sought that minimizes ratepayer cost, including but not limited to charges for or costs relating to long-term fuel supply, long-term fuel transport, long-term fuel storage, long-term fuel processing, or increased cost of capital, consistent with the principles and procedures contained in this Subchapter and in the utility's resource plan and associated procurement plans.

(B) The Commission, Attorney General, and Independent Evaluator will be included in the evaluation of all bids submitted to the soliciting utility.

(2) All bids shall be evaluated on the basis of the bidder's final best offer. No bidder shall be permitted to unilaterally submit a refreshed bid unless all bidders are given a meaningful opportunity to submit a refreshed bid as a result of some material, documented change. The Independent Evaluator shall be charged with evaluating any

such changes and ensuring that the changes are substantive and not an attempt to influence the final selection process in favor of a particular bidder.

(3) Should any bid be unclear to such extent that the lack of clarity could impact the outcome of the bidding, the soliciting utility, Commission, Attorney General, or Independent Evaluator may request further information from any bidder regarding its bid, provided, any such communication between or among the soliciting utility, Commission, Attorney General, or Independent Evaluator and bidder should be conducted through an open process in which the utility, Independent Evaluator, Commission and Attorney General are given adequate notice and an opportunity to attend.

(4) The Commission, Attorney General and Independent Evaluator, as well as the soliciting utility, may rely on the Southwest Power Pool to conduct all necessary transmission analyses concerning bids received. Southwest Power Pool analyses provided to the Commission, Attorney General, or Independent Evaluator shall be equivalent in quality and content to that provided to the soliciting utility. No bidder, including any bidder that is an affiliate (including the Bid Team) of the soliciting utility, shall communicate with the Southwest Power Pool Transmission group during the course of the competitive bidding process regarding any aspect of the RFP or process.

(5) In conducting the evaluation of the responses, the soliciting utility shall not:

(A) Waive or otherwise modify any evaluation factor or evaluation weight for any bidder;

(B) Add any adjustments on the basis of expected effects on the utility's cost of capital if not already contained in the RFP;

(C) Impose any penalty on the price of purchased power; or

(D) Include any discount for utility self-generation on the basis of reliability as part of the utility's resource mix.

(6) The variable cost of the utility producing power through self-generation will serve as the benchmark for comparing bids. Only bids below the benchmark will be eligible for acceptance.

(e) Prior to a utility taking long-term procurement action other than that contemplated by these rules, a utility shall seek a waiver of all or any part of these competitive bidding rules by filing a cause with the Commission.

(f) The utility shall promptly file its decision with the Commission and mail copies of such filing to all bidders, the Independent Evaluator, and the Attorney General identifying the successful bidder, which filing shall include a copy of the successful bid.

(1) Any unsuccessful bidder, the Independent Evaluator, or the Attorney General shall have fifteen (15) days following filing of the successful bid decision with the Commission to file with the Commission a complaint challenging the decision as not meeting the criteria for decision specified in this subchapter or waiver previously obtained pursuant to 165:35-34-3(e) and the RFP document and bid evaluation procedures developed pursuant to 165:35-34-3(a).

(2) In the event of the filing of such a complaint, after notice to all bidders and hearing, the Commission shall determine whether the utility's decision reveals either a clear departure from the criteria stated in these rules or previously obtained waiver, the RFP Document and bid evaluation procedures for decision or is erroneous, in which event the utility shall be required immediately to rebid, in accordance with this Subchapter, the items which were the subject of such determination.

(g) Upon determination of the successful bidder, the utility and successful bidder shall promptly proceed to finalize contracts necessary to implement the bid.

(1) The contract shall contain appropriate guarantees, as set by the Commission, regarding the reliability of services.

(2) At the request of either party and upon notice and hearing, the Commission shall have authority to determine any disputes between the parties as to terms incidental to the bid. All matters to be determined by the Commission under this provision shall be heard on an expedited basis and a decision rendered thereon within thirty (30) days from filing.

SUBCHAPTER 37. INTEGRATED RESOURCE PLANNING

165:35-37-4. Integrated Resource Plan Reviews

(a) Each utility shall submit to the Commission a proposed integrated resource plan, with the utility's first plan due on before October 1, 2006, and subsequent plans due every three (3) years thereafter, unless otherwise ordered by the Commission. The proposed resource plan shall include, among other things, a fuel procurement plan, purchased-power procurement plans, a risk management plan, an environmental compliance plan, and other elements as described further in this Subchapter. This plan will be made available upon request by any person or entity to the soliciting utility, except any portions subject to a Commission protective order.

(b) Each utility shall have an ongoing obligation to monitor markets and inputs and to notify the Commission when material changes in planning assumptions occur. As the integrated resource plan changes from year to year, the utility shall submit updates to the Commission. The Commission may require the utility to submit an interim, updated integrated resource plan to reflect material change(s) in planning assumptions.

(c) The integrated resource plan shall include, at a minimum, ~~the following~~ a tabular summary of each of the following Sections:

(1) Schedule A: An electric demand and energy forecast;

(2) Schedule B: A forecast of capacity and energy contributions from existing and committed supply-and demand-side resources;

(3) Schedule C: A description of transmission capabilities and needs covering the forecast period;
(4) Schedule D: An assessment of need for additional resources;
(5) Schedule E: A description of the supply, demand-side and transmission options available to the utility to address the identified needs;
(6) Schedule F: A fuel procurement plan, purchased-power procurement plan, and risk management plan;
(7) Schedule G: An action plan identifying the near-term (i.e., across the first five [5] years) actions that the utility proposes to take to implement its proposed resource plan;
(8) Schedule H: Any proposed RFP(s), supporting documentation, and bid evaluation procedures by which the utility intends to solicit and evaluate new resources; and
(9) Schedule I: A technical appendix for the data, assumptions and descriptions of models needed to understand the derivation of the resource plan.
(10) Schedule J: A description and analysis of the adequacy of its existing transmission system to determine its capability to serve load over the next ten (10) years, including any planned proposed changes to existing transmission facilities.
(11) Schedule K: An assessment of the need for additional resources to meet reliability, cost and price, environmental or other criteria established by the Commission, the State of Oklahoma, the Southwest Power Pool, North American Electric Reliability Council, or the Federal Energy Regulatory Commission. This assessment should address both base line forecast condition and important uncertainties, including but not limited to load growth, fuel prices, and availability of planned supplies.
(12) Schedule L: An analysis of the utility's proposed resource plan and any alternative scenarios to demonstrate how the preferred plan best meets the planning criteria. Technical appendices should be included to document the planning analysis and assumptions used in preparing this analysis.

SUBCHAPTER 39. MINIMUM FILING REQUIREMENTS

165:35-39-1. Purpose and Scope of this Subchapter

(a) The purpose of this Subchapter is to establish fair and reasonable rules and procedures for the Minimum Filing Requirements ("MFR") associated with the annual audit of fuel, purchased power cost recovery, and purchased power supply acquisitions of a utility ("Fuel Audit"), including but not limited to Prudence Reviews. These MFR's set forth the information to be filed and the documentation to be made available for examination by the Commission Staff, Attorney General, and to those parties that have been granted an intervention, subject to the appropriate confidentiality measures.

(b) It is the intent of the Commission to establish a set of standards for the filing of MFR Packages that will facilitate the Commission's responsibilities in conducting Fuel Audits and Prudence Reviews and reflect the practices and policies of the Commission.

165:35-39-2. Definitions and Acronyms

The following terms and acronyms shall have the meanings set forth below for the purpose of this Subchapter 39 to the Commission's Electric Rules (OAC 165:35):

"EIS market", means the Energy Imbalance Service market implemented pursuant to FERC-approved amendments to the SPP's OATT on February 1, 2007.

"FERC" means the Federal Energy Regulatory Commission.

"Fuel Audit", means the Statutory audit of an electric utility's costs of fuel and purchased power costs as delivered into the utility's system pursuant to 17 O.S. §§251 *et seq.*

"Fuel Supply Portfolio and Risk Management Plan", means the documentation required to be submitted to the Commission by each utility by Commission Order.

"Material Change", "Material Deviation" and **"Material Impact"**, means any change, deviation from planned operations, or cost impact to the utility's customers equal to or greater than three percent (3%) for any single line item or event reflected in the utility's total cost of fuel burned and purchased power during the Review Period.

"Minimum Filing Requirements" or **"MFR"**, means the minimum filing requirements established by this subpart 39 of the Electric Rules to be filed or made available by a utility to the Commission, the Commission Staff, the Attorney General, and interested parties, subject to appropriate confidentiality protection, upon the filing by the Commission Staff of an application initiating a Fuel Audit or a Prudence Review.

"MFR Package", means all of the documentation to be provided or made available by the utility as identified in this Subchapter.

"Monthly Fuel Adjustment Clause ("FAC") filings", means the information electric utilities are required to file pursuant to 17 O.S. §253.B prior to implementing fuel and fuel related costs pursuant to a Commission approved fuel and purchased power adjustment tariff.

"OATT", means an Open Access Transmission Tariff as approved by the FERC.

"Prudence Review", means the biennial review of the fuel, generation, and purchased power related expenses incurred by a utility pursuant to OAC 165:35-35-1.

"Review Period", means the period of time, in calendar year increments, identified by the Commission Staff in an application initiating a Fuel Audit or a Prudence Review.

"SPP", means the Southwest Power Pool, the Regional Transmission Organization recognized by the FERC and encompassing the State of Oklahoma and all or parts of surrounding jurisdictions.

165:35-39-3. Confidential Information

(a) The Commission recognizes that some information to be disclosed within the MFR Package may be proprietary or business sensitive and such information should be treated as confidential for the protection of the utility and/or its customers. Schedules requiring the disclosure of confidential information shall contain, a statement to that effect in the MFR Package, and disclosure of confidential information shall be withheld until the Commission issues an appropriate protective order pursuant to 17 O.S. §24A.22. Any confidential information shall be specifically identified in each such schedule contained within the MFR Package. The utility shall file a motion for a protective order identifying the confidential information to be protected simultaneously with the filing of the MFR Package, and the Commission shall determine the manner in which confidential information should be protected.

(b) Information deemed to be confidential by the utility may be withheld from disclosure until the Commission issues an appropriate protective order.

(c) All information supplied by the utility in connection with any Fuel Audit or Prudence Review, except that information subject to a requested or existing protective order, shall be considered in the public domain.

165:35-39-4. Initiation of Fuel Audit or Prudence Review

(a) The Commission Staff shall initiate a Fuel Audit or Prudence Review by filing an application identifying the utility or utilities subject to the Audit or Review and identifying the period of time the Fuel Audit or Prudence Review is intended to cover. The Commission Staff shall file its application for a Fuel Audit or Prudence Review no sooner than one hundred fifty (150) days subsequent to the end of the period identified for review.

(b) Each utility being reviewed shall make a filing meeting the MFRs, sixty (60) days after Staff has filed an application commencing a Fuel Audit or Prudence Review. The MFR Package shall contain documentation as described in this Subchapter covering January through December, of the period identified in the application.

165:35-39-5. Actual Fuel and Purchased Power Expenses

Under this Section, a utility must file documentation of actual fuel expenses, purchased power expenses, and off-system power sales revenues that occurred during the Review Period. This information should be contained in Schedule A of the MFR Package, consisting of the following:

(1) A thorough and detailed narrative of the fuel and purchased power expenses, procurement practices, and procedures;

(2) An electronic spreadsheet summary of annual volumes and expenses and revenues for fuel and purchased power, consistent with the format of the utility's monthly Fuel Adjustment Clause (FAC) filings;

(3) Electronic copies of the utility's monthly FAC filings. The spreadsheet should include a tabular summary of the type, volume and expense/revenues associated with affiliate fuel and purchased power transactions, and the summary should address energy production by separate fuel types;

(4) A comparison in matrix form of fuel and purchased power expenses and off-system sales revenues for the Review Period identified in Staff's application and for the previous two most recent years;

(5) A narrative explanation of the key factors and events that had a Material Impact on the utility's actual fuel and purchased power expenses, and their relative magnitudes.

165:35-39-6 . Fuel Purchase and Power Procurement Practices

Schedule -B- of the MFR Package shall include a thorough and detailed narrative for the fuel and purchased power procurement practices and procedures, both short-term and long-term, of the utility during the Review Period with the following information:

(1) A list of the fuel and purchased power procurement practices and risk management plans relevant to the Review Period that are filed with the Oklahoma Corporation Commission together with copies of all such plans previously submitted, but not filed;

(2) A list of Material Deviations from the fuel and purchased power procurement and risk management plans as the plans were implemented during the Review Period to include a discussion of any resulting price exposure and the causes for the Material Deviations from the plans to include material sales and/or purchases from the Southwest Power Pool Energy Imbalance Service (EIS) Market;

(3) A description of the safeguards in place concerning affiliate transactions to ensure fair treatment of non-affiliated potential providers of commodities or services;

(4) A list of fuel and purchased power solicitations and actions during the Review Period, including the type of competitive procurement methods used, the timeline for each solicitation, a narrative description of each solicitation, and copies of major fuel and purchased power transactions resulting from such solicitations of one month or more in duration.

165:35-39-7. Fuel, Purchased Power and Fuel-Related Contracts

Schedule -C- of the MFR Package shall include the following information related to fuel, purchased power and fuel related contracts in effect during the Review Period:

(1) A list of all fuel and fuel-related contracts in effect during the Review Period between the utility and any affiliate of the utility that supplied fuel or fuel-related services to the utility;

(2) A list of all natural gas contracts in effect during the Review Period including natural gas contracts having a term less than one year, which are considered "spot market" contracts. The utility may provide one or more

"generic" contracts which represent the terms of individual spot market contracts, in lieu of the natural gas contracts. The following information relating to all gas purchase contracts, including contracts with affiliates, shall be provided in summary form:

(A) Contract number/serial number/other designation;

(B) Supplier;

(C) Negotiation date or date signed;

(D) Origin date of supply or service; and

(E) Term and specific service provided under the contract; and

(3) Upon request, each contract identified in this schedule shall be made available, subject to any confidentiality provisions contained therein;

(4) A list of all applicable fuel supply contracts in effect during the Review Period including coal purchases, oil purchases, and any other fuel commodity contracts;

(5) A list of all purchase power contracts in effect during the Review Period for all purchases of energy, capacity or both having a term of thirty (30) days or longer;

(6) For those contracts requiring the use of government or other published indices to adjust the price, provide the monthly values for each index during the Review Period and identify the source of the values for each index;

(7) With respect to each contract, provide monthly minimum, maximum, and actual takes by contract for the Review Period;

(8) Documentation for all occurrences when the minimum take or pay volumes under contract were not met during the Review Period;

(9) Documentation of analyses performed to evaluate any fuel or fuel related solicitations having contract terms of 30 days or longer during the Review Period that affected fuel costs during the period. It is not necessary to provide documentation for contracts previously approved by the Commission.

165:35-39-8. Fuel Transportation Agreements

Schedule -D- of the MFR Package. Provide a list of each transportation agreement that was in place for natural gas and coal, the associated volumes transported, and the annual expense. Identify the agreements utilized during the Review Period.

165:35-39-9. Disclosure of all Fuel Related and Purchased Power Affiliate Transactions

Schedule -E- of the MFR Package. To the extent that a utility has not provided a complete disclosure of all fuel related affiliate transactions during the recovery period in response to the disclosure requirements otherwise set forth in this Subchapter, the utility shall provide a narrative explanation of any such transactions.

165:35-39-10. Material Public Filings and Disclosures

Schedule -F- of the MFR Package. Each utility shall file a list of all material public filings and disclosures made to this Commission, the FERC, or the SEC in which the utility disclosed information related to fuel, purchased power, off-system sales, or fuel procurement relevant to the Review Period.

165:35-39-11. Generator Availability and Dispatch

Schedule -G- of the MFR Package shall include generator availability and dispatch during the Review Period and a narrative description of the same, including Material Deviations from planned operations, including the following:

(1) A tabular summary of the monthly availability and output of each utility generating unit and any major non-utility generating unit under long-term contract to the extent available;

(2) A narrative description of each generating unit utilized by the utility during the Review Period, the manner in which it operated (i.e. baseload energy, peaking, load following service, ancillary services, etc.) during the Review Period, and the annual average heat rate achieved by each generating unit during the Review Period including the actual average monthly heat rate by including MMBtu burned per unit per month and the KWH generated each month for each unit;

(3) A narrative explanation of all significant unusual events with respect to generating unit availability and the extent to which the events affected the utility's fuel and purchased power expenses;

(4) A list of forced and scheduled outages and deratings whether it was an unplanned outage or forced outage that occurred during the fuel Review Period. Information submitted should contain unit name, date started, date ended, duration of outage or power reduction in hours, reason for outage or information may be reported consistent with North American Electric Reliability Corporation (NERC) Generation Availability Data Survey (GADS) reporting requirements in effect during the Review Period for each utility generating unit, including a description of the reason(s) for each outage and derating; and

(5) Description and explanation of any limitations on the output of utility generating units, including excess supplies or shortages of fuel.

165:35-39-12. Eligible Fuel Costs

Schedule -H- of the MFR Package shall contain the following:

(1) The utility shall provide in this schedule a distribution of eligible fuel expenses for each month of the eligible period, in the following categories for each generating station:

(A) Coal and Lignite: Coal and lignite costs as delivered to the utility's plants;

(B) Natural Gas:

(i) Gas cost;

(ii) Gas transportation (if contracted separately);

(iii) Gas storage (if contracted separately); and

(iv) Other costs (specify);

(C) Fuel Oil:

(i) Oil cost, and
(ii) Other costs (specify).
(D) Other costs: If costs are not readily identifiable and separable in the Company's accounting system, and are included in a cost category listed above, then indicate the type of costs and the cost category in which they are included.

165:35-39-13. Sunset Provisions

(a) The Commission recognizes the Southwest Power Pool Energy Imbalance Service (EIS) Market commenced on February 1, 2007. This market will cause regulated utilities to turn over the dispatch of at least some of their generating units to the Southwest Power Pool (SPP). As a result, some of the information required by these rules may either no longer be relevant or may not be available directly from the utilities. In addition, the prudence of a utility's dispatch may need to be judged in accordance with EIS market protocols as established by the SPP.

(b) The EIS market will cause regulated electric utilities to sell energy into that market and to purchase energy from the market periodically, at the direction of the SPP. The form and timing of this information will change and may necessitate a corresponding change in the filing requirements established for the MFR Packages to be filed by electric utilities in compliance with these rules.

(c) One year after the market has commenced operations, the OCC Staff working with the utilities, the AG's office and other stakeholders, shall examine the rules of this subchapter to determine where appropriate changes should be made in recognition of EIS market protocols.

[OAR Docket #07-1215; filed 5-25-07]

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

[OAR Docket #07-1205]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
210:10-1-9. Transfers [AMENDED]
AUTHORITY:
70 O. S. § 3-104, State Board of Education
DATES:
Comment period:
February 15, 2007 through March 21, 2007
Public hearing:
March 22, 2007
Adoption:
March 29, 2007
Submitted to Governor:
March 30, 2007
Submitted to House:
March 30, 2007
Submitted to Senate:
March 30, 2007
Gubernatorial approval:
May 4, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 24, 2007
Final adoption:
May 24, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATION BY REFERENCE:
N/A
ANALYSIS:
Rule amendments will change the words handicapped child to child with a disability and Education for Handicapped Children's Act to Individuals with Disabilities Act to be consistent with language used in the reauthorization of 2004.
CONTACT PERSON:
Connie Holland, 405-521-3308

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

210:10-1-9. Transfers

(a) **Regular transfers (70-8-101, 102, 103).** Regular transfers may be approved by the County Superintendent if both the sending and receiving boards of education approve. Provided, however, if the grade such child is entitled to pursue is not offered in the district where such child resides, the transfer must be approved. A special education transfer must be approved with the consent of the receiving board. The following statutory time-lines must be followed for the regular transfer process:

(1) Not later than May 15--Application by parents or guardian filed with county superintendent.
(2) Not later than May 25--County superintendent must notify the clerk of each affected board of education of the proposed transfers and a hearing date.
(3) On or before June 5--County superintendent conducts a hearing for either board of education to show cause as to whether or not the transfer should be granted.
(4) Not later than June 15--County superintendent must notify the clerk of each affected board of education as to whether or not the transfer was granted.
(5) Anytime before June 20--Either district or parent or guardian may appeal the action of the county superintendent to the district court, in writing.
(6) Not later than June 30--The decision must be rendered by the court and the decision is final.

(b) **Emergency transfers (70-8-104).** Emergency transfers ordered by the county superintendent of schools, subject to approval of the State Board of Education, are based upon any one of the following: destruction of a building, inability to furnish the grade of study the pupil is entitled to pursue, inability to offer the subject a pupil desires to pursue, nonavailability of science, mathematics, or foreign language, total failure of

transportation facilities previously had or contemplated, approval of the boards of education of the sending and receiving districts. Emergency transfers must be filed with the State Department of Education within 30 days of date of order by county superintendent.

(c) **Special education transfers.**

(1) **Regular special education transfer:** In order that a child, identified pursuant to the provisions of Title 70 O.S. 1981 § 13-101 may be transferred, a written application for such transfer, designating the district to which the transfer is desired, shall be made by either of his/her parents, or by his/her guardian, and such application shall be filed with the county superintendent of schools for transfers to school districts in the State of Oklahoma and with the State Board of Education for transfers to school districts in another state not later than May 15, preceding the school year for which the transfer is desired. The county superintendent of schools shall notify, no later than May 25, the clerk of the board of education of the district from which the transfer is proposed to be made and the clerk of the board of education of the district to which the transfer is proposed to be made. The notices of the application for transfer shall so state that the board of education, from which the transfer is proposed, will submit information as required by STATE BOARD OF EDUCATION POLICIES AND PROCEDURES MANUAL FOR SPECIAL EDUCATION IN OKLAHOMA for the delivery of Special Education Services for each identified ~~handicapped~~ child with a disability and that on or before June 5, the board of education of either district affected by the proposed transfer shall have an opportunity to show cause, if any, why the transfer should or should not be granted. This information will include (1) a current individual evaluation, (2) a categorical eligibility statement and (3) a current Individualized Education Program (IEP). The county superintendent of schools shall, not later than June 15, notify, in writing, the clerk of each board of education affected as to whether or not the transfer has been granted. Provided that at any time before June 20, the board of education of either district or the parent or guardian of the child may appeal, in writing, from the action of the county superintendent of schools to the district court of the county in which the child resides, and such appeal shall be heard, and a decision rendered thereon not later than June 30, and such decision shall be final.

(2) **Emergency special education transfer.** A written application for an emergency special education transfer for a child, identified pursuant to the provisions of Title 70 O.S. 1981 § 13-101, designating the district to which the transfer is desired shall be made by either the parent or guardian, and on an adequate showing of emergency based on information as required by STATE BOARD OF EDUCATION POLICIES AND PROCEDURES MANUAL FOR SPECIAL EDUCATION IN OKLAHOMA for the delivery of Special Education Services for each identified ~~handicapped~~ child with a disability. This information will include (1) a current individual evaluation, (2) a categorical eligibility statement and (3) a current Individualized Education Program (IEP) and shall be submitted to the county superintendent who may make and order a transfer, subject to approval by the State Board of Education.

(3) **Cancellation of regular or emergency special education transfer.** A transfer made may be canceled with the concurrence of the board of the receiving district, and a transfer granted. Also, on affidavit of parent or guardian, or of the school board of the transferring district, disclosing removal of residence from the transferring district, a transfer previously made may be canceled. Cancellation of special education transfers are subject to the rules and regulations of the State Board of Education and the procedural due process requirements outlined at 20 U.S.C. § 1415, of the ~~Education For Handicapped Children's Act~~Individuals With Disabilities Education Improvement Act.

(4) **Residence of child--attendance in transportation area.** Any child, identified pursuant to the provisions of Title 70 O.S. 1981 § 13-101, residing in a school district in the State of Oklahoma that does not offer the grade such child is entitled to pursue shall be entitled to attend the school of the school district in the transportation area in which such pupil resides that offers the grade he is entitled to pursue.

(d) **Kindergarten transfers (70-18-108).** It is the duty of every school district in this state to provide and offer kindergarten free of tuition for every child residing in such district who attains the age of five (5) years by the second day of September of the school year such kindergarten is offered. This duty may be satisfied by transferring kindergarten children to other school districts which accept them and provide kindergarten for such children with the district in which the child resides paying seventy-five percent (75%) of the average daily attendance per capita cost of the receiving district. The average daily attendance of such child shall be credited to the sending district of the child. When tuition is paid to a public school district for an underage kindergarten student during a given year, said student can legally enroll as a first grade student the following year in the same district without paying tuition. (70-1-114)

(e) **Gifted and talented transfers (70-1210.307).** Beginning with the school year 1983-84, it shall be the duty of each school district to provide gifted child educational programs for all identified gifted children, as defined in Section 1210.301 of Title 70 of the Oklahoma Statutes, who reside in that school district. This duty may be satisfied by: The district transferring identified gifted and talented children to other school districts which provide the appropriate gifted child educational programs, provided, no transfer shall be made without the consent of the board of education of the receiving school district. The district in which the child resides shall provide transportation for the transferred student and pay an amount of tuition equal to the proportion of the operating costs of the program to the receiving district. Transfers authorized by this section shall be made under such rules and regulations as the State Board of Education may prescribe; or the district located wholly or

in part in a county participating in any program established by that county superintendent of schools.

[OAR Docket #07-1205; filed 5-25-07]

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

[OAR Docket #07-1206]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 13. Student Assessment
210:10-13-11. Testing students with disabilities [AMENDED]
AUTHORITY:
70 O. S. § 3-104, State Board of Education
DATES:
Comment period:
February 15, 2007 through March 21, 2007
Public hearing:
March 22, 2007
Adoption:
March 29, 2007
Submitted to Governor:
March 30, 2007
Submitted to House:
March 30, 2007
Submitted to Senate:
March 30, 2007
Gubernatorial approval:
May 4, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 24, 2007
Final adoption:
May 24, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATION BY REFERENCE:
N/A
ANALYSIS:
The purpose of the proposed rule change is because the No Child Left Behind Act requires that all students, even students with significant cognitive disabilities, work towards grade level state standards of the grade in which they are enrolled. The functional curriculum is no longer an acceptable form of curriculum. The proposed changes are to implement the requirement the Oklahoma Alternate Assessment Program (OAAP) will be designed for students who are to participate in an adapted Priority Academic Student Skills (PASS) curriculum rather than functional life skills.
CONTACT PERSON:
Connie Holland, 405-521-3308

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 13. STUDENT ASSESSMENT

210:10-13-11. Testing students with disabilities

(a) Acceptable accommodations of the general assessments of the OSTP for students with disabilities shall be:

(1) specified in the student's IEP under the Individuals with Disabilities Education Act (IDEA); or

(2) specified for student served under Americans With Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

(b) The use of test accommodations which deviate from established standardized test procedures for the general assessments of the OSTP shall be reported to the State Department of Education's Student Assessment Section.

(c) Large print and Braille versions of the tests may be utilized with students whose visual disabilities necessitate such accommodations. The student must be utilizing large print or Braille in daily classwork as indicated on the student's IEP on file at the school district. To order large print or Braille tests, the district test coordinator shall indicate the quantities required at each grade level tested on the annual questionnaire.

(d) Students with disabilities who cannot be assessed in a valid and reliable manner with the general state assessment even with accommodations, as specified in the student's IEP, shall be assessed with an appropriate alternate assessment provided by the State Department of Education. Eligibility for an alternate assessment shall be determined annually by the student's IEP team. Alternate assessments may include, but not be limited to, portfolio assessments. The scores from alternate assessments shall be included in accountability calculations for the school, district, and state according to the standard AYP calculation procedures, as specified in federal law.

(e) Students with the most significant disabilities shall participate in an alternate assessment named the Oklahoma Alternate Assessment Program (OAAP) and should not exceed a small percentage of the special education population. ~~The OAAP shall be designed for students who are participating in a functional life skills curriculum and the general education curriculum at a functional level. The OAAP shall be based on standards for Personal and Home Management, Community Living, Job and Work Opportunities, and Recreation and Leisure, and on an adapted Priority Academic Student Skills (PASS) curriculum.~~ The OAAP shall be designed for students who are participating in adapted Priority Academic Student Skills (PASS).

(f) The OAAP shall consist of a portfolio assessment, which may include authentic performance tasks. A portfolio assessment is a collection of student-generated or student-focused products that exhibit the student's interests, range of skills, and development over time. Teams of teachers shall score the OAAP portfolio. If authentic performance tasks are used, teachers completing the portfolio shall be provided with information regarding these tasks during a specified time prior to the completion of the portfolio.

[OAR Docket #07-1206; filed 5-25-07]

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

[OAR Docket #07-1207]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 13. Student Assessment
210:10-13-18. Oklahoma School Accountability System [AMENDED]
AUTHORITY:
70 O. S. § 3-104, State Board of Education
DATES:
Comment period:
February 15, 2007 through March 21, 2007
Public hearing:
March 22, 2007
Adoption:
March 29, 2007
Submitted to Governor:
March 30, 2007
Submitted to House:
March 30, 2007
Submitted to Senate:
March 30, 2007
Gubernatorial approval:
May 4, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 24, 2007
Final adoption:
May 24, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATION BY REFERENCE:
N/A
ANALYSIS:
Rule amendments will clarify language relating to the Oklahoma School Accountability System and Adequate Yearly Progress (AYP) determinations and appeals.
CONTACT PERSON:
Connie Holland, 405-521-3308

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 13. STUDENT ASSESSMENT

210:10-13-18. Oklahoma School Accountability System

(a) **Adequate Yearly Progress (AYP).** The Oklahoma School Accountability System shall be based on AYP. All public elementary and secondary schools and local educational agencies (LEAs) shall be accountable for student achievement and for making Adequate Yearly Progress (AYP) according to federal law. AYP will be determined by meeting or exceeding statewide performance targets for required student groups in Reading/Language Arts and Mathematics on state tests; administering tests to 95 percent of students in each required student group; and meeting statewide targets for attendance rates and graduation rates where applicable. Alternatively, schools shall make AYP by showing growth in Reading/Language Arts and Mathematics on state tests as required by Safe Harbor regulations as defined in the No Child Left Behind Act of 2001, Public Law 107-110.

(b) **Consequences of Testing Irregularities or Misconduct on Test Scores and AYP.**

(1) If the State Department of Education (SDE) Student Assessment Office receives documentation of a student cheating on a test, the student's score shall be "invalidated." The student's score report for that content area shall read "Invalidated." The "invalidated" score shall have the effect of ~~a zero score~~ nonparticipation when aggregated with scores of other students at the school, district, and state levels.

(2) If a student does not attempt the test (such as refusal to read items or mark answers, finishing in 5 minutes, or randomly marking answers), no special action shall be taken. The student's test shall be scored and the score aggregated with the rest of the scores at the school, district, and state levels according to standard procedure.

(3) If a student becomes ill during testing and is not able to complete the test, the test shall not be scored and not counted in the summary scores. The student shall be counted as absent. If an alternate form of the test is available through the OSTP, the student may be given an opportunity to take the alternate form within the same testing window. In this case, the first test shall not be scored and the alternate test shall be scored in its place. (Note: Alternate test forms of the OSTP shall only be made available through the SDE only if determined practicable by the State Department of Education.)

(4) If any violation of security provisions (Section 210:10-13-4) occurs, such violations shall be reported in writing to the Student Assessment Section of the State Department of Education and may result in a student's, a school site's, and/or a school district's test scores being declared as invalid (Section 210:10-13-4 (18). In the case of invalidation, each invalidated score shall have the effect of a zero score and each zero score shall be aggregated with the remaining student scores at the school, district, and state levels. If the violation is not the fault of the students involved, and if an alternate form of the test is available through the OSTP, students may be given the alternate form within the same testing window at the district's expense if this is the first year for a security violation within the school and/or district in question. In the case that an alternate form is administered, the individual student score report shall reflect the scores from the alternate test (in place of the previous invalidated scores) and shall be aggregated at the school, district, and state levels. (Note: Alternate test forms of the OSTP shall only be made available through the SDE only if determined practicable by the State Department of Education.)

(5) If extreme changes in test scores or in Academic Performance Index (API) scores occur for a school or district from year to year, an investigation shall be conducted,

which may include, but not be limited to, a hand erasure analysis, and results of any apparent testing irregularity or misconduct reported to the State Board of Education for possible further action, which may include but not be limited to, score invalidation.

(6) Erasures shall be identified statewide by electronic scanning of all student answer documents, and the following action shall be taken: Scores for classes whose wrong-to-right erasures exceed the state average by more than four standard deviations shall be identified for further investigation. For each class with excessive erasures, the proportion of wrong-to-right erasures to the total number of erasures will be taken into account. A report shall be made to the State Board of Education of schools where classes have been identified with excessive erasures as defined by the criteria above for possible further action, which may result in score invalidation.

(7) Steps for Dealing with Reported Testing Irregularities or Misconduct

(A) **Step One.** When report of a testing irregularity or misconduct is made to the State Department of Education Student Assessment Section, the school site and/or school district involved shall be required to respond by conducting an investigation and providing in writing to the State Department of Education Student Assessment Section an explanation of how the testing misconduct/irregularity occurred and a description of the measures taken to prevent the misconduct from occurring again.

(B) **Step Two.** The testing irregularity or misconduct shall be categorized into one of three violation categories (minor, major, and critical) according to the severity of the violation and its possible consequences. Possible consequences may include, but not be limited to, invalidation of scores, accreditation with deficiency, accreditation with warning, accreditation with probation.

(C) **Step Three.** At the end of each testing period, a testing violations report shall be prepared by the Student Assessment office for review by the State Superintendent and possible further action.

(c) **Procedures for Schools to Review AYP Data and Appeal Accountability Decisions.**

~~(1) As required by No Child Left Behind (NCLB) for assuring valid AYP determinations prior to release of the AYP data reports, public schools shall review, upon receipt, the component pieces of the AYP data provided by their district, the testing vendors, and/or the State Department of Education and report any inaccuracies to the entity supplying the data within the applicable timelines. If the district does not respond within the applicable timelines, the SDE shall rely on the data as presented.~~

~~(2) Upon receiving their AYP Data Reports from the SDE for use in creating their School and District Report Cards, districts and charter schools shall review the data in the AYP Data Reports and report any discrepancies from the previously approved data pieces to the Student Assessment Section of the SDE within the specified timeline. Appeals of AYP determinations contained in the AYP Data Reports shall be made at this time, as follows: According to federal regulations, if a principal of a school, or a majority of the parents of the students enrolled in a school, believe that any accountability decision contained in the AYP Data Reports is in error for statistical or other substantive reasons, the principal shall provide supporting evidence to the district after review of the data. The district or charter school must consider the evidence and if warranted, present an appeal to the SDE in writing. Charter schools shall examine their data independently and determine if an appeal of their AYP determination is warranted. If the charter school decides to appeal, the appeal may be presented directly to the State Department of Education under the timelines contained in this rule. Beginning with the 2003-04 school year the SDE must receive the appeal within ten working days of the release of the AYP Data Reports.~~

~~(3) If a school and/or district has had test scores invalidated because of a testing irregularity or misconduct with the effect of zero scores for aggregation purposes, and such action results in an API score that prevents the school and/or district from making AYP, the district or charter school may appeal this accountability decision on a first time occurrence and request placement on Probationary Status instead of receiving an API score. At the end of the next consecutive year, if the school and/or district do not make AYP, they shall not be allowed to invoke Safe Harbor and shall automatically be identified as being in School Improvement status.~~

~~(4) When the SDE receives an appeal of an accountability decision from a district on behalf of a school within the district or from a charter school, a committee comprised of members of the SDE School Improvement Leadership Team or others appointed by the State Superintendent shall review the evidence contained in the appeal and provide a final determination to the district in writing within thirty working days from the release of the AYP data reports.~~

~~(5) At the end of the SDE Appeals process, the SDE shall report to the State Board of Education the statewide list of School Improvement schools.~~

(1) To assure the validity of AYP determinations prior to the release of the AYP data reports, as required by No Child Left Behind, the State Department of Education will forward to schools the preliminary AYP Data Reports containing component pieces from the school district, testing vendor, and the State Department of Education. Each school district must review these component pieces for accuracy and report any inaccuracies to the entity supplying the information within the applicable timelines. If the school district does not report inaccuracies within the timeline the State Department of Education will rely on the data in the preliminary AYP Data Report.

(2) Upon receiving their preliminary AYP Data Reports from the State Department of Education for use in

creating School and District Report Cards, districts shall review the data in the preliminary AYP Data Reports and report any discrepancies with the data components previously reviewed by the district to the Student Assessment Section of the State Department of Education within the specified timeline.

(3) Subsequent to the review of the preliminary AYP Data Report, if a principal of a school, or a majority of the parents of the students enrolled in a school, believe that any accountability decision contained in the AYP Data Report is in error the principal shall provide supporting evidence to the district. The district must consider the evidence and if warranted, request an appeal in writing to the State Department of Education. The State Department of Education must receive the appeal request within ten working days of the release of the AYP Data Reports.

(4) If a school and/or district has had test scores invalidated because of a testing irregularity or misconduct with the effect of nonparticipation for aggregation purposes, and such action results in a API score that prevents the school and/or district from making AYP, the district may appeal this accountability decision on a first time occurrence and request placement on Probationary Status instead of receiving an API score. At the end of the next consecutive year, if the school and/or district do not make AYP, they shall not be allowed to invoke Safe Harbor and shall automatically be identified as being in School Improvement status.

(5) When a school district appeals an accountability decision, the appeal request will be sent to the Office of Accountability and Assessment on the appeal form provided by the State Department of Education. The school district must specify on the form, if a hearing pursuant to Title 75 O.S. § 309 is requested. If such a hearing is requested, the district must provide a written waiver of the right of the district to receive a final determination from the State Department of Education within the 30 day period required by the NCLB Act. In that event, all parties will cooperate to expedite the hearing process. If a hearing pursuant to Title 75 O.S. § 309 is not requested, the school district must submit with the appeal request written evidence supporting its appeal. The district may also request to address the AYP Appeals Committee in person or by telephone. All appeal requests will initially be reviewed by the Office of Accountability and Assessments to determine whether the appeal request remains with the AYP Appeals Committee or is forwarded to the State Superintendent for a hearing pursuant to Title 75 O.S. § 309. The AYP Appeal Committee will consist of members of the State Department of Education's School Improvement Leadership Team and may also include additional members appointed by the State Superintendent. The AYP Appeals Committee will review the district's evidence submitted with the appeal and if requested, hear comments from the school district, before providing a final determination in writing within thirty working days from release of the AYP Data Reports.

(6) At the end of the State Department of Education Appeals process, the State Department of Education shall report to the State Board of Education the statewide list of School Improvement schools.

(d) **Sanctions for public elementary and secondary schools that do not make Adequate Yearly Progress (AYP).**

(1) Title I schools that do not make Adequate Yearly Progress (AYP) for two consecutive years shall be identified as being in School Improvement status. Title I schools in the state of Oklahoma shall be subject to the sanctions defined in the No Child Left Behind Act of 2001, Public Law 107-110.

(2) Non-Title I schools that do not make AYP for two consecutive years or more shall be subject to sanctions as determined by the State Board of Education. The State Board of Education may utilize sanction options identified in the No Child Left Behind Act of 2001, Public Law 107-110, as deemed appropriate based upon relevant circumstances of the school's performance. The sanctions shall include but not be limited to the following:

(A) provide school improvement plan,
(B) provide technical assistance,
(C) offer school choice,
(D) provide supplemental services,
(E) take corrective action, or
(F) implement a restructuring plan.

(e) **Rewards for public elementary and secondary schools that make Adequate Yearly Progress (AYP).**

(1) **Academic Achievement Awards - Title I, Part A.** Title I Schools that meet AYP shall be eligible for Academic Achievement Awards. Academic Achievement Awards, under section 1117 (b) of the No Child Left Behind Act of 2001, states that each state receiving a grant under federal funds shall establish a program for making academic achievement awards to recognize schools that significantly close the achievement gap between subgroups of students or exceed their adequate yearly progress. Schools that receive Title I, Part A funds are eligible for Academic Achievement Awards.

(2) **State Academic Performance Award Program.**

(A) All public elementary and secondary schools that make Adequate Yearly Progress, shall be recognized by the state as Distinguished Schools and eligible for state funds, if available, as established by the State Academic Performance Index (API) Program (O.S. § 70-30-152).

(B) Nonmonetary recognition may include, but not be limited to, citations of congratulations from the State Superintendent of Public Instruction as the designee of the State Board of Education, the Governor or designee, the Representative and Senator representing the school district, and a flag for each school achieving Distinguished status.

[OAR Docket #07-1207; filed 5-25-07]

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

[OAR Docket #07-1208]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Priority Academic Student Skills
Part 3. Kindergarten
210:15-3-5.1. Definitions [AMENDED]
210:15-3-5.3. Language arts [AMENDED]
Part 5. Language Arts
210:15-3-11.2. Definitions [AMENDED]
210:15-3-12. Language arts for grade 1 [AMENDED]
210:15-3-13. Language arts for grade 2 [AMENDED]
210:15-3-14. Language arts for grade 3 [AMENDED]
210:15-3-15. Language arts for grade 4 [AMENDED]
210:15-3-16. Language arts for grade 5 [AMENDED]
210:15-3-17. Language arts for grade 6 [AMENDED]
210:15-3-18. Language arts for grade 7 [AMENDED]
210:15-3-19. Language arts for grade 8 [AMENDED]
210:15-3-20. Language arts for grade 9 [AMENDED]
210:15-3-21. Language arts for grade 10 [AMENDED]
210:15-3-22. Language arts for grade 11 [AMENDED]
210:15-3-23. Language arts for grade 12 [AMENDED]
AUTHORITY:
70 O. S. § 3-104, State Board of Education
DATES:
Comment period:
February 15, 2007 through March 21, 2007
Public hearing:
March 22, 2007
Adoption:
March 29, 2007
Submitted to Governor:
March 30, 2007
Submitted to House:
March 30, 2007
Submitted to Senate:
March 30, 2007
Gubernatorial approval:
May 4, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 24, 2007
Final adoption:
May 24, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATION BY REFERENCE:
N/A
ANALYSIS:
The purpose of the rule amendments is to comply with review requirements set forth in 70 O. S. § 11-103.6. The proposed rule amendments will provide additional clarity and detail to the Priority Academic Student Skills, Oklahoma's core curriculum. Changes will be made to meet requirements in coordination with the existing textbook adoption (6) year cycle. The changes will provide public school educators with the guidance necessary to achieve further improvements in the quality of education for the students in this state.
CONTACT PERSON:
Connie Holland, 405-521-3308

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 3. PRIORITY ACADEMIC STUDENT SKILLS

PART 3. KINDERGARTEN

210:15-3-5.1. Definitions

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

"Beat" means the consistent pulse that occurs throughout a rhyme, song, or recorded musical selection;

"Biographical data" means information pertaining to an individual (e.g., name, age, birthdate, address, telephone number).

"Body percussion" means sounds produced by the use of the body (i.e., clap, snap, slap, tap, stamp, stomp, whistle).

"Color" means hue (name of the color), value (how light a color is), and intensity (amount of brightness) produced through the reflection of light to the eye. Primary colors are the three colors from which all other colors may be made: red, yellow, and blue. Secondary colors are the result of mixing any two primary colors: orange, green, and purple.

"Consonants" ~~means the letters of the alphabet (usually including y and w) represented by single sounds.~~ means the letters of the alphabet (excluding a, e, i, o, u, usually including y and w) and a single sound made by a parted or complete obstruction of air.

"Dynamics" means varying degrees of loud and soft.

"Folk music" means music of a particular people, nation, or region, originally transmitted orally, sometimes as a rhythmic accompaniment to manual work or to mark a specific ritual.

"Form" means a three-dimensional object with the qualities of length, width and depth. Examples of geometric forms include a cone, cube, sphere, or cylinder.

"Harmony" means two or more tones sounding together.

"Inquiry" means processes of science (observe, sort, classify, describe, communicate).

"Language experience" means an approach to the teaching of reading in which students read about their own experiences recorded in their own words. Experience stories are dictated by the student to a teacher who writes them down. Dictated accounts are reread in unison, in echo-fashion, and independently.

"Learning centers" means areas within the classroom arranged so that children are able to participate in a variety of activities relating to art, science, reading, dramatic play, blocks, etc.

"Line" means the path of a moving point. A line may define the edge of a shape; repeated, it can create texture or value. It may be thick or thin, smooth or rough, short or long, light or dark.

"Literature" means text created for a specific purpose (e.g., poem, story, novel, etc.).

"Locomotor" means movement from one place to another.

"Melody" means a succession or pattern of musical tones or pitches.

"Nonlocomotor" means movement in place.

"Nonstandard measurement" means a measurement determined by the use of nonstandard units (e.g., hands, paper clips, beans, cotton balls, etc.).

"Note" means a musical symbol that denotes both pitch and duration.

"Number sense" means the understanding of numbers and their quantities.

"One-to-one correspondence" means pairing or matching objects in a one-to-one relationship.

"Onset" means the sound(s) in a word that come(s) before the first vowel.

"Ordinal" means a number that is used to tell order (e.g., first, fifth).

"Phonemes" means a minimal sound unit of speech that distinguishes one word from another (lace, lake).

"Phonological/phonemic awareness" means the ability to hear, identify, and manipulate large parts of spoken language (e.g., words, syllables, onsets, rimes) and the auditory ability to divide speech into smaller units of sound (phonemes).

"Phonics" means a way of teaching reading and spelling that stresses symbol sound relationships; the ability to associate letters and letter combinations with sound and blend them into syllables and words.

"Pitch" means the highness or lowness of a particular note.

"Primary colors" means the basic colors of red, yellow, and blue from which it is possible to mix all other colors on the color wheel.

"Print awareness" means the ability to understand how print works. This includes knowing that the print on the page represents the words that can be read aloud and distinguishing between various forms and purposes of print, from personal letters and signs to storybooks and essays.

"Prior knowledge" means knowing that stems from previous experience.

"Rhythm" means beats per measure.

"Rime" means the first vowel in a syllable and all the sounds that follow (e.g., /ook/ in book or brook, /ik/ in strike or bike, /a/ in play or day).

"Set" means a group of objects.

"Shape" means a two-dimensional area defined by an outline or change in color. Examples of types of geometric shapes include circle, square, rectangle, triangle, or oval. Other shapes may be free-form such as natural objects (i.e., leaves, flowers, clouds) or invented free-form shapes that might be created by doodling.

"Shared reading" means a term used to describe the process in which the teacher and the children read a book together. The book is read and reread many times. On the first several readings the teacher does most of the reading. As children become more familiar, they join in and "share" the reading.

"Shared writing" means teacher and children work together to compose messages and stories; teacher supports process as a scribe.

"Space" means area within, around, between, above or below objects and shapes. Space or distance may be suggested in visual art by using perspective or other strategies such as placement of objects on the picture plane, overlapping of shapes, or objects closer to the viewer are made to appear to have more vibrant color and detail than objects further away. Variation of size or value and the use of converging lines are also used to suggest space.

"Spatial sense" means involves building and manipulating mental representations of two- and three-dimensional objects and ideas.

"Standard measurement" means a measure determined by the use of standard units (e.g., inches, feet, pounds, cups, pints, gallons).

"Tempo" means the speed or pace of music.

"Transitional spelling" means the result of an attempt to spell a word whose spelling is not already known, based on a writer's knowledge of the spelling system and how it works.

"Text" means any printed material.

"Texture" means the surface quality or feel of an object. Texture may be actual (rough or smooth) or implied visually.

"Value" means the degree of dark or light tones or colors. A value scale shows the gradual changing of a tone from the darkest to the lightest or white. Value may be created by simple shading, hatch marks (small repeated lines in the same direction), or crosshatching.

"Vowels" means a, e, i, o, u and sometimes y and w.

210:15-3-5.3. Language arts

(a) Young children begin to develop language arts skills through the context of shared reading with quality children literature, shared writing, language experience, reading and writing centers.

(b) **Reading/literature.** The student will apply a wide range of strategies to comprehend, interpret, evaluate, appreciate, and respond to a wide variety of ~~texts.~~text and literature.

(1) **Standard - print awareness.** The student will understand the characteristics of written language.

(A) Demonstrate correct book orientation by holding book correctly (right side up) and indicating where to begin (e.g., front to back, top to bottom, left to right).

(B) Identify the front cover, back cover, title page of a book and title and author.

(C) Follow words from left to right and from top to bottom on the printed page.

(D) Understand that printed materials provide information.

(E) Recognize that sentences in print are made up of separate words.

(F) Distinguish letters from words.

(G) Recognize and name all capital and lowercase letters of the alphabet.

(2) **Standard - phonological/phonemic awareness.** The student will demonstrate the ability to hear, identify, and manipulate large parts of spoken language (e.g., words, syllables, onsets, and rimes) and individual sounds (phonemes) in spoken words.

(A) Identify and produce simple rhyming pairs. Example: bat/cat

(B) Identify and count syllables in spoken words.

(C) Distinguish onset (beginning sound[s]) and rimes in one-syllable words. Example: Onset - /b/ in bat. Example: Rime - at in ba

(D) Recognize ending sounds in spoken words. Example: /t/ in bat

(E) Recognize the same sounds in different words. ~~Example:~~Examples: /b/ in ball, big, and bun; /p/ in tap, rip, and mop

(F) Begin to blend phonemes to form a word. Example: /b/ /a/ /t/ = bat

(G) Begin to segment phonemes of one syllable words. Example: bat = /b/ /a/ /t/

(3) **Standard - phonics/decoding.** The student will demonstrate the ability to apply sound-symbol relationships. Identify the alphabet by name and sound.

(4) **Standard - vocabulary.** The student will develop and expand their knowledge of words and word meanings to increase their vocabulary. ~~Use new vocabulary and language in own speech and writing.~~

(A) Increase personal vocabulary by listening to a variety of literature and text.

(B) Use new vocabulary and language in own speech and writing.

(5) **Standard - fluency.** The student will demonstrate the ability to identify words in text.

(A) "Reads" familiar texts emergently, not necessarily verbatim from the print alone.

(B) Recognizes some common words by sight~~,~~; including ~~a few very common ones (e.g.,~~but not limited to: a, the, I, my, you, is, are~~)~~.

(6) **Standard - comprehension.** The student will associate meaning and understanding with reading.

(A) Use prereading skills (e.g., connecting prior knowledge to text, making predictions about text and using picture clues).

(B) Retell, reenact or dramatize a story read to the student or by the student.

(C) Make predictions and confirm after reading or listening to text.

(D) Tell what is happening in a picture.

(7) **Standard - literature.** The student will read to construct meaning and respond to a wide variety of literary forms.

(A) Literary Genre to distinguish between fiction and nonfiction. Example: Listen to *Tops and Bottoms*. This is a fiction book about a hare and a bear's adventure to determine who gets the tops and who gets the bottoms of their vegetables. Read *Eating the Alphabet* by Lois Ehlert which is a nonfiction book and discuss the differences in books.

(B) Literary Elements

(i) Place events in sequential order by telling the beginning, middle and ending. Example: Read and retell a story orally or by illustrating the beginning, middle and ending.

(ii) Summarize main points and events of a simple story.

(iii) Recognize cause~~/~~ and effect relationships. Example: Read *The Mitten* by Jan Brett and tell what happened to the mitten because of the animals.

(8) **Standard - research and information.** The student will conduct research and organize information. The student will select the best source for a given purpose and begin to identify the appropriate source needed to gather information (e.g., fiction book, nonfiction book, newspaper, map, resource person)

(c) **Writing/grammar/usage and mechanics.** The student will express ideas effectively in written modes for a variety of purposes and audiences.

(1) **Standard - writing process.** The student will use the writing process to write coherently.

(A) Participate in frequent writing opportunities. Example: Modeled writing, shared writing, journal writing, and interactive writing.

(B) Dictate a story about an event or experience. Example: Dictate a story about an exciting event.

(C) Read his or her own writing to the group, teacher and/or parent. Example: May be pictures, attempts at letters, initial consonants, words or phrases.

(2) **Standard - grammar/usage and mechanics.** The student will demonstrate appropriate practices in writing by applying Standard English conventions.

(A) Spelling: Demonstrate the process of representing language by means of a writing system.

(i) Recognize that letters have different sounds

(ii) Recognize and record some beginning and ending sounds in words.

(iii) Generates temporary spelling using letters, particularly to represent initial and ending consonant sounds.

(B) Handwriting: Demonstrate appropriate handwriting in the writing process.

(i) Trace, copy and generate letters. Children may still be reversing some letters.

(ii) Print his/her first and last name.

(d) **Oral language/listening and speaking.** The student will demonstrate thinking skills in listening and speaking.

(1) **Standard - listening.** The student will listen for information and for pleasure.

(A) Hear and repeat sounds in a sequence. Example: Hand rhythms, vocal sounds, numbers in a sequence, letters in a sequence, five sounds in a sequence

(B) Listen with interest to stories read aloud. Example: Trade books and shared reading.

(C) Follow one and two step directions.

(2) **Standard - speaking.** The student will express ideas or opinions in group or individual settings.

(A) Share information and ideas speaking in clear, complete, coherent sentences.

(B) Recite short poems, rhymes and songs.

(3) **Standard - group interaction.** The student will use effective communication strategies in pair and small group context and show respect and consideration for others in verbal and physical communications.

(e) **Visual literacy.** The student will interpret, evaluate, and compose visual messages.

(1) **Standard - interpret meaning.** The student will interpret and evaluate various ways visual image-makers including graphic artists, illustrators, and news photographers represent meaning.

(2) Respond to visual messages by distinguishing between reality and fantasy in stories, videos and television programs.

PART 5. LANGUAGE ARTS

210:15-3-11.2. Definitions

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

"Affix" means an element added to the base, stem, or root of a word to form a fresh word or stem. Principal kinds of affix are prefixes and suffixes. The prefix un- is an affix which added to balanced, makes unbalanced. The suffix -ed is an affix which, added to wish makes wished.

"Alliteration" means a device commonly used in poetry and occasionally in prose: the repetition of an initial sound in two or more words of a phrase, line of poetry, or sentence (e.g., "Our souls have sight of that immortal sea.").

"Antonym" means words which have opposite meanings (e.g., hot and cold).

"Archetype" means a descriptive detail, plot pattern, character type, or theme that recurs in many different cultures. One such archetype that appears in Shakespeare's *Macbeth* is the battle between the forces of good and the forces of evil.

"Autobiography" means the biography of a person written by oneself.

"Balanced reading program" means dual emphasis, stress on both skill and application of skills. A balanced reading program includes instruction in word identification skills as well as instruction in reading comprehension strategies. A balanced reading program includes reading to whole groups of students, guided reading activities with groups of students, shared reading, and independent reading by individual students.

"Base word" means a word to which a prefix or suffix may be added to form a new word (e.g., go + ing = going).

"Biography" means a story about the achievements of others; helps students see history as the lives and events of real people and to appreciate the contribution of all cultures; subjects include explorers; political heroes and heroines; and achievers in literature, science, sports, the arts, and other disciplines; effectiveness depends on accuracy, authenticity, and an appealing narrative style.

"CVC" means consonant/vowel/consonant

"Choral reading" means a group reading aloud (e.g., choral reading may be used with a group to develop oral fluency or to make a presentation to an audience).

"Cinquain" means poetic form; structure may follow a 2-4-6-8-2 syllable pattern or may follow a simpler form using words per line in a 1-2-3-4-1 pattern.

"Compound word" means a word made by putting two or more words together (e.g., cowboy).

"Consonant blend" means the joining of the sounds represented by two or more letters with minimal change in those sounds; consists of two or more consonants sounded together in such a way that each is heard (e.g., bl, gr, sp, etc.)

"Consonant digraph" means consists of two consonants that together represent one sound (e.g., sh, ch, th, wh).

"Consonants" means the ~~remaining~~ letters of the alphabet ~~and usually include y and w;~~(excluding a, e, i , o, u, usually including y and w) and a single sound made by a parted or complete obstruction of air.

"Context clue" means the information from the immediate textual setting that helps identify a word or word group.

"Contraction" means a short way to write two words as one by writing the two words together, leaving out one or more letters and replacing the missing letters by an apostrophe (e.g., cannot = can't).

"Convention" means accepted practice in written language.

"Cooperative learning" means activities in which students work together in groups to achieve a common goal.

"Critical thinking" logical, reflective thinking that is focused on deciding what to believe or do. It may include analyzing arguments, seeing other points of view, and/or reaching conclusions.

"Cubing" means a method for discovering ideas about a topic by using six strategies (in any order) to investigate it: describe it, compare it, associate it, analyze it, apply it, and argue for or against it.

"Cues/cueing system" means sources of information used by readers to construct meaning. The language cueing system includes the graphophonic system - the relationship between oral and written language (phonics); the syntactic system - the relationship among linguistic units such as prefixes, suffixes, words, phrases, and clauses (grammar); and the semantic system - the meaning system of language.

"Decode" means to analyze spoken or graphic symbols of a familiar language to ascertain their intended meaning.

"Descriptive writing" means one of four chief composition modes. Writing which paints a picture of a person, place, thing, or idea using vivid details.

"Dialect" means a social or regional variety of a particular language with phonological, grammatical, and lexical patterns that distinguish it from other varieties.

"Diamante" means poetic form; structure follows a diamond shape of seven lines as follows: one noun, two adjectives, three participles, four related nouns, or a phrase of four words, three participles, two adjectives, and one noun.

"Diphthong" means a vowel sound produced when the tongue moves from one vowel sound toward another vowel in the same syllable; two vowel sounds that come together so fast they are considered one syllable (e.g., ou, ow, oi/oy).

"Directionality" means the ability to perceive spatial orientation accurately (left to right).

"**Epic literature"** means long narratives detail the adventures of a single heroic figure; the center of action revolves around the relationship between the heroic figure and the gods; the main character symbolizes the ideal characteristics of greatness; many were originally written as poetry or songs; language is lyrical, stately, and rich with images.

"Essays" means documentary records on diverse topics such as slavery, life in the 12th century England, or songs of the American Revolution; content is based upon or adapted from an original document in diary, letter, or essay form.

"Etymology" means the study of the origins of words; an account of the history of a particular word.

"Evaluative" means questioning that requires the reader to use experiential background knowledge in conjunction with information explicitly stated in the text (e.g., reading beyond the line).

"Expository" means a reading or writing selection which explains, defines, and interprets. It covers all compositions which do not primarily describe an object, tell a story, or maintain a position (e.g., content-area textbooks, magazine articles, editorials, essays).

"Fables" means tales concerning human conduct with moralistic overcomes; animals exhibit human qualities and behaviors.

"Fairytale" means a folktale about real-life problems usually with imaginary characters and magical events.

"Fantasy" means characters or settings depart from what is realistic; the author makes the impossible believable; characters include humanized animals, good and evil stereotypes, heroes and heroines with magical powers.

"Fiction" means plots are simple, fast-paced and predictable; characters and their actions appeal to young children; illustrations contribute to story line; rhyme and repetition refrain encourage reading aloud; story and language appeal to sense of humor through word play, nonsense, surprise, and exaggeration; illustrations encourage participation through naming, pointing, and seeking.

"Figurative language" means writing or speech not meant to be taken literally. Writers use figurative language to express ideas in vivid or imaginative ways (e.g., "the apple of my eye," "forever chasing rainbows").

"Flashback" means the technique of disrupting the chronology of a narrative by shifting to an earlier time in order to introduce information.

"Fluency" means freedom from word-identification problems that might hinder comprehension in silent reading or the expression of ideas in oral reading; automaticity, the ability to produce words or larger language units in a limited time interval.

"Folktales" means time and place are generic (e.g., "Once upon a time in a faraway castle. . ."); stories are not intended to be accepted as true; plots use predictable motifs (e.g., ogres, magic, supernatural helpers, quests); story line is frequently a series of recurring actions; characters are one-dimensional.

"Foreshadowing" means the technique of giving clues to coming events in a narrative.

"Genre" means a category used to classify literary and other works, usually by form, technique, or content. The novel, the short story, and the lyric poems are all genres.

"Grapheme" means a written or printed representation of a phoneme (e.g., b for /b/ and oy for /oi/ in boy)

"Graphophonic cues" means the relationship between graphemes and the phonemes they represent. These symbol-sound-association skills can be used as an aid in recognizing a word that is not firmly fixed in sight vocabulary, especially if used in conjunction with other cues (e.g., determining the sound of the initial letter or two and the use of context may be all that is needed to recognize a word).

"High frequency words" means a word that appears many more times than most other words in spoken or written language (e.g., the, of, said, for).

"Historical fiction" means stories are grounded in history but not restricted by it; the historical setting is an authentic and integral part of the story; characters' actions, dialogue, beliefs, and values are true to the historical period.

"Homographs" means words which are spelled alike but have different sounds and meanings (e.g., bow and arrow vs. bow of a ship).

"Homonyms" means words which sound the same but have different spellings and meanings (e.g., bear, bare).

"Homophone" means words with the same pronunciation but different meanings (e.g., hare and hair, scale [of a fish] and scale [a ladder]).

"Hyperbole" means obvious and deliberate exaggeration; an extravagant statement; a figure of speech not intended to be taken literally. Hyperboles are often used for dramatic or comic effect. (e.g., "He died a thousand deaths." "The discussion lasted an eternity.")

"Idiom" means an expression that does not mean what it literally says (e.g., to have the upper hand has nothing to do with the hands).

"Independent reading level" means the readability or grade level of material that is easy for a student to read with few word-identification problems and high comprehension.

"Inferential" means a reasoned assumption about meaning that is not explicitly stated (e.g., reading between the lines).

"Instructional reading level" means the reading ability or grade level of material that is challenging, but not frustrating for the student to read successfully with normal classroom instruction and support.

"Irony" means a figure of speech of which the literal meaning of the word is the opposite of their intended meaning (e.g., I could care less); a literary technique for implying, through plot or character, that the actual situation is quite different from that presented.

"Journal" means a less private form of diary. It is more readily shared, allows more flexibility, and is more adaptable as a teaching tool. It is especially useful when used to elicit responses to reading, issues, and events under study.

"Legends" means plots record deeds of past heroes; stories are presented as true; stories are usually secular and associated with wars and victories.

"Literal" means information directly from the text (e.g., on the line).

"Literature" means text created for a specific purpose (e.g., poem, story, novel, etc.)

"Main idea" means the gist of a passage; central thought.

"Medial" means coming in the middle of a word.

"Metaphor" means a figure of speech in which a comparison is implied by analogy but is not stated.

"Mode of writing" means any of the major types of writing (e.g., argumentation, description, exposition, narration).

"Mood" means the emotional state of mind expressed by an author or artist in his or her work; the emotional atmosphere produced by an artistic work.

"Mystery" means tightly woven plots that have elements of suspense, danger, or intrigue; plots are fast-paced and frequently involve foreshadowing or flashback.

"Myths" means stories are seen as true in the represented society; plots are usually associated with theology or ritual; accounts frequently explain natural phenomena.

"Narrative" means a reading or writing selection which tells a story (e.g., fables, fairy tales, legends, tall tales, short stories, novels).

"Neologism" means a new word or phrase, or a new meaning of, for an established word. Neologism also applies to new doctrines, such as a fresh new interpretation of the Bible or of some other work of literature.

"Nonfiction" means information is factual and may be presented by detailed descriptions or examples; organization follows a logical pattern and may include textual aids.

"Onomatopoeia" means the formation and use of words that suggest by their sounds the object or idea being named: bow wow, bang, buzz, crackle, clatter, hiss, murmur, sizzle, twitter, zoom.

"Onset" means all of the sounds in a word that come before the first vowel.

"Pacing" means setting one's own reading rate by using a pattern appropriate for the reading task.

"Personification" means metaphorical figure of speech in which animals, ideas, and things are represented as having human qualities.

"Phoneme" means a minimal sound unit of speech that distinguishes one word from another (lace, lake).

"Phonemic awareness" means ability to manipulate, detect, and change sounds in spoken language (precedes phonics instruction).

"Phonics" means a way of teaching reading and spelling that stresses symbol sound relationships; the ability to associate letters and letter combinations with sound and blending them into syllables and words.

"Point-of-view" means the way in which an author reveals a perspective/viewpoint, as in characters, events, and ideas in telling a story.

"Predictable text" means books with dramatic cumulative repetitions and dependable schemes of rhyme and language that help children anticipate and thereby decode the printed page (e.g., *Brown Bear, Brown Bear*).

"Prediction strategy" means a person's use of knowledge about language and the context in which it occurs to anticipate what is coming in writing or speech.

"Prefix" means a syllable or group of syllables attached to the beginning of a word, or root, to change its meaning (e.g., reprint, unpack, dislike).

"Prior knowledge" means knowing that stems from previous experience. Note: prior knowledge is a key component of schema theories of reading and comprehension.

"Propaganda" means an extreme form of written or spoken persuasion intended to influence the reader, though sometimes subtly, and usually by one-sided rather than objective argument (e.g., advertising propaganda to sell a product).

"Readers Theatre" means a performance of literature, as a story, play, poetry read aloud expressively by one or more persons, rather than acted.

"R-controlled vowels" means the modified sound of a vowel immediately preceding /r/ in the same syllable as in care, never, sir, or.

"Recursive process" means moving back and forth through a text in either reading or writing, as new ideas are developed or problems encountered. In reading a text, recursive processes might include rereading earlier portions in light of later ones, looking ahead to see what topics are addressed or how a narrative ends, and skimming through text to search for particular ideas or events before continuing a linear reading. In creating a written composition, recursive processes include moving back and forth among the planning, drafting, and revising phases of writing.

"Representing" means the presentation aspect of viewing. It is nonverbal depiction of communication.

"Rime" means the first vowel in a word and all the sounds that follow (e.g., ed in bed, red, Ted, and sled).

"Root word" means a word with no prefix or suffix added; may also be referred to as a base word.

"Rule of Thumb" means a method students can use to make their reading selections. Students select a book, open it to any page, and read. One finger is raised for each unknown word. If they encounter more than five words that they cannot pronounce, probably it is a good idea to select another book.

"Schwa" means the vowel sound heard at the beginning of the word about and represented by the symbol /a/ and any of the vowel letters (e.g., carrot, alone).

"Science fiction" means relies on hypothesized scientific advancements and raises questions about the future of humanity; can be a useful vehicle for examining issues related to human survival in an uncertain future.

"Semantic cues" means semantic cues involving word-meaning knowledge and a general sense of the test's meaning.

"Sight word" means any word recognized by memory only.

"Silent e" means an e that makes no sound that is usually found in the final position of an English root word.

"Simile" means a combination of two things that are unlike, usually using the words like or as (e.g., soft as a kitten).

"Soft c and g rule" means when c or g is followed by e, i, or y, it is usually soft.

"Structural analysis" means the process of using knowledge of root words, endings, and affixes to decode words.

"Subvocalize" means reading to oneself.

"Suffix" means a syllable or group of syllables attached to the end of a word, or root, to change its meaning (e.g., s, ed, ing).

"Sustained silent reading/drop everything and read" means child reads self-selected literature 10-30 minutes daily. A brief pair discussion, approximately 2 minutes, follows SSR/DEAR.

"Syllabication" means the division of words into syllables.

"Syllable" means a minimal unit of sequential speech sounds made up of a vowel sound or a vowel consonant combination and always contains a vowel sound.

"Symbolism" means use of one thing to suggest something else, specifically the use of symbols to represent ideas in concrete ways; the implied meaning of a literary work.

"Synonyms" means words which have the same meaning.

"Syntactic cues" means syntactic cues involve implicit knowledge of word order and the functions of words. Only certain word sequences are allowable in English, and only certain kinds of words fit into particular slots in our sentence patterns (e.g., the baseball player the ball. The missing word must be a verb).

"Tall tales" means a story about an impossible or exaggerated happening related in a realistic, matter-of-fact, and often humorous way (e.g., Paul Bunyon).

"Text" means any printed material.

"Theme" means a topic of discussion in writing. A major idea broad enough to cover the entire scope of a literary work of art. A theme can be a noun or phrase (e.g., friendship, justice).

"Transitional spelling" means the result of an attempt to spell a word whose spelling is not already known, based on a writer's knowledge of the spelling system and how it works.

"VC" means vowel/consonant.

"Vowel digraph" means two vowels pronounced in such a way that the letters together stand for one sound (e.g. /a/ in sleigh).

"Vowels" means a, e, i, o, u and sometimes y; made without any air obstruction.

"Webbing" means instructional activities, particularly graphic ones, that are designed to show the relationship among ideas or topics in text or to plan for writing: cognitive mapping.

"Writer's workshop" means instructional time that includes mini-lessons, peer/teacher conferences, process writing, sharing time, author's chair, sustained silent reading, and small teaching groups.

"Writing folders" means a folder or notebook that contains writing generated during the various stages of the writing process.

"Y as a vowel rule" means if y is the only vowel sound at the end of a one-syllable word, y has the sound of long i; if y is the only vowel at the end of a word of more than one syllable, y has a sound almost like long e.

210:15-3-12. Language arts for grade 1

(a) **Reading/literature.** The student will apply a wide range of strategies to comprehend, interpret, evaluate, appreciate, and respond to a variety of texts.

(1) **Standard - print awareness.** The student will develop and demonstrate knowledge of print awareness.

(A) Read from left to right, top to bottom.

(B) ~~Match spoken word to print.~~Track print as text is being read.

(C) Recognize the difference among letters, words, and sentences.

(2) **Standard - phonological/phonemic awareness.** The student will develop and demonstrate knowledge of phonological/phonemic awareness.

(A) Create and state groups of rhyming words (e.g., bat/cat/sat/mat).

(B) Count syllables in a word.

(C) ~~Identify onsets and rimes (e.g., at in bat).~~ Distinguish onset (beginning sounds) and rimes in one-syllable words. Examples: Onset-/b/ in bat; Rime-at in bat.

(D) Segment and blend the phonemes of one-syllable words (e.g., bat = /b/ /a/ /t/).

(E) Isolate phonemes within words by identifying the beginning, middle, and ending sounds in one syllable words (e.g., the beginning sound of dog is /d/, the middle sound in can is /a/).

(F) Add or delete a phoneme ~~change~~ to a word (e.g., /b/ + at = bat, cat - /k/ = at).

(3) **Standard - phonics/decoding.** The student will apply sound-symbol relationships to decode unknown words.

(A) **Phonetic analysis.** Apply phonics knowledge to decode one-syllable words.

(i) Use short and long vowel patterns (e.g., CVC = mad, hid, cut; CVCV (final e) = made, hide, cute; CV[1] = he, me, so).

(ii) Use r-controlled vowel patterns (e.g., er = "r" in fern, ir = "r" in bird, and ur = "r" in turn.

(iii) Use blends, digraphs, and diphthongs (e.g., blends - fl, tr, sl, sm, sn, bl, gr, and str; Digraphs - sh, th, wh; Diphthongs - oi, oy, ou, ow).

(B) **Structural analysis.** Apply knowledge of structural analysis to decode words using strategies such as inflectional endings (e.g., -s, -es, -ing, or -ed), contractions (e.g., can + not = can't), and compound words (e.g., cup + cake = cupcake), and possessives.

(4) **Standard - vocabulary.** The student will develop and expand knowledge of words and word meanings to increase their vocabulary.

(A) Increase personal vocabulary by listening to and reading a variety of text and literature.

(B) Discuss unfamiliar oral and/or written vocabulary after listening to or reading texts.

(C) Use new vocabulary and language in own speech and writing.

(D) Classify categories of words (e.g., tell which of the following are fruits and which are vegetables: bananas, oranges, apples, carrots, and peas.

(5) **Standard - fluency.** The student will identify words rapidly so that attention is directed at the meaning of the text.

(A) Read regularly in independent-level text (text in which no more than 1 in 20 words is difficult for the reader), effortlessly, and with expression.

(B) Read regularly in instructional-level text (text in which no more than 1 in 10 words is difficult for the reader~~; a "typical" first grader reads approximately 60 words per minute~~).

(C) Students will engage in repeated readings of the same text to increase fluency.

(D) Recognize 100-200 high frequency and/or common irregularly spelled words in text (e.g., have, to, was, where, said).

(E) Use punctuation cues (e.g., periods, commas, question marks) in text as a guide to understand meaning.

(6) **Standard - comprehension/critical literacy.** The student will interact with the words and concepts in a text to construct an appropriate meaning.

(A) Literal Understanding

(i) Read and comprehend both fiction and nonfiction that is appropriately designed for the second half of first grade.

(ii) Use prereading strategies such as previewing, using prior knowledge, predicting, and establishing a purpose for reading. Example: Prior to reading the book *Verdi* by Janell Cannon, have students preview the book by looking at the cover, identifying the main character and telling what they know about snakes (what they do, where they live, . . .). Make predictions by doing a picture walk to discuss some of the early actions in the story.

(iii) Respond to questions designed to aid general comprehension.

(B) Inferences and Interpretations - Make simple inferences based on what is stated in text.

(C) Summary and Generalization

(i) Retell or act out stories and events using beginning, middle, and ending.

(ii) Respond to who, what, when, where, why, and how questions and discuss the main idea of what is read.

(iii) Draw and discuss visual images based on text information.

(D) Analysis and Evaluation

(i) Identify simple cause and effect relationships.

(ii) ~~Mark~~Identify favorite passages.

(E) Monitoring and Correction Strategies - Apply a basic use of semantics, syntax, and graphophonic cues ~~(e.g., semantics - Does it make sense? syntax - Does it sound right? graphophonic - Does it look right?)~~. Example:

(i) Semantic-does it make sense?

(ii) Syntax-does it sound right?

(iii) Graphophic-does it look right?

(7) **Standard - literature.** The student will read to construct meaning and respond to a wide variety of literary forms.

(A) Literary Genres - The student will demonstrate knowledge of and appreciation of the various forms (genres) of literature.

(i) Discriminate between fiction and nonfiction.

(ii) Recognize elements of cultures different from their own in multicultural tales.

(B) Literary Elements - The student will demonstrate knowledge of literary elements and techniques and how they affect the development of a literary work.

(i) Describe the roles of authors and illustrators in telling a story or presenting information.

(ii) Identify and describe the plot, setting, and character(s) in a story.

(8) **Standard - research and information.** The student will conduct research and organize information.

(A) Accessing Information: Select the best source for a given purpose.

(i) Alphabetize words to the first letter.

(ii) Read and follow simple written directions.

(iii) Recognize author, illustrator, title page, and table of contents (when applicable) as identifying items of information about a book.

(iv) Access information from simple charts, maps, graphs, and calendars.

(B) Interpreting Information: Analyze and evaluate information from a variety of sources. Generate questions about topics of personal interest and find books to gather information.

(b) **Writing/grammar/usage and mechanics.** The student will express ideas effectively in written modes for a variety of purposes and audiences.

(1) **Standard - writing process.** The student will use the writing process to write coherently.

(A) Participate in prewriting activities such as brainstorming, discussion, webbing, or story starters.

(B) Write first drafts.

(C) Be introduced to proofreading and editing.

(D) Publish and share writing with various audiences, such as peers or adults.

(2) **Standard - modes and forms of writing.** The student will communicate through a variety of written

forms and for various purposes and to a specific audience or person.

(A) Develop stories that describe, explain, or tell about familiar objects, people, places, events, or experiences.

(B) Write "thank you" notes, friendly letters, and invitations.

(C) Make journal entries.

(D) Create simple poems.

(E) Write brief descriptions of a real object, person, place, or event using some details.

(3) **Standard - grammar/usage and mechanics.** The student will demonstrate appropriate practices in writing by applying Standard English conventions to the revising and editing stages of writing.

(A) Grammar/Usage: Students are beginning to recognize and use appropriate nouns, verbs, and adjectives in their writing.

(i) Singular and plural nouns

(ii) Singular possessive pronouns

(iii) Present and past tense verbs

(iv) Contractions

(v) Adjectives.

(B) Mechanics: Students are expected to demonstrate appropriate language mechanics in writing. Capitalize the first word of a sentence, names of people, places, major holidays, days of the week, months of the year, and the pronoun "I".

(C) Punctuation: Students are expected to demonstrate appropriate punctuation in writing. Correctly use periods, exclamation points, and question marks at the end of sentences.

(D) Sentence Structure: The student will demonstrate appropriate sentence structure in writing. Write in complete sentences using a noun and verb in each sentence.

(E) Spelling: Students are expected to demonstrate appropriate application of spelling knowledge to the revising and editing stages of writing.

(i) Spell correctly three- and four-letter words, and grade-level-appropriate sight words.

(ii) Use a picture dictionary to gain information.

(F) Handwriting: Students are expected to demonstrate appropriate handwriting in the writing process. Print legibly and space letters, words, and sentences appropriately, using left to right progression moving from the top to the bottom of the page.

(c) **Oral language/listening and speaking.** The student will demonstrate thinking skills in listening and speaking.

(1) **Standard - listening.** The student will listen for information and for pleasure.

(A) Listen attentively and ask questions for clarification and understanding.

(B) Give, restate, and follow simple two-step directions.

(2) **Standard - speaking.** The student will express ideas and opinions in a group or individual situations.

(A) Stay on topic when speaking.

(B) Use descriptive words when speaking about people, places, things and events.

(C) Recite poems, rhymes, songs and stories.

(D) Retell stories using basic story grammar and relating the sequence of story events by answering who, what, when, where, why, and how questions.

(F) Relate an important life event or personal experience in a simple sequence.

(G) Provide descriptions with careful attention to sensory detail.

(H) Use visual aids such as pictures and objects to present oral information.

(3) **Standard - group interaction.** The student will use effective communication strategies in pair and small group context.

(A) Show respect and consideration for others in verbal and physical communications.

(B) Make contributions in group discussions.

(d) **Visual literacy.** The student will interpret, evaluate, and compose visual messages.

(1) **Standard - interpret meaning.** The student will interpret and evaluate the various ways visual image-makers including graphic artists, illustrators, and news photographers represent meaning.

(A) Respond to visual messages by distinguishing between fiction and nonfiction in stories, videos, and television programs.

(B) Respond through talk, movement, music, art, drama and writing in ways that reflect understanding of a variety of stories and poems.

(2) **Standard - evaluate media.** The student will evaluate visual and electronic media such as film as they compare print messages. Make connections between illustrations and print.

210:15-3-13. Language arts for grade 2

(a) **Reading/literature.** The student will apply a wide range of strategies to comprehend, interpret, evaluate, appreciate, and respond to a wide variety of texts.

(1) **Standard - phonological/phonemic awareness.** The student will demonstrate the ability to hear, identify, and manipulate words, syllables, onsets, rimes, and individual sounds (phonemes) in spoken words. Demonstrate an awareness of the sounds that are made by different letters by distinguishing beginning, middle, and ending sounds in words, rhyming words, and clearly pronouncing blends and vowel sounds.

(A) Segment and blend the phonemes of one and two syllable words (e.g., salad = /s/ /a/ /l/ /a/ /d/, /s/ /a/ /l/ /a/ /d/ = salad).

(B) Substitute a phoneme change to a word (e.g., slap, change the /p/ to /m/ = slam).

(2) **Standard - phonics/decoding.** The student will apply sound-symbol relationships to decode unknown words.

(A) Phonetic Analysis

(i) Use consonant sounds in beginning, medial, and final positions.

(ii) Use short (e.g., CVC pattern - rob), long (e.g., VC final e - robe), and r-controlled vowel sounds (e.g., "er" in her, "ir" in bird, "ur" in turn, "ar" in car and "or" in port).

(iii) Use blends ((e.g., cr, sk, st, sw, squ, thr), digraphs, (e.g., ch, wh, sh, th, ph), and dipthongs (e.g., oi, oy, ou, ow).

(B) Analysis

(i) Build and understand compound words (e.g., straw + berry = strawberry), contractions e.g., I am = I'm), and base words using prefixes and suffixes (e.g., un + happy = unhappy, - care + ful = careful, care is the base word of careful; happy is the baseword of unhappy).

(ii) Apply knowledge of basic syllabication rules to decode words in text (e.g. VC-CV - rab-bit = rabbit, V-CV - pi-lot = pilot, VC-V - cab-in = cabin).

(3) **Standard - vocabulary.** The student will develop and expand their knowledge of words and word meanings to increase their vocabulary.

(A) Words in Context: Expand vocabulary in language and writing by reading and listening to a variety of ~~texts.~~text and literature.

(B) Synonyms, Antonyms, and Homonyms/Homophones: Understand and explain common antonyms (words with opposite meanings), synonyms (words with the same meanings), and homonyms/homophones ~~(words with the same sound and spelling, but different meanings).~~(words which sound the same but have diffeent spellings and means (e.g., bear and bare).

(C) Affixes: Know the meaning of simple prefixes and suffixes. Example: In unhappy, the "un" means not, in played, the suffix "ed" changes play to past tense.

(4) **Standard - fluency.** The student will identify words rapidly so that attention is directed at the meaning of the text.

(A) Read regularly in independent-level text (text in which no more than 1 in 20 words is difficult for the reader) effortlessly and with expression.

(B) Read regularly in instructional-level text that is challenging yet manageable (texts in which no more than 1 in 10 words is difficult for the reader~~; a "typical" second grader reads approximately 75 words per minute)~~.

(C) Engage in repeated readings of same text to increase fluency.

(D) Accurately and fluently read 200-300 high frequency and/or irregularly spelled words in meaningful text.

(E) Use punctuation cues in text (i.e., commas, periods, question marks, and exclamation points) as a guide to understanding meaning.

(5) **Standard - comprehension/critical literacy.** The student will interact with the words and concepts in a text to construct an appropriate meaning.

(A) Literal Understanding

(i) Read and comprehend both fiction and nonfiction that is appropriately designed for ~~the second half of~~ second grade.

(ii) Use prereading strategies to preview, activate prior knowledge, make predictions, use picture clues, and establish the purpose for reading (i.e., graphic organizers).

(ii) Ask and respond to questions to aid comprehension about important elements of fiction and nonfiction.

(B) Inferences and Interpretation

(i) Make inferences about events, characters, and ideas in fictional texts by connecting their own knowledge and experience to the story.

(ii) Support interpretations or conclusions with examples taken from the text.

(C) Summary and Generalization

(i) Retell or act out narrative text by identifying story elements and sequencing the events.

(ii) Produce oral or written summaries of text selections by discussing who, what, when, where, why, and how to identify the main idea and significant supporting details of a text.

(D) Analysis and Evaluation

(i) Identify cause~~/~~ and effect relationships in a text.

(ii) Make comparisons and draw conclusions based on what is read.

(iii) Describe character traits, changes, and relationships.

(E) Monitoring and Correction Strategies: Integrate the use of semantics (e.g., Does it make sense?), syntax (e.g., Does it sound right?), and graphophonic cues to gain meaning from the text (e.g., Does it look right?).

(6) **Standard - literature.** The student will read to construct meaning and respond to a wide variety of ~~literacy~~literary forms.

(A) Literary Genres: Demonstrate knowledge of and appreciation for various forms (genres) of literature. Recognize defining characteristics of a variety of texts (e.g., poems, informational text, plays, folk tales, fables, predictable books, legends, and fairytales).

(B) Literary Elements: Demonstrate knowledge of literary elements and techniques and how they affect the development of a literary work.

(i) Compare different endings to stories and identify the reasons and the impact of the different ending.

(ii) Compare plots, settings, and characters presented in several texts by the same author (i.e., author studies).

(iii) Infer the lesson or moral in a variety of texts (e.g., multicultural tales, fables, legends, and myths).

(C) Figurative Language and Sound Devices: The student will identify figurative language and sound devices in writing and how they affect the development of a literary work. Identify the use of rhythm, rhyme, and alliteration (using words with repeating consonant sounds, (e.g., "Silly Sally went to town.") in poetry.

(7) **Standard - research and information.** The student will conduct research and organize information.

(A) Accessing Information: Select the best source for a given purpose.

(i) Identify the purposes of various reference materials such as a dictionary, a thesaurus, and an atlas.

(ii) Alphabetize to the second letter.

(iii) Use guide words to locate words in dictionaries and topics in encyclopedias.

(iv) Use title page, table of contents, glossary, and index to locate information.

(v) Use and interpret charts, maps, graphs, schedules, and directions.

(B) Interpreting Information: Analyze and evaluate information from a variety of sources. Use graphic organizers, such as webbing and mapping, to organize and summarize information.

(b) **Writing/grammar/usage and mechanics.** The student will express ideas effectively in written modes for a variety of purposes and audiences.

(1) **Standard - writing process.** The student will use the writing process to write coherently.

(A) Create a list of topic ideas for writing.

(B) Use a process approach to write coherently, using developmentally appropriate steps of the writing process: prewriting, drafting, revising, editing or proofreading, and publishing or sharing.

(C) Organize related ideas together to maintain a consistent focus by establishing a beginning, middle, and ending.

(2) **Standard - modes and forms of writing.** Communicate through a variety of written forms and for various purposes and to a specific audience or person.

(A) Recognize that language has many uses such as informing, persuading, and entertaining.

(B) Write brief personal descriptive narratives (stories) that:

(i) Present a logical sequence of events.

(ii) Develop a main idea.

(iii) Use details to support the main idea.

(C) Write "thank you" notes, friendly letters (identifying the five parts), and invitations.

(D) Make journal entries.

(E) Create simple rhymes and poems.

(3) **Standard - grammar/usage and mechanics.** The student will demonstrate appropriate practices in writing by applying Standard English conventions to the revising and editing stages of writing.

(A) Grammar/Usage: Students are expected to recognize and use correct nouns, verbs, contractions, and adjectives in their writing.

(i) Singular and plural nouns

(ii) Common and proper nouns

(iii) Pronouns

(iv) Subjects (naming part) and predicates (action part)

(v) Present and past tense verbs

(vi) Helping verbs

(vii) Adjectives

(viii) Contractions (e.g., I'm, You're)

(B) Mechanics: Students are expected to demonstrate appropriate language mechanics in writing.

(i) Capitalize all proper nouns (names of specific people or things, such as Mike, Indian, Jeep), greetings, months and days of the week, titles (Dr., Mr., Mrs., and Miss), and initials of people.

(ii) Capitalize correctly the first word in a sentence and the pronoun "I."

(C) Punctuation: Students are expected to demonstrate appropriate punctuation in writing.

(i) Correctly use end punctuation.

(ii) Use commas correctly in dates.

(iii) Use apostrophes correctly in contractions.

(iv) Use quotation marks to show that someone is speaking.

(v) Use period in common abbreviations (e.g., Mr., Mrs., Dr., Mon., and Jan).

(D) Sentence Structure: The student will demonstrate appropriate sentence structure in writing. Write in complete sentences using a noun, verb, and details.

(E) Spelling: Students are expected to demonstrate appropriate application of spelling knowledge to the revising and editing stages of writing.

(i) Spell correctly words with short and long vowel sounds, r-controlled vowels, and consonant vowel patterns.

(ii) Spell frequently used words with irregular spelling patterns.

(iii) Spell prefixes and suffixes correctly.

(iv) Recognize the use of homophones/homonyms in spelling.

(F) Handwriting: Students are expected to demonstrate appropriate handwriting in the writing process. Form letters correctly and space words and sentences properly so that writing can be easily read by another person.

(c) **Oral language/listening and speaking.** The student will demonstrate thinking skills in listening and speaking.

(1) **Standard - listening.** The student will listen for information and for pleasure.

(A) Listen attentively and ask questions for clarification and understanding.

(B) Give, restate, and follow simple two and three step directions.

(2) **Standard - speaking.** The student will express ideas and opinions in group or individual situations.

(A) Speak articulately and audibly using appropriate language, correct usage, enunciation and volume.

(B) Provide descriptions using correct sequence of events and details.

(C) Use verbal and nonverbal communication in effective ways, such as making announcements, giving directions, or making instructions.

(3) **Standard - group interaction.** The student will use effective communication strategies in pairs and small group context.

(A) Show respect and consideration for others in verbal or physical communication.

(B) Ask and answer questions related to the topic and make contributions in small or large group discussions.

(d) **Visual literacy.** The student will interpret, evaluate, and compose visual messages.

(1) **Standard - interpret meaning.** The student will interpret and evaluate the various ways visual image-makers, including graphic artists, illustrators, and news photographers, represent meaning.

(A) Distinguish between telling and selling messages in such things as commercials, advertisements, and safety and drug public service announcements.

(B) Identify the differences in facts and opinions in print and nonprint media.

(2) **Standard - evaluate media.** The student will evaluate visual and electronic media, such as film, as they compare with print media.

(A) Make connections between illustrations and print.

(B) Identify differences in the presentation or depiction of characters and plot that tells of characters in American and other cultures through listening, viewing, or reading (e.g., read *Cinderella* and watch film). Compare and contrast the two.

210:15-3-14. Language arts for grade 3

(a) **Reading/literature.** Students will apply a wide range of strategies to comprehend, interpret, evaluate, appreciate, and respond to a wide variety of texts.

(1) **Standard - phonics/decoding.** The student will apply sound-symbol relationships to decode words.

(A) Phonetic Analysis: Apply knowledge of phonetic analysis to decode unknown words (e.g. common letter/sound relationships, consonants, blends, digraphs, vowels, and diphthongs).

(B) Structural Analysis: Apply knowledge of structural analysis to decode unknown words (e.g. syllabication rules, affixes, root words, compound words, spelling patterns, contractions, final stable syllables).

(C) Apply knowledge of sentence structures and semantics in conjunction with phonics and structural analysis to decode unknown words.

(2) **Standard - vocabulary.** The student will develop and expand their knowledge of words and word meanings to increase their vocabulary.

(A) Words in Context: Use context clues (the meaning of the text around the word) to determine the meaning of grade-level appropriate words.

(B) Affixes: Use prefixes (for example: un-, pre-, bi-, mis-, dis-, en-, in-, im-, ir-), suffixes (for example: -er, -est, -ful, -ness, -ing, -ish, -less), and roots to determine the meaning of words.

(C) Synonyms, Antonyms, and Homonyms/Homophones: Determine the meanings of words using knowledge of synonyms, antonyms, homonyms/homophones, and multiple meaning words.

(D) Using Resource Materials: Use word reference materials (glossary, dictionary, thesaurus) to determine the meaning and pronunciation of unknown words.

(3) **Standard - fluency.** The student will identify words rapidly so that attention is directed at the meaning of the text.

(A) Read regularly in independent-level texts (texts in which no more than 1 in 20 words is difficult for the reader) fluently and accurately, and with appropriate rate, change in voice, and expression.

(B) Read regularly in instructional-level texts that are challenging yet manageable (texts in which no more than 1 in 10 words is difficult for the reader~~; a "typical" third grader reads approximately 85 words per minute~~).

(C) Engage in repeated readings of the same text to increase fluency.

(D) Accurately and fluently read 300-400 high frequency and/or irregularly spelled words in meaningful texts.

(E) Use punctuation cues (e.g., final punctuation, commas, quotation marks) in text with appropriate phrasing as a guide to understanding meaning.

(4) **Standard - comprehension/critical literacy.** The student will interact with the words and concepts in a text to construct an appropriate meaning.

(A) Literal Understanding

(i) Read and comprehend poetry, fiction, and nonfiction that is appropriately designed for~~ the second half of~~ third grade.

(ii) Use prereading strategies independently to preview, activate prior knowledge, predict content of text, and establish a purpose for reading.

(iii) Recall major points in a text and revise predictions about what is read.

(iv) Show understanding by asking questions and supporting answers with literal information from the text.

(B) Inferences and Interpretation

(i) Make inferences by connecting prior knowledge and experience with information from the text.

(ii) Interpret text, including lessons or morals depicted in fairytales, fables, etc., and draw conclusions from evidence presented in the text.

(iii) Participate in creative response to text (e.g., art, drama, and oral presentations).

(C) Summary and Generalization

(i) Summarize by recognizing main ideas, key concepts, key actions, and supporting details in fiction and nonfiction.

(ii) Make generalizations about a text (e.g., theme of a story or main idea of an informational text).

(iii) Produce summaries of ~~text selections.~~fiction and non-fiction text, highlighting major points.

(D) Analysis and Evaluation

(i) Analyze characters including their traits, relationships, feelings, and changes in text.

(ii) Distinguish between fact and opinion in nonfiction text.

(iii) Analyze the causes, motivations, sequences, and results of events from a text.

(E) Monitoring and Correction Strategies

(i) Monitor own reading and modify strategies as needed (e.g., recognizes when he or she is confused by a section of text, questions whether the text makes sense, etc.).

(ii) Predict, monitor, and ~~crosscheck~~check for understanding using semantic, syntactic, and graphophonic cues.

(iii) Clarify meaning by rereading, questioning, and modifying predictions.

(5) **Standard - literature.** The student will read to construct meaning and respond to a wide variety of literary forms.

(A) Literary Genres - Demonstrate knowledge of and appreciation for various forms (genres) of literature.

(i) Recognize characteristics of literary genres and forms (e.g. contemporary realistic fiction, historical fiction, nonfiction, modern fantasy, poetry, drama, and traditional stories such as fairy tales and fables).

(ii) Read, understand, and discuss a variety of genres.

(B) Literary Elements - Demonstrate knowledge of literary elements and techniques and how they affect the development of a literary work.

(i) Compare and contrast plots, settings, or characters presented by different authors and the same author of multiple texts.

(ii) Recognize themes that occur across literary works. Example: Read *Yoko* by Rosemary Wells and *You Are Special* by Max Lucado. Discuss the theme of "everyone is unique" that occurs in both stories.

(C) Figurative Language and Sound Devices - The student will identify figurative language and sound devices in writing and how they affect the development of a literary work by identifing and discussing how certain words and rhythmic patterns can be used in a selection to imitate sounds (e.g., rhythm, rhyme, alliteration).

(6) **Standard - research and information.** The student will conduct research and organize information.

(A) Accessing Information - The student will select the best source for a given purpose.

(i) Alphabetize to the third letter.

(ii) Use guide words to locate words in dictionaries and topics in encyclopedias.

(iii) Access information from charts, maps, graphs, schedules, directions, and diagrams.

(iv) Use the title page, table of contents, glossary, chapter headings, and index to locate information.

(v) Use text formats as an aid in constructing meaning from nonfiction (expository) text (e.g., heading, subheading, bold print, and italics).

(B) Interpreting Information - The student will analyze and evaluate information from a variety of sources.

(i) Begin the research process by selecting a topic, formulating questions, and identifying key words.

(ii) Locate, organize, and synthesize information from a variety of print and nonprint and technological resources (e.g., dictionaries, reference books, atlases, magazines, informational text, thesaurus, and technology/Internet).

(iii) Compile information into summaries of information.

(iv) Use test-taking strategies by answering different levels of questions, such as open-ended, literal, and interpretive, as well as well as multiple choice, true/false, and short answer.

(b) **Writing/grammar/usage and mechanics.** The student will express ideas effectively in written modes for a variety of purposes and audiences.

(1) **Standard - writing process.** The student will use the writing process to write coherently. Use the writing process to develop and refine composition skills.

(A) Use a variety of prewriting activities such as brainstorming, clustering, illustrating, and webbing.

(B) Compose first drafts.

(C) Revise selected drafts, changing or adding details and vivid words.

(D) Proofread/edit writing with peers or teacher.

(E) Share writing with peers or adults.

(2) **Standard - modes and forms of writing.** Communicate through a variety of written forms and for various purposes and to a specific audience or person.

(A) Communicate through a variety of written forms for various audiences and purposes to inform, entertain, instruct, describe, and to reflect.

(B) Write simple narrative, descriptive, and persuasive paragraphs.

(C) Write descriptive pieces about people, places, things, or experiences that:

(i) develop a main idea.

(ii) use details to support the main idea.

(D) Write personal, persuasive, and formal letters, thank-you notes, and invitations including the date, greeting, body, closing, and signature.

(E) Write simple poems.

(F) Write narratives (stories) that:

(i) provide a context within which an action occurs.

(ii) include details that develop the plot.

(iii) provide a clear beginning, middle, and end that includes details that develop around a central idea.

(G) Use descriptive language such as action verbs, vivid adjectives, and adverbs to make writing interesting.

(3) **Standard - grammar/usage and mechanics.** The student will demonstrate appropriate practices in writing by applying standard English conventions to the revising and editing stages of writing.

(A) Grammar/Usage: Students are expected to recognize and use nouns, pronouns, verbs, adjectives, adverbs, and conjunctions correctly in their writing.

(i) Singular and plural forms of nouns

(ii) Common and proper nouns

(iii) Singular and plural possessive nouns

(iv) Subject, object, and possessive pronouns

(v) Present, past, and future tense verbs

(vi) Regular, irregular, and helping verbs

(vii) Past participle of verbs

(viii) Subject-verb agreement.

(ix) Descriptive, comparative, and superlative adjective

(B) Mechanics: Students are expected to demonstrate appropriate language mechanics in writing by correctly capitalizing geographical names, holidays, dates, proper nouns, book titles, titles of respect, sentences, and quotations.

(C) Punctuation: Students are expected to demonstrate appropriate punctuation in writing.

(i) Periods in abbreviations and sentence endings.

(ii) Question marks.

(iii) Commas in dates, addresses, locations, quotes, introductory words, words in a series, greetings, and closings in a letter.

(iv) Apostrophes in contractions and possessives.

(v) Colon in notation of time, formal letter writing, and the introduction of words or concepts in a series, (e.g., bring the following supplies: glue, paper, scissors, etc.)

(vi) Quotation marks around direct quotations, the titles of individual poems, and short stories.

(D) Sentence Structure: The student will demonstrate appropriate sentence structure in writing. Write correctly the four basic kinds of sentences (declarative, exclamatory, imperative, and interrogative) with final punctuation.

(E) Spelling: Students are expected to demonstrate appropriate application of spelling knowledge to the revising and editing stages of writing.

(i) Demonstrate recall of spelling patterns (e.g., grapheme or blend), consonant doubling (e.g., bat + ed = batted), changing the ending of a word from -y to -ies when forming the plural (e.g., carry = carries), and common homophones (e.g., hair/hare).

(ii) Spell phonetically regular multisyllabic words, contractions, and compounds.

(iii) Increase the number of high frequency words spelled correctly.

(iv) Spell words ending in -tion and -sion correctly.

(v) Use various sources of materials to check and correct spelling.

(F) Handwriting: Students are expected to demonstrate appropriate handwriting in the writing process and use handwriting/penmanship to copy and/or compose text using correct formation and spacing of letters in manuscript and cursive.

(c) **Oral language/listening and speaking: The student will demonstrate thinking skills in listening and speaking.**

(1) **Standard - listening.** The student will listen for information and for pleasure.

(A) Listen critically for information and incorporate the information into other activities.

(B) Listen actively for pleasure and respond appropriately.

(2) **Standard - speaking.** The student will express ideas and opinions in group or individual situations.

(A) Speak articulately and audibly using appropriate grammar, enunciation, and volume.

(B) Make brief narrative (story) presentations that:

(i) provide a context for an event that is the subject of the presentation.

(ii) provide insight into why the selected event should be of interest to the audience.

(iii) include well-chosen details to develop characters, setting, and plot.

(C) Plan and present dramatic interpretations of experiences, stories, poems, or plays.

(D) Organize ideas chronologically (in the order they happened) or around major points of information.

(E) Use clear and specific vocabulary to communicate ideas and establish the tone of the message.

(F) Provide a clear beginning, middle, and end when making oral presentations that include details that develop a central idea.

(3) **Standard - group interaction.** The student will use effective communication strategies in pairs and small group context.

(A) Show respect and consideration for others in verbal and physical communication.

(B) Demonstrate thinking skills in listening, speaking, reading, and writing. For example, students are expected to gather information, organize and analyze it, and generate a simple written or oral report.

(d) **Visual literacy.** The student will interpret, evaluate, and compose visual messages.

(1) **Standard - interpret meaning.** The student will interpret and evaluate the various ways visual image-makers, including graphic artists, illustrators, and news photographers, represent meaning.

(A) Distinguish fact, opinion, and fiction in print and nonprint media in literature and advertising.

(B) Interpret and describe important events and ideas gathered from maps, charts, and graphics.

(2) **Standard - evaluate media.** The student will evaluate visual and electronic media, such as film, as they compare with print messages.

(A) Make connections between illustrations and print.

(B) Interpret important events and ideas gathered from maps, charts, graphics, video segments, or technology presentations.

(C) Listen to, view, or read stories which tell of characters in American and other cultures.

(3) **Standard - compose visual messages.** The student will create a visual message that effectively communicates an idea. Create visual messages to communicate ideas (e.g., developing a product advertisement, creating cartoons to share information, or designing book posters).

210:15-3-15. Language arts for grade 4

(a) **Reading/literature.** Students will apply a wide range of strategies to comprehend, interpret, evaluate, appreciate, and respond to a wide variety texts.

(1) **Standard - vocabulary.** The student will develop and expand their knowledge of words and word meanings to increase their vocabulary.

(A) Words in Context: Use context clues (the meaning of the text around a word) to distinguish and interpret the meaning of multiple meaning words ~~a~~as well as other unfamiliar words.

(B) Affixes, Roots, and Derivatives

(i) Interpret new words by analyzing the meaning of prefixes and suffixes.

(ii) Use knowledge of root words (e.g., snow, snowbound, snowdrift) and word parts (therm = heat) derived from Greek and Latin to analyze the meaning of complex words (thermometer).

(C) Synonyms, Antonyms, and Homonyms/Homophones: Apply knowledge of fourth grade level synonyms, antonyms, homonyms/homophones, multiple meaning words, and idioms to determine the meanings of words and phrases.

(D) Using Resource Materials

(i) Use a thesaurus to determine related words and concepts.

(ii) Determine the meanings and pronunciations of unknown words by using a glossary and/or dictionary.

(2) **Standard - fluency.** The student will identify words rapidly so that attention is directed at the meaning of the text.

(A) Read aloud regularly in independent-level texts (texts in which no more than 1 in 20 words is difficult for the reader) fluently and accurately, and with appropriate rate, change in voice, and expression.

(B) Read aloud regularly in instructional-level texts that are challenging yet manageable (texts in which no more than 1 in 10 words is difficult for the reader~~; a "typical" fourth grader reads approximately 95 words per minute~~).

(C) Increase ~~silent~~ reading ~~speed~~ through daily independent reading~~.~~ practice as monitored by the instructor through peer discussions, teacher conferences, response journals, etc.

(3) **Standard - comprehension/critical literacy.** The student will interact with the words and concepts in a text to construct an appropriate meaning.

(A) Literal Understanding

(i) Use prereading strategies independently to preview, activate prior knowledge, predict content of text, formulate questions that might be answered in the text, establish and adjust purposes for reading (e.g., to find out, to understand, to enjoy, to solve problems).

(ii) Read and comprehend poetry, fiction, and nonfiction that is appropriately designed for fourth grade.

(iii) Identify and explain the differences in fiction and nonfiction text.

(B) Inferences and Interpretation

(i) Use prior knowledge and experience to make inferences and support them with information presented in text.

(ii) Make interpretations and draw conclusions from fiction and nonfiction text beyond personal experience.

(iii) Make inferences and draw conclusions about characters' qualities and actions (i.e., based on knowledge of plot, setting, characters' motives, characters' appearances, and other characters' responses to a character).

(iv) Participate in creative responses to text (i.e., art, drama, and oral presentation).

(C) Summary and Generalization

(i) Paraphrase by recognizing main ideas, key concepts, key actions, and supporting details in fiction and nonfiction to recall, inform, or organize ideas.

(ii) Support ideas, arguments, and generalizations by reference to evidence in the text.

(iii) Represent text information in different ways such as in outline, timeline, or graphic organizer.

(D) Analysis and Evaluation

(i) Evaluate new information and hypotheses by testing them against known information and ideas.

(ii) Compare and contrast information on the same topic after reading several passages or articles.

(iii) Identify fact/opinion and cause~~/~~ and effect in various texts.

(iv) Analyze and explain the causes, motivations, sequences, and results of events from a text.

(E) Monitoring and Correction Strategies

(i) Monitor own reading and modify strategies as needed (e.g., recognizes when he or she is confused by a section of text, questions whether the text makes sense, rereading, etc.)

(ii) Predict, monitor, and ~~crosscheck~~check for understanding using semantic, syntactic, and graphophonic cues.

(4) **Standard - literature.** The student will read to construct meaning and respond to a wide variety of literary forms.

(A) Literary Genres - Demonstrate knowledge of and appreciation for various forms (genres) of literature.

(i) Identify the defining characteristics of a variety of literary genres and forms (e.g. contemporary realistic fiction, historical fiction, nonfiction, modern fantasy, poetry, drama, legends, myths, biography, autobiographies, and traditional stories such as fairy tales and fables).

(ii) Read and construct meaning from a variety of genres.

(B) Literary Elements - Demonstrate knowledge of literary elements and techniques and how they affect the development of a literary work.

(i) Identify the main events of the plot, including their causes and effects of each event on future actions, and the major theme from the story.

(ii) Identify the purposes of different types of texts (e.g., to inform, to explain, to entertain).

(iii) Identify themes that occur across literary works.

(iv) Use knowledge of the situation, setting, a character's traits, motivations, and feelings to determine the causes for that character's actions.

(C) Figurative Language and Sound Devices - The student will identify figurative language and sound devices in writing and how they affect the development of a literary work.

(i) Interpret poetry and recognize poetic styles (e.g., rhymed, free verse, and patterned [cinquain, diamante]).

(ii) Define figurative language, such as similes, metaphors, hyperboles, or personification, and identify its use in literary works.

(I) Simile: a comparison that uses like or as

(II) Metaphor: an implied comparison

(III) Hyperbole: an exaggeration for effect

(IV) Personification: a description that represents a thing as a person

(D) Literary Works - The student will read and respond to historically and culturally significant works of literature. Compare and contrast story elements from tales of different cultures (e.g., compare/contrast adventures of character types, setting, theme, etc.).

(5) **Standard - research and information.** The student will conduct research and organize information.

(A) Accessing Information - Select the best source for a given purpose.

(i) Understand the organization of and access information from a variety of sources including dictionaries, encyclopedias, atlases, almanacs, tables of contents, glossaries, and indexes.

(ii) Identify key words to be used in searching for resources and information.

(iii) Cite information sources appropriately.

(iv) Use text formats and organization as an aid in constructing meaning from nonfiction (expository) text (e.g., heading, subheading, bold print, and italics).

(v) Locate information in reference texts by using organizational features, such as prefaces and appendixes.

(vi) Continue to use test-taking strategies by answering different levels of questions, such as open-ended, literal, and interpretive, as well as multiple choice, true/false, and short answer,

(B) Interpreting Information - Analyze and evaluate information from a variety of sources.

(i) Identify a research question and appropriate sources to answer that question.

(ii) Take notes to paraphrase or summarize information.

(iii) Locate, organize, and synthesize information from a variety of print, nonprint and technological resources (e.g., dictionaries, reference books, atlases, magazines, informational texts, thesaurus, and technology/Internet).

(iv) Report on the findings of research in a variety of formats including written, oral, and/or visual presentations.

(b) **Writing/grammar/usage and mechanics.** The student will express ideas effectively in written modes for a variety of purposes and audiences.

(1) **Standard - writing process.** The student will use the writing process to write coherently.

(A) Use a variety of prewriting activities such as brainstorming, clustering, illustrating, webbing, and graphic organizers.

(B) Select a focus and an organizational structure based upon purpose, audience, length, and required format and write one or more drafts by categorizing ideas, organizing them into paragraphs, and blending paragraphs into longer text.

(C) Revise selected drafts by adding, elaborating, deleting, combining, and rearranging text.

(D) Edit drafts to ensure standard usage, mechanics, spelling, and varied sentence structure.

(E) Share writing with peers and adults.

(F) Use common organizational structures for providing information in writing, such as chronological order (beginning, middle, and end), cause/effect, or similarity and difference, and posing and answering questions.

(2) **Standard - modes and forms of writing.** Communicate through a variety of written forms and for various purposes and to a specific audience or person.

(A) Write narrative, descriptive, expository, and persuasive paragraphs and longer compositions that:

(i) have topic sentences.

(ii) use concrete sensory supporting details.

(iii) provide a context to allow the reader to imagine the event.

(iv) support a logical conclusion.

(B) Write creative stories and poems using figurative language (alliteration, personification, simile, and metaphor) and varied word choice.

(C) Write personal, persuasive, formal, business letters, thank-you notes, and invitations including, the date, greeting, body, closing, and signature.

(D) Write informational pieces with multiple paragraphs that:

(i) provide an introductory paragraph that asks a central question about an idea or issue.

(ii) establish and support a central theme or idea with a topic sentence.

(iii) include supporting paragraphs with simple facts, details, and explanations for focus.

(iv) present important ideas and events in sequence, chronological order, of order of importance.

(v) provide details and transitions to link paragraphs.

(vi) conclude with a paragraph that summarizes the points.

(vii) use correct indention at the beginning of paragraphs.

(viii) use more than one source of information, including speakers, newspapers, media sources, and online information.

(E) Write responses to literature that:

(i) demonstrate an understanding of a literary work.

(ii) support judgements through references to both the text and prior knowledge.

(F) Write summaries based upon the main idea of a reading selection and its most significant details.

(3) **Standard - grammar/usage and mechanics.** The student will demonstrate appropriate practices in writing by applying Standard English conventions to the revising and editing stages of writing.

(A) Grammar/Usage: Students are expected to recognize and use nouns, pronouns, verbs, adjectives, adverbs, and conjunctions correctly in their writing.

(i) Singular and plural forms of nouns

(ii) Singular and plural possessive nouns

(iii) Subject, object, reflexive, and possessive pronouns

(iv) Subject, direct object, and object of prepositions

(v) Present, past, future, and present perfect verbs tense

(vi) Regular, irregular, and helping verbs

(vii) Subject-verb agreement

(viii) Descriptive, comparative, superlative, and demonstrative adjectives

(ix) Time, place, and manner adverbs

(x) Comparative forms of adverbs

(B) Mechanics: Students are expected to demonstrate appropriate language mechanics in writing.

(i) Capitalize correctly geographical names, holidays, dates, proper nouns, book titles, titles of respect, sentences, and quotations.

(ii) Capitalize correctly familial relations, proper adjectives, and conventions of letter writing.

(iii) Indent correctly at the beginning of each paragraph.

(iv) Observe left hand and right hand margins.

(C) Punctuation: Students are expected to demonstrate appropriate punctuation in writing.

(i) Parentheses

(ii) Quotation marks

(iii) Terminal punctuation

(iv) Apostrophes in contractions and possessives

(v) Commas

(vi) Colons, commas, and semi-colons

(D) Sentence Structure: The student will demonstrate appropriate sentence structure in writing.

(i) Use simple, compound, and complex sentences appropriately in writing.

(ii) Create interesting sentences using words that describe, explain, or provide additional details and connections, such as adjectives, adverbs, appositives, participial phrases, prepositional phrases, and conjunctions.

(iii) Correct sentence fragments and run-ons.

(E) Spelling: Students are expected to demonstrate appropriate application of spelling knowledge to the revising and editing stages of writing.

(i) Spell correctly roots, inflections (e.g., -s/es, -ing, -ly, -er), suffixes (e.g., -ment, -ness, -able, -sion, -tion), and prefixes (e.g., dis-, in-, un-, re-, mis-, pre-).

(ii) Spell homophones correctly according to usage (e.g., to, too, two; there, their, they're).

(iii) Use more complex patterns in producing conventional spellings (e.g., ought = brought, fought; urse = nurse, purse).

(iv) Use word reference materials including glossary, dictionary, and technology to check correct spelling.

(F) Handwriting: Students are expected to demonstrate appropriate handwriting in the writing process and use handwriting/penmanship to copy and/or compose text, writing smoothly and legibly in cursive, forming letters and words that can be read by others.

(c) **Oral language/listening and speaking.** The student will demonstrate thinking skills in listening and speaking.

(1) **Standard - listening.** The student will listen for information and for pleasure.

(A) Listen to directions and questions and respond appropriately.

(B) Listen critically and respond appropriately to oral communication.

(C) Listen and respond to teacher-read stories.

(2) **Standard - speaking.** The student will express ideas and opinions in group or individual situations.

(A) Speak articulately and audibly before a group using appropriate delivery (enunciation, volume, and movement) and language skills (pronunciation, word choice, and usage).

(B) Present effective introductions and conclusions that guide and inform the listener's understanding of important ideas and details.

(C) Use traditional structures for conveying information, including cause and effect, similarity and difference, and posing and answering a question.

(D) Emphasize points in ways that help the listener or viewer to follow important ideas and concepts (e.g., pausing, hand gestures, inflection volume, body language)

(E) Engage the audience with appropriate words, facial expressions, gestures, and eye contact.

(3) **Standard - group interaction.** The student will use effective communication strategies in pairs and small group context.

(A) Show respect and consideration for others in verbal and physical communication.

(B) Demonstrate thinking skills in listening, speaking, reading, and writing. For example, students are expected to gather information, organize and analyze it, and generate a simple written or oral report.

(C) Participate in story telling, give oral book reports, and present poems, stories, plays, and pantomime.

(d) **Visual literacy.** The student will interpret, evaluate, and compose visual messages.

(1) **Standard - interpret meaning.** The student will interpret and evaluate the various ways visual image-makers, including graphic artists, illustrators, and news photographers, represent meaning. Distinguish fact, opinion, and fiction in print and nonprint media.

(2) **Standard - evaluate media.** The student will evaluate visual and electronic media, such as film, as they compare with print messages.

(A) Interpret and describe important events and ideas gathered from maps, charts, graphics, video segments, or technology presentations.

(B) Compare and contrast print, visual, and electronic media, such as film, with a written story.

(C) Listen to, view, or read literature which tells of characters in American and other cultures.

(D) Make connections between illustrations and print.

(3) **Standard - compose visual messages.** The student will create a visual message that effectively communicates an idea. Select, organize, or produce visuals to complement and extend ideas (e.g., book posters, multimedia projects, books, or advertisements).

210:15-3-16. Language arts for grade 5

(a) **Reading/literature.** The student will apply a wide range of strategies to comprehend, interpret, evaluate, appreciate, and respond to a wide variety of texts.

(1) **Standard - vocabulary.** The student will develop and expand ~~their~~ knowledge of words and word meanings to increase their vocabulary.

(A) Words in Context

(i) Use knowledge of word parts and word relationships, as well as context clues (the meaning of the text around a word), to determine the meaning of specialized vocabulary and to understand the precise meaning of grade-level-appropriate words.

(ii) Use prior experience and context to understand and explain the figurative use of words ~~and~~such as similes (comparisons that use like or as: His feet were as big as boats.) and metaphors (implied comparisons: The giants steps were thunderous.).

(B) Affixes, Roots, and Stems

(i) Interpret new words by analyzing the meaning of prefixes and suffixes.

(ii) Apply knowledge of root words to determine the meaning of unknown words within a passage.

(iii) Use word origins, including knowledge of less common roots (graph = writing, terras = earth) and word parts (hemi = half, bio = life) from Greek and Latin to analyze the meaning of complex words (terrain, hemisphere, biography).

(C) Synonyms, Antonyms, and Homonyms/Homophones: Apply knowledge of fifth grade level synonyms, antonyms, homonyms/homophones, and multiple meaning words to determine the meaning of words and phrases.

(D) Using Resource Materials and Aids

(i) Use a thesaurus to determine related words and concepts.

(ii) Determine the meanings, pronunciation, and derivations of unknown words by using a glossary and/or dictionary.

(2) **Standard - fluency.** The student will identify words rapidly so that attention is directed at the meaning of the text.

(A) Read regularly in independent-level texts (texts in which no more than approximately 1 in 20 words is difficult for the reader) fluently and accurately, and with appropriate timing, change in voice, and expression.

(B) Read regularly in instructional-level texts (texts in which no more than approximately 1 in 10 words is difficult for the reader~~; a "typical" fifth grader reads approximately 105 words per minute~~).

(C) Read silently for increased periods of time.

(D) Increase ~~silent~~ reading ~~speed~~ through daily independent reading~~.~~ practice as monitored by the instructor through peer discussions, teacher conferences, response journals, etc.

(3) **Standard - comprehension/critical literacy.** The student will interact with the words and concepts in the text to construct an appropriate meaning.

(A) Literal Understanding

(i) Use prereading strategies independently (to preview, activate prior knowledge, predict content of text, formulate questions that might be answered by the text, and establish purpose for reading).

(ii) Read and comprehend both fiction and nonfiction that is appropriately designed for fifth grade.

(iii) Recognize main ideas presented in a particular segment of text; identify ~~and assess~~ evidence that supports those ideas.

(iv) Use the text's structure or progression of ideas such as cause and effect or chronology to organize or recall information.

(B) Inferences and Interpretation

(i) Apply prior knowledge and experience to make inferences and respond to new information presented in text.

(ii) Draw inferences and conclusions about text and support them with textual evidence and prior knowledge.

(iii) Describe elements of character development in written works (e.g., differences between main and minor characters; ~~stereotypical characters as opposed to fully developed characters;~~ changes that characters undergo; the importance of a character's actions, motives, sterotypes, and appearance to plot and theme).

(iv) Make inferences or draw conclusions about characters' qualities and actions (e.g., based on knowledge of plot, setting, characters' motives, characters' appearances, sterotypes, and other characters' responses to a character).

(v) Participate in creative response to text (e.g., art, drama, and oral presentation).

(C) Summary and Generalization

(i) Summarize and paraphrase information from entire reading selection including the main idea and significant supporting details.

(ii) Make generalizations with information gleaned from text.

(iii) Support ideas and arguments by reference to relevant aspects of text and issues across texts.

(iv) Organize text information in different ways (e.g., timeline, outline, graphic organizer) to support and explain ideas.

(D) Analysis and Evaluation

(i) Identify and analyze the characteristics of poetry, drama, fiction, and nonfiction and explain the appropriateness of the literary form chosen by an author for a specific purpose.

(ii) Identify the main problem or conflict of the plot and explain how it is resolved.

(iii) Contrast the actions, motives, and appearances of characters in a work of fiction and discuss the importance of the contrasts to the plot or theme.

(iv) Make observations and connections, react, speculate, interpret, and raise questions in analysis of texts.

(v) Recognize structural patterns found in information text (e.g., cause~~/~~ and effect, problem/solution, sequential order).

(vi) Distinguish among facts ~~and~~ /inferences supported by evidence and opinions in text.

(E) Monitoring and Correction Strategies

(i) Monitor own reading and modify strategies as needed when understanding breaks down (e.g., rereading a portion aloud, using reference aids, searching for clues, and asking questions).

(ii) Predict, monitor, and ~~crosscheck~~check for understanding using semantic, syntactic, and graphophonic cues.

(iii) Monitor and adjust reading rate according to the purpose for reading and the difficulty of the text.

(4) **Standard - literature.** The student will read to contrast meaning and respond to a wide variety of literary forms.

(A) Literary Genres - Demonstrate knowledge of and appreciation for various forms (genres) of literature.

(i) Recognize characteristics of literary genres and forms (e.g. contemporary realistic fiction, historical fiction, nonfiction, modern fantasy, poetry, drama, and traditional stories such as fairy tales, fables, myths, and legends).

(ii) Read and construct meaning from a variety of genres.

(iii) Demonstrate an understanding of similarities and differences within and among literary works of various genre and cultures (e.g., in terms of settings, character types, events, and role of natural phenomena).

(B) Literary Elements - Demonstrate knowledge of literary elements and techniques and how they affect the development of a literary work.

(i) Develop a knowledge of the literary elements of fiction (plot, problems, attempts to resolve conflicts, resolution, etc.) and the text structure of nonfiction (compare/contrast, cause/effect, sequence, main idea, and details).

(ii) Compare/contrast genres, themes, ideas, and story elements across texts read, listened to, or viewed.

(iii) Identify the author's purpose (persuade, inform, or entertain).

(iv) Recognize and identify the writer's perspective or point of view in a literary selection (e.g., first person, second person, etc.) and how it affects the text.

(C) Figurative Language and Sound Devices - Identify figurative language and sound devices in writing and how they affect the development of a literary work.

(i) Identify and discuss certain words and rhythmic patterns that can be used in a selection to imitate sounds (e.g., rhythm, rhyme, alliteration).

(ii) Evaluate and identify figurative language, such as simile, metaphors, hyperbole, personification, and idioms.

(I) Simile: a comparision that uses like or as

(II) Metaphor: an implied comparison

(III) Hyperbole: an exaggeration for effect

(IV) Personification: a description that represents a thing as a person

(V) Idioms: an expression that does not mean what it literally says

(iii) Identify the function and effect of common literary devices, such as imagery, metaphor, and symbolism.

(I) Symbolism: the use of an object to represent something else; for example, a dove might symbolize peace.

(II) Imagery: the use of language to create vivid pictures in the reader's mind.

(III) Metaphor: an implied comparison in which a word or phrase is used in place of another, such as "He was drowning in money."

(iv) Interpret poetry and recognize poetic styles (e.g., rhymed, free verse, and patterned [cinquain, diamante]).

(D) Literary Works - Read and respond to historically and culturally significant works of literature. Compare and analyze literary works from various cultures.

(5) **Standard - research and information.** The student will conduct research and organize information.

(A) Accessing Information - Select the best source for a given purpose.

(i) Determine and use appropriate sources for accessing information including, dictionaries, thesaurus, electronic card catalogs and databases, magazines, newspapers, technology/Internet, encyclopedias, atlases, almanacs, tables of contents, glossaries, and indexes.

(ii) Identify and credit the sources used to gain information.

(iii) Use text features to access information (e.g., format, italics, heading, subheadings, graphics, sequence, diagrams, illustrations, charts, and maps).

(iv) Use reference features of printed text, such as citations, endnotes, and bibliographies to locate relevant information about a topic.

(v) Use the features of informational texts, such as formats, graphics, diagrams, illustrations, charts, maps, and organization, to find information and support understanding. Example: Locate specific information in a social studies textbook by using its organization, sections on different world regions, and textual features, such as headers, maps, and charts.

(vi) Recognize and apply test-taking strategies by answering different levels of questions, such as literal, as well as multiple choice, true/false, short answer, inferential, evaluative, or open-ended.

(B) Information - Analyze and evaluate information from a variety of sources.

(i) Follow multistep directions to accomplish a task (e.g., video games, computer programs, recipes).

(ii) Select a topic, formulate questions, and synthesize information from a variety of print, nonprint and technological resources (e.g., dictionaries, reference books, atlases, magazines, informational texts, thesaurus, and technology/Internet).

(iii) Develop notes that include important information on a selected topic.

(iv) Summarize information from multiple sources into a written report or summary.

(v) Create simple documents using a computer and employing organizational features, such as passwords, entry and pull-down menus, word searches, the thesaurus, and spell checks.

(b) **Writing/grammar/usage and mechanics.** The student will express ideas effectively in written modes for a variety of purposes and audiences.

(1) **Standard - writing process.** The student will use the writing process to write coherently.

(A) Use the writing process to develop, extend, and refine composition skills by using a variety of prewriting activities, such as brainstorming, clustering, illustrating, webbing, using graphic organizers, notes, and logs.

(B) Select a focus and an organizational structure based upon purpose, audience, length, and required format and write one or more drafts by categorizing ideas, organizing them into paragraphs, and blending paragraphs into longer compositions.

(C) Use common organizational structures for providing information in writing, such as chronological order, cause and effect, or similarity and difference, and posing and answering questions.

(D) Edit drafts to ensure standard usage, mechanics, spelling, and varied sentence structure to improve meaning and clarity. Proofread to edit one's own writing, as well as that of others, using an editing checklist or set of rules, with specific examples of corrections of specific errors.

(E) Review, evaluate, and revise selected drafts by adding, elaborating, deleting, combining, and rearranging text for meaning and clarity.

(F) Publish and share writing with peers and adults.

(2) **Standard - modes and forms of writing.** Communicate through a variety of written forms and for various purposes and to a specific audience or person.

(A) Communicate through a variety of written forms and for various audiences to inform, persuade, entertain, instruct, and describe, while adjusting tone and style as appropriate. Example: Write a skit to present at your class talent show. Use funny words and phrases to make the audience laugh or convincing statements that might persuade them to support a particular idea.

(B) Write narratives (stories) that establish a plot, point of view, setting, conflict, and are written to allow a reader to picture the events of a story. Example: Select a type of narrative to write that is modeled after a mode of literature that has been shared in the classroom such as folktale, myth, science fiction, or mystery. Be sure to include an interesting beginning, develop the central conflict of the story, and establish an ending that resolves the conflict.

(C) Use figurative language when appropriate (alliteration, personification, simile, and metaphor) and varied word choice to make writing interesting (e.g., inquired or requested instead of asked).

(D) Write personal, persuasive, formal, business letters, thank-you notes, and invitations, including the date, greeting, body, closing, and signature.

(E) Write informational pieces with multiple paragraphs that:

(i) provide an introductory paragraph.

(ii) establish and support a central theme or idea with a thesis statement.

(iii) include supporting paragraphs with simple facts, details, and explanations.

(iv) present important ideas and events in sequence or in chronological order.

(v) provide details and transitions to link paragraphs.

(vi) conclude with a paragraph that summarizes the points.

(vii) use correct indention at the beginning of paragraphs.

(F) Write research reports about important ideas, issues, or events that:

(i) frame questions about an idea or issue to direct the investigation.

(ii) a main idea or topic.

(iii) develop the topic with simple facts, details, examples, and explanations to support the main idea.

(iv) use a variety of information sources, including speakers, firsthand interviews, reference materials, and online information.

(G) Write responses to literature that:

(i) demonstrate an understanding of a designated literary work.

(ii) support judgments through references to the text and connections to prior knowledge.

(iii) develop interpretations and evaluations that exhibit careful reading and understanding.

(H) Write persuasive compositions or letters that:

(i) state a clear position in support of a proposal.

(ii) support a position with relevant evidence and effective emotional appeals in order to persuade.

(iii) organize supporting statements from the most appealing to the least powerful

(iv) include and address reader concerns. Example: Interview several students in varying grades about the changes they would like to see in the monthly cafeteria menu choices. Compile the opinions and ideas to compose a persuasive article for the school newspaper.

(3) **Standard - grammar/usage and mechanics.** The student will demonstrate appropriate practices in writing by applying Standard English conventions to the revising and editing stages of writing.

(A) Grammar/Usage: Students are expected to recognize and use nouns, pronouns, verbs, adjectives, adverbs, and conjunctions in their writing.

(i) Singular and plural forms of nouns

(ii) Subject, object, reflexive, and possessive pronouns

(iii) Subject, direct object, and object of prepositions

(iv) Present, past, future, and present perfect verbs tense

(v) Subject-verb agreement

(vi) Descriptive, comparative, superlative, and demonstrative adjectives.

(vii) Time, place, and manner adverbs.

(viii) Comparative forms of adverbs

(B) Mechanics: Students are expected to demonstrate appropriate language mechanics in writing.

(i) Capitalize correctly proper nouns such as titles of books, magazines, newspapers, stories, titles of respect, works of art, regions of the country, political parties, organizations, and state colleges and universities.

(ii) Capitalize correctly proper adjectives.

(iii) Capitalize correctly conventions of letter writing.

(C) Punctuation: Students are expected to demonstrate appropriate punctuation in writing.

(i) Parentheses

(ii) Quotation marks

(iii) Terminal punctuation

(iv) Apostrophes in contractions and possessives

(v) Conventions of letter writing

(vi) Colons, semi-colons, and commas

(D) Sentence Structure: The student will demonstrate appropriate sentence structure in writing.

(i) Create interesting sentences using words that describe, explain, or provide additional details and connections, such as adjectives, adverbs, appositives, participial phrases, prepositional phrases, modifiers, pronouns, and conjunctions.

(ii) Correct sentence fragments and run-ons.

(E) Spelling: Students are expected to demonstrate appropriate application of spelling knowledge to the revising and editing stages of writing.

(i) Spell previously misspelled words correctly in final writing products.

(ii) Spell correctly roots, inflections (e.g., -s/es, -ing, -ly, -en -er), suffixes (e.g., -ment, -ture, -ate, -able, -sion, -tion), and prefixes (e.g., dis-, in-, un-, re-, mis-, pre-), and syllable constructions (e.g., grad.u.a.tion).

(iii) Spell homophones correctly according to usage (e.g., to, too, two; there, their, they're) and other words that are commonly misspelled in the English language (e.g., until, our)

(iv) Use word reference materials including glossary, dictionary, thesaurus, encyclopedia, and technology to check and correct spelling.

(F) Handwriting: Students are expected to demonstrate appropriate handwriting in the writing process. Use handwriting/penmanship to copy and/or compose text writing smoothly and legibly in cursive, forming letters and words that can be read by others.

(c) **Oral language/listening and speaking.** The student will demonstrate thinking skills in listening and speaking.

(1) **Standard - listening.** The student will listen for information and for pleasure.

(A) Interpret a speaker's verbal and nonverbal message, purpose, and perspective.

(B) Listen critically and respond appropriately to oral communication to seek information not already discussed.

(2) **Standard - speaking.** The student will express ideas and opinions in group or individual situations.

(A) Speak articulately and audibly before a group using appropriate delivery (enunciation, volume, timing, and gestures) and language skills (pronunciation, word choice, and usage).

(B) Present effective introductions and conclusions that guide and inform the listener's understanding of important ideas and details by clarifying and supporting spoken ideas with evidence and examples.

(C) Use traditional structures for conveying information, including cause and effect, similarity and difference, and posing and answering a question.

(D) Engage the audience with appropriate words, phrasing, facial expressions, and gestures.

(E) Deliver narrative (story) presentations that establish a situation, develop a plot, point of view, and setting with descriptive words and phrases.

(F) Deliver informative presentations about an important topic, issue, or event that frames a question to guide the investigation, establishes a central idea or topic, and develops that topic appropriately.

(G) Deliver oral responses to literature that summarizes important events and details, demonstrates an understanding of several ideas communicated in the work, and uses examples from the literature to support conclusions.

(3) **Standard - group interaction.** The student will use effective communication strategies in pairs and small group context.

(A) Show respect and consideration for others in verbal and physical communication.

(B) Demonstrate thinking skills in listening, speaking, reading, and writing. For example, students are expected to gather information, organize and analyze it, and generate a written or oral report that conveys ideas clearly and relates to the background and interest of the audience.

(d) **Visual literacy.** The student will interpret, evaluate, and compose visual messages.

(1) **Standard - interpret meaning.** The student will interpret and evaluate the various ways visual image-makers, including graphic artists, illustrators, and news photographers, represent meaning.

(A) Distinguish fact, opinion, and fiction in print and nonprint media.

(B) Interpret and describe important events and ideas gathered from maps, charts, graphics, video segments, or technology presentation.

(2) **Standard - evaluate media.** The student will evaluate visual and electronic media, such as film, as they compare with print messages.

(A) Interpret and evaluate the various ways visual image-makers, such as graphic artists, illustrators, and news photographers represent meaning.

(B) Compare and contrast print, visual, and electronic media, such as film, with a written story.

(C) Listen to, view, or read literature which tells of characters in American and other cultures.

(D) Analyze media as sources for information, entertainment, persuasion, interpretation of events, and transmission of culture.

(3) **Standard - compose visual messages.** The student will create a visual message that effectively communicates an idea and produces communications using appropriate technology or media (e.g., developing a class newspaper, videos, or multimedia projects).

210:15-3-17. Language arts for grade 6

(a) **Reading/literature.** The student will apply a wide range of strategies to comprehend, interpret, evaluate, appreciate, and respond to a wide variety of texts.

(1) **Standard - vocabulary.** The student will develop and expand their knowledge of words and word meanings to increase their vocabulary.

(A) Words in Context

(i) Use knowledge of word parts and word relationships, as well as context clues (the meaning of the text around a word), to determine the meaning of technical and specialized vocabulary and to understand the precise meaning of grade-level-appropriate words in fiction and nonfiction texts.

(ii) Use prior experience and context to analyze and explain the figurative use of words, similes (comparisons that use like or as: *The Snowplow reared Up Like a Stallion*), metaphors (implied comparisons: *Peace is a Sunrise*), and multiple meaning words.

(B) Word Origins

(i) Recognize the origins and meanings of foreign words frequently used in English. Example: Understand foreign words that are often used in English such as spaghetti (Italian) and rodeo (Spanish).

(ii) Apply knowledge of root words to determine the meaning of unknown words within a passage.

(iii) Use word origins, including knowledge of less common roots (graph = writing, logos = the study of) and word parts (auto = self, bio = life) from Greek and Latin to analyze the meaning of complex words (autograph, autobiography, biology).

(C) Using Resource Materials and Aids

(i) Determine the meanings, pronunciation, and derivations of unknown words by using a glossary, dictionary, and/or thesaurus.

(ii) Relate dictionary definitions to context of the reading in order to aid understanding.

(2) **Standard - fluency.** The student will identify words rapidly so that attention is directed at the meaning of the text.

(A) Read regularly in independent-level texts (texts in which no more than approximately 1 in 10 words is difficult for the reader) fluently and accurately, and with appropriate timing, change in voice, and expression.

(B) Read regularly in instructional-level texts (texts in which no more than approximately 1 in 10 words is difficult for the reader; a "typical" sixth grader reads approximately 120 words per minute).

(C) Increase silent reading speed through daily independent reading.

(D) Read silently for increased periods of time.

(3) **Standard - comprehension/critical literacy.** The student will interact with the words and concepts in the text to construct an appropriate meaning**.** Read and understand grade-level appropriate material. Describe and connect the essential ideas, arguments, and perspectives of the text by using the knowledge of text structure, organization, and purpose. At grade six, in addition to regular classroom reading, students read a variety of grade-level-appropriate narrative (story) and expository (informational and technical) texts, including classic and contemporary literature, poetry, magazines, newspapers, reference materials, and online information~~.~~, as well as expository (informational and technical) tests.

(A) Literal Understanding

(i) Use prereading strategies independently (to preview, activate prior knowledge, predict content of text, formulate questions that might be answered by the text, establish purpose for reading).

(ii) Read and comprehend both fiction and nonfiction that is appropriately designed for sixth grade.

(iii) Recognize main ideas presented in a particular segment of text; identify and assess evidence that supports those ideas. Example: Use a graphic organizer to compare an advertisement to the actual product label.

(iv) Use the text's structure or progression of ideas, such as cause and effect or chronology to locate or recall information.

(B) Inferences and Interpretation

(i) Draw inferences and conclusions about text and support them with textual evidence and prior knowledge.

(ii) Make inferences or draw conclusions about characters' qualities and actions (i.e., based on knowledge of plot, setting, characters' motives, characters' appearances, other characters' responses to a character).

(iii) Interpret and respond creatively to literature (e.g., art, drama, oral presentations, and Reader's Theater).

(C) Summary and Generalization

(i) Summarize and paraphrase information including the main idea and significant supporting details of a reading selection.

(ii) Make generalizations based on information gleaned from text.

(iii) Support reasonable statements and conclusions by reference to relevant aspects of text and examples.

(iv) Clarify understanding of text information in different ways (e.g., timelines, outlines, graphic organizer) to support and explain ideas.

(D) Analysis and Evaluation

(i) Evaluate the believability of a character and the impact they have on the plot.

(ii) Analyze the main problem or conflict of the plot; the effect of the qualities of the characters and explain how the conflict is resolved.

(iii) Contrast the actions, motives, and appearances of characters in a work of fiction and discuss the importance of the contrasts to the plot or theme.

(iv) Make observations, connections, and react, speculate, interpret, and raise questions in analysis of texts.

(v) Recognize and evaluate structural patterns found in a literary work (e.g., cause/effect, problem/solution, sequential order).

(vi) Distinguish among stated facts, inferences supported by evidence, and opinions in text.

(E) Monitoring and Correction Strategies

(i) Monitor own reading and modify strategies as needed when understanding breaks down (e.g., rereading a portion aloud, using reference aids, trying an alternate pronunciation, searching for clues, and asking questions).

(ii) Clarify meaning by questioning and rereading; confirm and revise predictions as needed when reading.

(iii) Adjust reading rate and determine appropriate strategies according to the purpose for reading, the difficulty of the text, and characteristics of the text.

(4) **Standard - literature.** The student will read, construct meaning, and respond to a wide variety of literary forms. Read and respond to grade-level-appropriate historically or culturally significant works of literature that reflect and enhance their study of history and social science. Clarify ideas and connect them to other literary works. Participate productively in self-directed work teams to create observable products.

(A) Literary Genres - The student will demonstrate a knowledge of and an appreciation for various forms of literature.

(i) Analyze the characteristics of genres, including short story, novel, drama, poetry, and nonfiction.

(ii) Analyze characteristics of subgenres, including autobiography, biography, fable, folk tale, mystery, and myth.

(B) Literary Elements - The student will demonstrate knowledge of literary elements and techniques and how they affect the development of a literary work.

(i) Identify and explain elements of fiction, including plot, conflict, character, setting, and theme.

(ii) Identify and explain internal and external conflict in the development of a story.

(iii) Determine the author's purpose (persuade, inform, entertain) and point of view, whether explicitly or implicitly stated and how it affects the text.

(iv) Connect, compare, and contrast ideas, themes, and issues across texts.

(C) Figurative Language and Sound Devices - The student will identify figurative language and sound devices and will analyze how they affect the development of a literary work.

(i) Identify and explain figurative language, including symbolism, imagery, metaphor, personification, simile, and idioms.

(ii) Identify and explain sound devices, including alliteration, onomatopoeia, and rhyme.

(iii) Interpret poetry and recognize poetic styles (e.g., rhymed, free verse, and patterned [cinquain, diamante]).

(iv) Identify and describe the function and effect of common literary devices, such as imagery and symbolism.

(I) Imagery: the use of language to create vivid pictures in the reader's mind.

(II) Symbolism: the use of an object to represent something else; for example, a dove might symbolize peace.

(D) Literary Works - The student will read and respond to historically and culturally significant works of literature.

(i) Analyze and evaluate works of literature and the historical context in which they were written.

(ii) Analyze and evaluate literature from various cultures to broaden cultural awareness.

(iii) Compare similar characters, settings, and themes from varied literary traditions.

(5) **Standard - research and information.** The student will conduct research and organize information.

(A) Accessing Information - The student will select the best source for a given purpose.

(i) Use card catalogs and computer databases to locate sources for research topics.

(ii) Access information from a variety of primary and secondary sources to gather information for research topics.

(iii) Use organizational strategies as an aid to comprehend increasingly difficult content material.

(iv) Note instances of persuasion, propaganda, faulty reasoning, or misleading information in text.

(v) Use reference features of printed text, such as citations, endnotes, and bibliographies, to locate relevant information about a topic.

(B) Interpreting Information - The student will analyze and evaluate information from a variety of sources.

(i) Record, organize, and display relevant information from multiple sources in systemic ways (e.g., outlines, graphic organizers, or note cards).

(ii) Identify and credit the reference sources used to gain information.

(iii) Determine the appropriateness of an information source for a research topic.

(iv) Summarize information from multiple sources into a research paper.

(b) **Writing/grammar/usage and mechanics.** The student will express ideas effectively in written modes for a variety of purposes and audiences. Discuss and keep a list of writing ideas and use graphic organizers to plan writing. Write clear, coherent, and focused papers, and progress through the stages of the writing process. ~~and proofread, edit, and revise writing.~~ Work independently and in self-directed work teams to edit and revise.

(1) **Standard - writing process.** The student will use the writing process to write coherently.

(A) Use a writing process to develop composition skills. Students are expected to use prewriting strategies, write and revise multiple drafts, edit, and share their compositions.

(B) Use details, examples, reasons, and evidence to develop an idea.

(C) Use spatial, chronological, and climactic organizational patterns as appropriate to purpose.

(D) Use precise word choices, including figurative language, that convey specific meaning and tone.

(E) Use a variety of sentence structures, types, and lengths to contribute to fluency and interest.

(F) Edit for errors in Standard English usage, sentence structure, mechanics, and spelling.

(2) **Standard - modes and forms of writing.** The student will write for a variety of purposes and audiences using narrative, descriptive, expository, persuasive, and reflective modes. At Grade 6, write narrative (story), expository (informative), persuasive, reflective, and descriptive texts of at least 500 to 700 words, demonstrating a command of Standard English and the research, organization, and drafting strategies outlined in the writing process. Writing demonstrates an awareness of the audience (intended reader) and purpose for writing.

(A) Write narratives that:

(i) establish and develop a plot and setting, and present a point of view that is appropriate to the stories.

(ii) include sensory details and clear language to develop plot and character.

(iii) use a range of narrative devices, such as dialogue or suspense. Example: Write a short play that could be presented to the class. Rewrite a short story that was read in class, telling the story from another point of view.

(B) Write descriptions, explanations, comparison and contrast papers, and problem and solution papers that:

(i) state the thesis (position on the topic) or purpose.

(ii) explain the situation.

(iii) organize the composition clearly and appropriately for the purpose of the writing.

(iv) provide evidence to support arguments and conclusions. Example: Write successive drafts of a one or two page newspaper article about school carnival activities, including details to support the main topic and allow the reader to compare and contrast the different carnival activities described.)

(C) Write persuasive/argumentative compositions that:

(i) state a clear position on a proposition or proposal.

(ii) support the position with organized and relevant evidence and effective emotional appeals.

(iii) anticipate and address reader concerns and counterarguments. Example: Write a persuasive paper on how the class should celebrate the end of the school year, including adequate reasons for why the class should participate in the activity described. Create an advertisement for a product to try to convince readers to buy the product.

(D) Write reflective papers that may address one of the following purposes:

(i) express the individual's insight into conditions or situations.

(ii) compare a scene from a work of fiction with a lesson learned from experience.

(iii) complete a self-evaluation on a class performance. Example: Write a reflective paper that discusses reasons for selections used in a portfolio of works that demonstrate skills in different subjects.

(E) Use appropriate essay test-taking and time-writing strategies that:

(i) address and analyze the question (prompt).

(ii) use organizational methods required by the prompt.

(F) Write responses to literature that:

(i) include an interpretation that shows careful reading, understanding, and insight.

(ii) organize the interpretation around several clear ideas.

(iii) develop and justify the interpretation through the use of examples and evidence from the text. Example: After reading folktales from other countries and the United States, write a response to the stories. Identify the beliefs and values that are highlighted in each of these folktales and develop a theory to explain why similar tales appear in many different cultures.

(G) Write for different purposes and to a specific audience or person, adjusting tone and style as necessary to make writing interesting. Example: Write stories, reports, and letters showing a variety of word choices, or review a favorite book or film.

(H) Write friendly letters and business letters, and continue to produce other writing forms introduced in earlier grades.

(I) Use handwriting/penmanship to copy and/or compose text, in manuscript or cursive, using correct spacing and formation of letters.

(3) **Standard - grammar/usage and mechanics.** The student will demonstrate appropriate practices in writing by applying Standard English conventions to the revising and editing stages of writing.

(A) Standard English Usage - Demonstrate correct use of Standard English in speaking and writing.

(i) Identify the principal parts of verbs to form verb tenses.

(ii) Make subjects and verbs agree.

(iii) Identify nominative, objective, and possessive pronouns correctly.

(iv) Make pronouns agree with their antecedents.

(v) Correctly form and use the comparative and superlative forms of adjectives.

(vi) Use correct pronoun reference.

(vii) Identify direct objects, indirect objects, objects of prepositions, predicate nominatives and predicate adjectives.

(viii) Use prepositional phrases to elaborate written ideas.

(ix) Correctly use conjunctions.

(x) Distinguish commonly confused words (e.g., there, their, they're; two, to, too; accept, except; affect, effect).

(xi) Form regular and irregular plurals correctly.

(B) Mechanics and Spelling - Demonstrate appropriate language mechanics in writing.

(i) Apply the capitalization rules appropriately in writing.

(ii) Punctuate correctly in writing

(I) End punctuation

(II) Commas to separate words in a series, city and state, quotation, and sentence and to set off nonrestrictive phrases.

(III) Quotation marks

(IV) Apostrophes in contractions and possessives

(V) Conventions of letter writing

(iii) Distinguish correct spelling of commonly misspelled words and homonyms.

(C) Sentence Structure - Demonstrate appropriate sentence structure in writing.

(i) Correct sentence run-ons and fragments.

(ii) Correct dangling and misplaced modifiers.

(iii) Differentiate between dependent and independent clauses.

(iv) Write simple and compound sentences.

(c) **Oral language/listening and speaking.** The student will demonstrate thinking skills in listening and speaking. Deliver focused, coherent presentations that convey ideas and relate to the background and interests of the audience. Evaluate the content of oral communication. Deliver well-organized formal presentations using traditional speech strategies, including narration, exposition, persuasion, and description. Use the same Standard English conventions for oral speech that are used in writing. Participate independently and in groups to create oral presentations.

(1) **Standard - listening.** The student will listen for information and for pleasure.

(A) Identify the major ideas and supporting evidence in informative and persuasive messages.

(B) Determine the purpose for listening (i.e., gaining information, solving problems; or for enjoying, appreciating, recalling, interpreting, applying, analyzing, evaluating, receiving directions, or learning concepts).

(C) Recognize and understand barriers to effective listening (i.e., internal and external distractions, personal biases, and conflicting demands).

(D) Evaluate the spoken message in terms of content, credibility, and delivery.

(2) **Standard - speaking.** The student will express ideas and opinions in group or individual situations.

(A) Analyze purpose, audience, and occasion and consider this information in planning an effective presentation or response.

(B) Compose a presentation with a sell-organized introduction, body, and conclusion that is appropriate for different purposes, audiences, and occasions.

(C) Communicate using appropriate delivery (volume, rate, enunciation, and movement).

(d) **Visual literacy.** The student will interpret, evaluate, and compose visual messages.

(1) **Standard - interpret meaning.** The student will interpret and evaluate the various ways visual image-makers, including graphic artists, illustrators, and news photographers represent meaning.

(A) Interpret a variety of messages conveyed by visual images (e.g., main concept, details, themes, lessons, or viewpoints).

(B) Identify film and television features that chacterize different styles of dress and genres (e.g., setting in a western or a drama).

(2) **Standard - evaluate media.** The student will evaluate visual and electronic media, such as film, as they compare with print messages.

(A) Identify the different ways in which people are stereotyped in visual media and consider alternative representations (e.g., clever people wear glasses, super heroes, scientists wear white coats).

(B) Identify basic elements of advertising in visual media (e.g., sales approaches and techniques aimed at children).

(C) Evaluate how different media forms influence and inform viewers.

(D) Assess how language, medium, and presentation contribute to the message.

(3) **Standard 3 - compose visual messages.** The student will create a visual message that effectively communicates an idea. Produce communication using technology or appropriate media, such as developing a class newspaper, multimedia reports, or video reports.

210:15-3-18. Language arts for grade 7

(a) **Reading/literature.** The students will apply a wide range of strategies to comprehend, interpret, evaluate, appreciate, and respond to a wide variety of texts.

(1) **Standard - vocabulary.** The student will expand vocabulary through word study, literature, and class discussion Use a knowledge of word parts and word relationships, as well as context clues (the meaning of the text around a word), to determine the meaning of specialized vocabulary and to understand the precise meaning of grade-level-appropriate words.

(A) Words in Context - Verify the meaning of a word in its context, even when its meaning is not directly stated, through the use of definitions, restatement, example, comparison, or contrast.

(B) Word Origins

(i) Identify the origins and meanings of foreign words frequently used in English and use these words accurately in speaking and writing. Example: Understand and use in speaking and writing foreign words that are often used in English such as lasagne (Italian), sauerkraut (German), and déjà vu (French).

(ii) Use knowledge of Greek and Latin word parts and roots to determine the meaning of subject area vocabulary. Example: Analyze the roots, prefixes, and suffixes of subject area words such as telescope, geography, and quadrant.

(C) Idioms and Comparisons - Identify and explain idioms and comparisons, such as analogies, metaphors, and similes, to infer the literal and figurative meanings of phrases.

(i) Idioms: expressions that cannot be understood just by knowing the meanings of the words in the expression, such as "the apple of his eye" or "beat around the bush."

(ii) Analogies: comparisons of the similar aspects of two different things

(iii) Metaphors: implies comparisons, such as "The street light was my security guard."

(iv) Similes: comparisons that use like or as, such as "A gentle summer breeze feels like a soft cotton sheet."

(2) **Standard - fluency.** The student will identify words rapidly so that attention is directed to the meaning of the text.

(A) Read regularly in independent-level materials (texts in which no more than 1 in 20 words is difficult for the reader) fluently and accurately, and with appropriate time, change in voice, and expression.

(B) Read regularly in instructional-level materials that are challenging but manageable (text in which no more than approximately 1 in 10 words is difficult for the reader; a "typical" seventh grader reads 135 words per minute).

(C) Increase silent reading speed and comprehension through daily, independent reading.

(D) Read silently for increased periods of time.

(E) Use punctuation as a cue for pausing and characterization while reading.

(3) **Standard - comprehension.** The student will interact with the words and concepts in a text to construct an appropriate meaning. Read and understand grade-level-appropriate material. Describe and connect the essential ideas, arguments, and perspectives of the text by using a knowledge of text structure, organization, and purpose. At Grade 7, in addition to regular classroom reading, read a variety of grade-level-appropriate narrative (story) and expository (informational and technical) texts, including classic and contemporary literature, poetry, magazines, newspapers, reference materials, and online information~~.~~, as well as expository (informational and technical) texts.

(A) Literal Understanding

(i) Apply prereading strategies when reading both fiction and nonfiction that is appropriately designed for grade level.

(I) Determine the purpose for reading such as to be informed, entertained, or persuaded.

(II) Preview the material and use prior knowledge to make connections between text and personal experience.

(ii) Recognize transition words to guide understanding of the text (e.g., as a result, first of all, furthermore).

(iii) Show understanding by asking questions and supporting answers with literal information from text.

(B) Inference and Interpretation

(i) Make inferences and draw conclusions with evidence drawn from the text and/or student experiences.

(ii) Make inferences supported by a character's thoughts, words, and actions or the narrator's description.

(C) Summary and Generalization

(i) Summarize the main idea and how it is supported with specific details.

(ii) Recall major points in the text and make and revise predictions.

(iii) Recognize the importance and relevance of details on the development of the plot.

(iv) Support reasonable statements by reference to relevant aspects of text and examples.

(D) Analysis and Evaluation

(i) Compare and contrast points of view, such as first person, third person, limited and omniscient, and explain their effect on the overall theme of a literary work.

(ii) Evaluate events that advance the plot of a literary work and how those events relate to past, present, or future actions.

(iii) Analyze character traits, conflicts, motivations, points of view, and changes that occur within the story and discuss the importance to the plot or theme.

(iv) Evaluate the accuracy or appropriateness of the evidence used by the author to support claims and assertions.

(v) Distinguish between stated fact, reasoned judgement, and opinion in text.

(E) Monitoring and Correction Strategies

(i) Monitor the understanding of text and use correcting strategies, such as rereading a portion, using reference aids, or searching for content when needed.

(ii) Make, confirm, and revise predictions when reading.

(iii) Adjust reading rate and determine appropriate strategies to match the purpose, difficulty, and characteristics of the text.

(4) **Standard-literature.** The student will read, construct meaning, and respond to a wide variety of literary forms. Read and respond to grade-level-appropriate historically or culturally significant works of literature that reflect and enhance a study of history and social science. Clarify the ideas and connect them to other literary works. Participate productively in self-directed work teams to create observable products.

(A) Literary Genres - Demonstrate a knowledge of and an appreciation for various forms of literature.

(i) Analyze the characteristics of genres, including short story, novel, drama, poetry, and nonfiction.

(ii) Analyze characteristics of subgenres, including autobiography, biography, fable, folk tale, mystery, and myth.

(B) Literary Elements - Demonstrate knowledge of literary elements and techniques and how they affect the development of a literary work.

(i) Analyze and explain elements of fiction, including plot, conflict, resolution, character, setting, theme, and point of view.

(ii) Identify and explain techniques of direct and indirect characterization in fiction.

(iii) Describe how the author's perspective, argument, or point of view affects the text.

(iv) Analyze inferred and recurring themes in literary works (e.g., bravery, loyalty, historical).

(C) Figurative Language and Sound Devices: The student will identify figurative language and sound devices and will analyze how they affect the development of a literary work.

(i) Identify and explain the use of figurative language in literary works to convey mood, images, and meaning, including metaphor, personification, and simile.

(ii) Identify and explain the use of sound devices in literary works to convey mood, images, and meaning, including alliteration, onomatopoeia, and rhyme.

(iii) Analyze poetry and evaluate poetic styles (e.g., rhymed, free verse, and patterned [cinquain, diamante]).

(D) Literary Works - The student will read and respond to historically and culturally significant works of literature.

(i) Analyze and evaluate works of literature and the historical context in which they were written.

(ii) Analyze and evaluate literature from various cultures to broaden cultural awareness.

(iii) Compare similar characters, settings, and themes from varied literary traditions.

(5) **Standard - research and information.** The student will conduct research and organize information.

(A) Accessing Information - Select the best source for a given purpose.

(i) Use card catalogs and computer databases to locate sources for research topics.

(ii) Access a variety of primary and secondary sources to locate information relevant to research questions.

(iii) Gather data for research purposes through interviews (e.g., prepare and organize relevant questions, make notes of responses, and compile the information).

(iv) Use organizational strategies as an aid to comprehend increasingly difficult content material.

(v) Note instances of persuasion, propaganda, and faulty reasoning in text.

(vi) Use reference features of printed text, such as citations, endnotes, and bibliographies to locate relevant information about a topic.

(B) Interpreting Information - The student will analyze and evaluate information from a variety of sources.

(i) Record, organize, and display relevant information from multiple sources in systematic ways (e.g., outlines, graphic organizers, or note cards).

(ii) Interpret and use graphic sources of information such as graphs, maps, timelines, or tables, to address research questions.

(iii) Analyze and paraphrase or summarize information gathered from a variety of sources into a research paper.

(iv) Determine the appropriateness of an information source for a research topic.

(v) Identify and credit the sources used to gain information for both quoted and paraphrased information in a bibliography using a consistent format.

(b) **Writing/grammar/usage and mechanics.** The student will express ideas effectively in written modes for a variety of purposes and audiences. Discuss and keep a list of writing ideas. Write clear, coherent, and focused papers, progressing through the stages of the writing process. ~~and proofread, edit, and revise writing.~~ Work independently and in self-directed work teams to edit and revise.

(1) **Standard - writing process.** The student will use the writing process to write coherently.

(A) Use a writing process to develop composition skills. Students are expected to use prewriting strategies, write and revise multiple drafts, edit, and share their compositions.

(B) Use details, examples, reasons, and evidence to develop an idea.

(C) Use spatial, chronological, and climactic organizational patterns as appropriate to purpose.

(D) Use precise word choices, including figurative language, that convey specific meaning and tone.

(F) Use a variety of sentence structures, types, and lengths to contribute to fluency and interest.

(G) Edit for errors in Standard English usage, sentence structure, mechanics, and spelling.

(2) **Standard - modes and forms of writing.** The student will write for a variety of purposes and audiences using narrative, descriptive, expository, persuasive, and reflective modes. At Grade 7, write narrative (story), expository (informative), persuasive, reflective, and descriptive texts of at least 500 to 750 words. Introduce biographical and autobiographical narratives and write summaries of grade-level-appropriate reading material. The writing demonstrates a command of Standard English and the research, organization, and drafting strategies outlined in the writing process. Writing demonstrates an awareness of the audience (intended reader) and purpose for writing.

(A) Write biographical or autobiographical narratives (stories) that:

(i) identify a real person, living or not, who has had a special influence on other prople.

(ii) provide a sequence of factual events and communicate the significance of the events to the person.

(iii) isolate specific scenes and incidents in times and places significant to defining the person's influence.

(iv) use anecdotes or describe with specific details the sights, sounds, and smells of a scene, and the specific actions, moments, gestures, and feelings of the person; use interior monologue (what a person says silently to self) to show the person's qualities and beliefs.

(v) present action segments to accommodate changes in time and mood. Example: After reading a biography or an autobiography of someone who has had special influence on others, use the structure to compose an autobiography of your own.

(B) Write research reports that:

(i) include relevant and focused questions about the topic.

(ii) communicate clear and accurate perspectives on the subject.

(iii) include evidence and supporting details compiled through the formal research process, including use of a card catalog, computer catalog, magazines, newspapers, dictionaries, and other reference books.

(iv) document sources with reference notes and a bibliography. Example: Write a research report on the impact that television has had on American society. Take a position on the topic, whether positive or negative, and support this view by citing a variety of reference sources.

(C) Write persuasive/argumentative compositions that:

(i) state a clear position or perspective in support of a proposition or proposal.

(ii) describe the points in support of the proposition, employing well-articulated evidence, and effective emotional appeal.

(iii) identify and address reader concerns and counterarguments. Example: In preparation for an upcoming student election, choose a candidate and write speeches and make posters that will make this candidate especially appealing to the other students (the voters).

(D) Write reflective papers that accomplish one of the purposes:

(i) describe personal learning growth and changes in perspective.

(ii) express the individual's insight into conditions or situations.

(iii) compare a scene from a work of fiction with a lesson learned from experience.

(iv) complete a self-evaluation on a class performance. Example: Write a reflective paper interpreting how personal circumstances and background shape interact with text.

(E) Use appropriate essay test-taking and time-writing strategies that:

(i) address and analyze the question (prompt).

(ii) Use organizational methods required by the prompt.

(F) Write responses to literature that:

(i) develop interpretations that show careful reading, understanding, and insight.

(ii) organize the interpretation around several clear ideas, premises, or images for the literary work.

(iii) justify interpretation through sustained use of examples and evidence from the text. Example: After reading a novel, write a paper describing the different ways the characters in the novel speak (using slang words or regional dialect) and analyze how this enhances or detracts from the book.

(G) Write summaries of reading material that:

(i) include the main ideas and most significant details.

(ii) use the student's own words, except quotations.

(iii) reflect underlying meaning, not just the superficial details. Example: Demonstrate comprehension of the main idea and details of a subject-specific text and write a summary of a text read from another content area. Make the summary clear enough that it would provide another student with the important information from the chapter.

(H) Write for different purposes and to a specific audience or person, adjusting tone and style as necessary to make writing interesting. Example: Write stories and reports showing a variety of word choices, or review a favorite book or film.

(I) Write friendly letters and business letters, and continue to produce other writing forms introduced in earlier grades.

(J) Use handwriting/penmanship to copy and/or compose text, in manuscript or cursive, using correct spacing and formation of letters.

(3) **Standard - grammar/usage and mechanics.** The student will demonstrate appropriate practices in writing by applying grammatical knowledge to the revising and editing stages of writing.

(A) Standard English Usage - Demonstrate correct use of Standard English in speaking and writing.

(i) Recognize the principal parts of regular and irregular verbs.

(ii) Use the principal parts of verbs to form verb tenses.

(iii) Make subject and verbs agree.

(iv) Identify direct objects, indirect objects, objects of prepositions, predicate nominatives, and predicate adjectives.

(v) Use nominative, objective, and possessive pronouns correctly.

(vi) Make pronouns agree with their antecedents.

(vii) Use correct pronoun reference.

(viii) Correctly form and use the comparative and superlative forms of adjectives.

(ix) Use prepositional phrases to elaborate written ideas.

(x) Identify appositives and appositive phrases.

(xi) Correctly use conjunctions.

(xii) Distinguish commonly confused words (e.g., there, their, they're; two, to, too; accept, except; affect, effect).

(B) Mechanics and Spelling - Demonstrate appropriate language mechanics in writing.

(i) Apply the capitalization rules appropriately in writing.

(ii) Punctuate correctly in writing, including:

(I) end punctuation.

(II) commas to separate words in a series, city and state, quotation and sentence, and to set off nonrestrictive phrases.

(III) quotation marks.

(IV) apostrophes in contractions and possessives.

(V) conventions of letter writing.

(iii) Distinguish correct spelling of commonly misspelled words and homonyms.

(C) Sentence Structure - Demonstrate appropriate sentence structure in writing.

(i) Correct sentence run-ons and fragments.

(ii) Correct dangling and misplaced modifiers.

(iii) Differentiate between dependent and independent clauses.

(iv) Write simple, compound, and complex sentences.

(c) **Oral language/listening and speaking.** The student will demonstrate thinking skills in listening and speaking. Deliver focused, coherent presentations that convey ideas and relate to the background and interests of the audience. Evaluate the content of oral communication and deliver well-organized formal presentations using traditional speech strategies, including narration, exposition, persuasion, and description. Use the same Standard English conventions for oral speech that is used in writing. Participate independently and in groups to create oral presentations.

(1) **Standard - listening.** The student will listen for information and for pleasure.

(A) Identify the major ideas and supporting evidence in informative and persuasive messages.

(B) Listen in order to identify and discuss topic, purpose, and perspective.

(C) Recognize and understand barriers to effective listening (i.e., internal and external distractions, personal biases, and conflicting demands).

(D) Evaluate the spoken message in terms of content, credibility, and delivery.

(2) **Standard - speaking.** The student will express ideas and opinions in group or individual situations.

(A) Analyze purpose, audience, and occasion and consider this information in planning an effective presentation or response.

(B) Compose a presentation with a well-organized introduction, body, and conclusion that is appropriate for different purposes, audiences, and occasions..

(C) Communicate oral presentations to the class using appropriate delivery (volume, rate, enunciation, and movement).

(D) Use level-appropriate vocabulary in speech (e.g., metaphorical language, sensory details, or specialized vocabulary).

(d) **Visual literacy.** The student will interpret, evaluate, and compose visual messages.

(1) **Standard - interpret meaning.** The student will interpret and evaluate the various ways visual image-makers, including graphic artists, illustrators, and news photographers, represent meaning.

(A) Interpret a variety of messages conveyed by visual images.

(B) Identify film and television features that characterize different styles of dress and genres (e.g., setting in a western or a drama).

(2) **Standard - evaluate media.** The student will evaluate visual and electronic media, such as film, as they compare with print messages.

(A) Identify the different ways in which people are stereotyped in visual media and consider alternative representations (e.g., clever people wear glasses, super heroes, scientist wear white coats).

(B) Identify basic elements of advertising in visual media (e.g., sales approaches and techniques aimed at children).

(C) Analyze the effect on the viewer of text, sound, images, and organization in electronic media and discuss the techniques used to create the effects.

(3) **Standard - compose visual messages.** The student will create a visual message that effectively communicates an idea.

(A) Select, organize, or produce visuals such as maps, charts, graphics, video segments, or technology presentations to complement and extend meaning for a selected topic.

(B) Use media forms to create a visual message that will compare and contrast ideas and points of view.

210:15-3-19. Language arts for grade 8

(a) **Reading/literature.** The student will apply a wide range of strategies to comprehend, interpret, evaluate, appreciate, and respond to a wide variety of texts. Participate productively in self-directed work teams to create observable products.

(1) **Standard - vocabulary.** The student will expand vocabulary through word study, literature, and class discussion. Use a knowledge of word parts and word relationships, as well as context clues (the meaning of the text around a word), to determine the meaning of specialized vocabulary and to understand the precise meaning of grade-level-appropriate words.

(A) Words in Context - Verify the meaning of a word in its context, even when its meaning is not directly stated, through the use of definitions, restatement, example, comparison, or contrast.

(B) Word Origins - Recognize and analyze the influence of historical events on English word meaning and vocabulary expansion. Example: Identify how the early influences of Spanish explorers in North America impacted American English vocabulary by adding words such as lasso, tortilla, and patio and investigate why these particular words were adopted from the Spanish.

(C) Idioms and Comparisons - Analyze idioms and comparisons, such as analogies, metaphors, and similes, to infer the literal and figurative meanings of phrases.

(i) Idioms: expressions that cannot be understood just by knowing the meanings of the words in the expression, such as "Rush hour traffic moves at a snail's pace or as plain as day."

(ii) Analogies: comparisons of the similar aspects of two different things.

(iii) Metaphors: implies comparisons, such as, "The cup of hot tea was the best medicine for my cold."

(iv) Similes: comparisons that use like or as, such as, "The ice was smooth as glass before the skaters entered the rink."

(2) **Standard - fluency.** The student will identify words rapidly so that attention is directed to the meaning of the text.

(A) Read regularly in independent-level materials (texts in which no more than 1 in 20 words is difficult for the reader) fluently and accurately, and with appropriate time, change in voice, and expression.

(B) Read regularly in instructional-level materials that are challenging but manageable (text in which no more than approximately 1 in 10 words is difficult for the reader; a "typical" eighth grader reads 150 words per minute).

(C) Increase reading speed and comprehension through daily, independent reading.

(D) Read silently for increased periods of time.

(E) Use punctuation as a cue for pausing and characterization while reading.

(3) **Standard - comprehension.** The student will interact with the words and concepts in the text to construct an appropriate meaning. Read and understand grade-level-appropriate material. Describe and connect the essential ideas, arguments, and perspectives of the text by using their knowledge of text structure, organization, and purpose. At Grade 8, in addition to regular classroom reading, read a variety of grade-level-appropriate narrative (story) and expository (informational and technical) texts, including classic and contemporary literature, poetry, magazines, newspapers, reference materials, and online information.

(A) Literal Understanding

(i) Apply prereading strategies when reading both fiction and nonfiction that is appropriately designed for grade level.

(I) Determine the purpose for reading such as to be informed, entertained, persuaded, or to understand.

(II) Preview the text and use prior knowledge and experience to make connections to text.

(ii) Show understanding by asking questions and supporting answers with literal information from text.

(B) Inferences and Interpreting

(i) Make inferences and draw conclusions supported by text evidence and student experiences.

(ii) Connect, compare, and contrast ideas, themes, and issues across texts. Example: Use graphic organizers to show comparisons.

(C) Summary and Generalization

(i) Determine the main (or major) idea and how those ideas are supported with specific details.

(ii) Paraphrase and summarize text to recall, inform, or organize ideas.

(D) Analysis and Evaluation

(i) Distinguish between stated fact, reasoned judgement, and opinion in various texts.

(ii) Use text's structure or progression of ideas, such as cause and effect or chronology (sequential order).

(iii) Compare/contrast to determine similarities and differences in treatment, scope, or organization.

(iv) Problem/solution - offer observations, make connections, react, speculate, interpret, and raise questions in response to text.

(v) Analyze character traits, conflicts, motivations, points of view, and changes that occur within the story.

(vi) Analyze the structural elements of the plot, subplot, and climax and explain the way in which conflicts are or are not resolved.

(E) Monitoring and Correction Strategies

(i) Monitor the understanding of text and use correcting strategies, such as rereading a portion, using reference aids, or searching for content when needed.

(ii) Make, confirm, and revise predictions when reading.

(iii) Adjust reading rate and determine appropriate strategies to match the purpose, difficulty, and characteristics of the text.

(4) **Standard - literature.** The student will read, construct meaning, and respond to a wide variety of literary forms. Read and respond to grade-level-appropriate historically or culturally significant works of literature that reflect and enhance a study of history and social science. Clarify the ideas and connect them to other literary works. Participate in self-directed work teams to create observable products.

(A) Literary Genres - The student will demonstrate a knowledge of and an appreciation for various forms of literature.

(i) Analyze the characteristics of genres, including short story, novel, drama, lyric poetry, nonfiction, historical fiction, and informational texts.

(ii) Identify and distinguish characteristics of subgenres, including autobiography, biography, fable, folk tale, mystery, myth, limericks, tall tales, and plays.

(B) Literary Elements - Demonstrate knowledge of literary elements and techniques and how they affect the development of a literary work.

(i) Analyze and explain elements of fiction including plot, conflict, character, mood, setting, theme, point of view, and author's purpose.

(ii) Identify and explain various points of view and how they affect a story's interpretation.

(C) Figurative Language and Sound Devices - Identify figurative language and sound devices and analyze how they affect the development of a literary work.

(i) Identify and explain the use of figurative language, in literary works to convey mood, images, and meaning, including metaphor, personification, and simile.

(ii) Identify and explain the use of sound devices in literary works to convey mood, images, and meaning, including alliteration, onomatopoeia, and rhyme.

(iii) Identify and interpret literary devices such as flashback, foreshadowing, symbolism, and imagery.

(D) Literary Works - The student will read and respond to historically and culturally significant works of literature.

(i) Analyze and evaluate works of literature and the historical context in which they were written.

(ii) Analyze and determine distinctive and common characteristics of literature from various cultures to broaden cultural awareness.

(iii) Compare similar characters, settings, and themes from varied literary traditions that cross cultures.

(5) **Standard - research and information.** The student will conduct research and organize information.

(A) Accessing Information - Select the best source for a given purpose, locate information relevant to research questioning.

(i) Access information from a variety of primary and secondary sources, including electronic text, experts, and prime resources, to locate information relevant to research questioning.

(ii) Use text organizers, including headings, graphic features (e.g., boldface, italic type), and tables of contents, to locate and organize information.

(iii) Use organizational strategies to learn and recall important ideas from texts, such as preview,

questions, reread, and record, as an aid to comprehend increasingly difficult content material.

(iv) Note instances of persuasion, propaganda, and faulty reasoning in text.

(B) Interpreting Information - Analyze and evaluate information from a variety of sources.

(i) Record, organize, and display relevant information from multiple sources in systematic ways (e.g., outlines, timelines, graphic organizers, or note cards).

(ii) Analyze and paraphrase or summarize information from a variety of sources into a research paper.

(iii) Identify and credit the sources used to gain information (e.g., bibliographies, footnotes, appendix)

(iv) Identify and apply test-taking strategies by answering different types and levels of questions, such as open-ended, literal, and interpretive as well as test-like questions, such as multiple choice, true/false, and short answer.

(v) Interpret and use graphic sources of information such as maps, graphs, timelines, or tables to address research questions.

(b) **Writing/grammar/usage and mechanics.** The student will express ideas effectively in written modes for a variety of purposes and audiences. Discuss and keep a list of writing ideas. Write clear, coherent, and focused papers progressing through the stages of the writing process. ~~and proofread, edit, and revise writing.~~ Work independently and in self-directed work teams to edit and revise.

(1) **Standard - writing process.** The student will use the writing process to write coherently.

(A) Use a writing process to develop composition skills. Students are expected to use prewriting strategies, write and revise multiple drafts, edit, and share their compositions.

(B) Use details, examples, reasons, and evidence to develop an idea.

(C) Use spatial, chronological, and climactic organizational patterns as appropriate to purpose.

(D) Use precise word choices, including figurative language, that convey specific meaning and tone.

(E) Use a variety of sentence structures, types, and lengths to contribute to fluency and interest

(F) Edit for errors in Standard English usage, sentence structure, mechanics, and spelling.

(2) **Standard - modes and forms of writing.** The student will write for a variety of purposes and audiences using narrative, descriptive, expository, persuasive, and reflective modes. At Grade 8, write narrative (story), expository (informational), persuasive, reflective, and descriptive papers of at least 500 to 750 words and introduce technical documents. Demonstrates a command of Standard English and the research, organization, and drafting strategies outlined in the writing process. Writing demonstrates an awareness of the audience (intended reader) and purpose for writing.

(A) Write biographical or autobiographical narratives or short stories that:

(i) tell about an incident, event, or situation by using well-chosen details.

(ii) reveal the significance of, or the writer's attitude about the subject.

(iii) includes narrative and descriptive strategies, such as relevant dialogue, specific action, physical description, background description, and comparison or contrast characters. Example: Write an autobiographical account of one of your most memorable first days of school. Describe the day and its importance clearly enough so the reader can see and feel the day from your perspective.

(B) Write research reports that:

(i) define a thesis (a statement of position on the topic).

(ii) include important ideas, concepts, and direct quotations from significant information sources, including print reference material and the Internet, and paraphrase and summarize all perspectives on the topic, as appropriate.

(iii) identifies a variety of primary and secondary sources and distinguish the nature and value of each.

(iv) organizes and displays information on charts, tables, maps, and graphs.

(v) document sources with reference notes and a bibliography. Example: Research the topic of the benefits and drawbacks of public transportation in Oklahoma. Conduct research to learn why some experts argue that we should use more public transportation. Survey parents and friends to find out how often they use public transportation for school, business, or pleasure travel. Summarize the findings and write a report on the pros and cons of public transportation in Oklahoma, including charts and graphs to support your findings.

(C) Write persuasive/argumentative compositions that:

(i) include a well-defined thesis that makes a clear and knowledgeable appeal.

(ii) present detailed evidence, examples, and reasoning to support effective arguments and emotional appeal.

(iii) provide details, reasons, and examples, arranging them effectively by anticipating and answering reader concerns and counter-arguments. Example: Using the research completed on public transportation, write a persuasive letter to the mayor on why the community should or should not invest more resources into public transportation.

(D) Write technical documents that:

(i) identify the sequence of activities needed to design a system, operate a tool, or explain the bylaws or rules of an organization's constitution or guidelines.

(ii) include all the factors and variables that need to be considered.

(iii) includes formatting techniques, such as headings and changing the fonts (typeface) to aid comprehension. Example: Write a report of a science experiment that was conducted in class describing both the process and the scientific conclusion. Describe the steps clearly, using precise scientific vocabulary, so that another reader could follow exactly what the experiment involved and could understand the reasoning behind the conclusion. Add graphics and text design to make the content clearer and easier to follow.

(E) Write reflective papers that may address one of the following purposes:

(i) express the individual's insight into conditions or situations.

(ii) compare a scene from a work of fiction with a lesson learned from experience.

(iii) complete a self-evaluation on a class performance. Example: Write a reflective paper that discusses reasons for selections used in a portfolio of works that demonstrate skills in different subjects.

(F) Use appropriate essay test-taking and time-writing strategies that:

(i) address and analyze the question (prompt).

(ii) use organizational methods required by the prompt.

(G) Write responses to literature that:

(i) demonstrate careful reading and insight into interpretations.

(ii) connect responses to the writer's techniques and to specific textual references.

(iii) make supported inferences about the effects of a literary work on its audience.

(iv) support judgments through references to the text, other works, other authors, or to personal knowledge. Example: After reading a novel, write a final chapter to the book, describing what happens to the main character after the point where the book ends. Then, plan a class presentation explaining the new ending, and how it is supported by the rest of the book.

(H) Write for different purposes and to a specific audience or person, adjusting tone and style as necessary to make writing interesting. Example: Write stories and reports, showing a variety of word choices, or review a favorite book or film.

(I) Write friendly letters and business letters and continue to produce other writing forms introduced in earlier grades.

(J) Use handwriting/penmanship to copy and/or compose text, in manuscript or cursive, using correct spacing and formation of letters.

(3) **Standard - grammar/usage and mechanics.** The student will demonstrate appropriate practices in writing by applying grammatical knowledge to the revising and editing stages of writing.

(A) Standard English Usage - Demonstrate correct use of Standard English in speaking and writing.

(i) Use the principal parts of verbs and progressive verb forms.

(ii) Make subject and verbs agree.

(iii) Use nominative, objective, and possessive pronouns correctly.

(iv) Make pronouns agree with their antecedents.

(v) Use correct pronoun reference.

(vi) Correctly form and use the comparative and superlative forms of adjectives.

(vii) Identify and use appositives and appositive phrases.

(viii) Use infinitives, gerunds, and participles to vary sentence structure in writing.

(ix) Correctly use conjunctions for coordination and subordination.

(x) Distinguish commonly confused words (e.g., there, their, they're; two, to, too; accept, except; affect, effect).

(B) Mechanics and Spelling - Demonstrate appropriate language mechanics in writing.

(i) Apply the capitalization rules appropriately in writing.

(ii) Punctuate correctly in writing, including:

(I) Commas

(II) Quotation marks

(III) Apostrophes

(IV) Colons

(V) Conventions of letter writing

(iii) Distinguish correct spelling of commonly misspelled words and homonyms.

(C) Sentence Structure - Demonstrate appropriate sentence structure in writing.

(i) Correct sentence run-ons and fragments.

(ii) Correct dangling and misplaced modifiers.

(iii) Differentiate between dependent and independent clauses.

(iv) Write simple, compound, complex, and compound-complex sentences.

(c) **Oral language/listening and speaking.** The student will demonstrate thinking skills in listening and speaking. Deliver focused, coherent presentations that convey ideas and relate to the background and interests of the audience. Evaluate the content of oral communication and deliver well-organized formal presentations using traditional speech strategies, including narration, exposition, persuasion, and description. Use the same Standard English conventions for oral speech that is used in writing. Participate independently and in groups to create oral presentations.

(1) **Standard - listening.** The student will listen for information and for pleasure.

(A) Identify the major ideas and supporting evidence in informative and persuasive messages.

(B) Listen in order to identify and discuss topic, purpose, and perspective.

(C) Recognize and understand barriers to effective listening (i.e., internal and external distractions, personal biases, and conflicting demands).

(D) Evaluate the spoken message in terms of content, credibility, and delivery.

(2) **Standard - speaking.** The student will express ideas and opinions in group or individual situations.

(A) Analyze purpose, audience, and occasion and consider this information in planning an effective presentation or response.

(B) Compose a presentation with a well-organized introduction, body, and conclusion that is appropriate for different purposes, audiences, and occasions.

(C) Communicate oral presentations to the class using appropriate delivery (volume, rate, enunciation, and movement).

(D) Use level-appropriate vocabulary in speech (e.g., metaphorical language, sensory details, or specialized vocabulary.

(E) Adjust message wording and delivery according to particular audience and purpose.

(d) **Visual literacy.** The student will interpret, evaluate, and compose visual messages.

(1) **Standard - interpret meaning.** The student will interpret and evaluate the various ways visual image-makers, including graphic artists, illustrators, and news photographers, represent meaning.

(A) Interpret how language choice is used to enhance visual media (e.g., language or particular television or film genre, the use of emotional or logical arguments in commercials).

(B) Identify and explain reasons for varied interpretations of visual media (e.g., different purposes or circumstances while viewing, influence of personal knowledge and experiences, focusing on different stylistic features).

(2) **Standard - evaluate media.** The student will evaluate visual and electronic media, such as film, as they compare with print messages.

(A) Use a variety of criteria to evaluate and form viewpoints of visual media (e.g., evaluates the effectiveness of informational media, such as Web sites, documentaries, news programs, and recognizes a range of viewpoints and arguments).

(B) Establish criteria for selecting or avoiding specific programs.

(C) Assess how language medium and presentation contribute to the message.

(3) **Standard - compose visual messages.** The student will create a visual message that effectively communicates an idea.

(A) Produce visual images, messages, and meanings that communicate with others.

(B) Use media forms to create a visual message that will compare and contrast ideas and points of view.

215:15-3-20. Language arts for grade 9

(a) **Reading/literature.** The student will apply a wide range of strategies to comprehend, interpret, evaluate, appreciate, and respond to a variety of texts. Apply knowledge of word origins (words from other languages, history, or literature) to determine the meaning of new words encountered in reading and use of those words accurately.

(1) **Standard - vocabulary.** The student will expand vocabulary through word study, literature, and class discussion.

(A) Apply a knowledge of Greek (e.g., tele/phone. micro/phone), Latin (e.g., flex/ible), and Anglo-Saxon (e.g., un/friend/ly) roots, prefixes, and suffixes to determine word meanings.

(B) Use word meanings within the appropriate context and verify those meanings by definition, restatement, example, and analogy.

(C) Expand vocabulary through wide reading, listening, and discussing.

(D) Use reference material such as glossary, dictionary, thesaurus, and available technology to determine precise meaning and usage.

(E) Identify the relation of word meanings in analogies, homonyms, synonyms/antonyms, and connotative and denotative.

(2) **Standard - comprehension.** The student will interact with the words to construct an appropriate meaning. Read and understand grade-level-appropriate material. Analyze the organizational patterns and evaluate author's argument and positions. At Grade 9, in addition to regular classroom reading, read a wide variety of classic and contemporary literature, poetry, magazines, newspapers, reference materials, and online information~~.~~, as well as expository (informational and technical) texts.

(A) **Literal understanding.**

(i) Examine the structures and format of functional workplace documents, including graphics and headers, and explain how authors use the features to achieve their purpose.

(ii) Draw upon own background to provide connections to text.

(iii) Monitor reading strategies and modify them when understanding breaks down such as rereading, using resources, and questioning.

(iv) Recognize text structures such as compare and contrast, cause and effect, and chronological ordering.

(v) Use study strategies such as skimming and scanning, note taking, outlining, and using study-guide questions to better understand texts.

(B) **Inferences and interpretation.**

(i) Analyze characteristics of text, including its structure, word choice, and intended audience.

(ii) Draw inferences such as conclusions, generalizations, and predictions, and support them with text evidence and personal experience.

(iii) Recognize influences on a reader's response to a text (e.g., personal experience and

values; perspective shapes by age, gender, class, or nationality).

(C) **Summary and generalization.**

(i) Identify the main idea and supporting details by producing summaries of text.

(ii) Use text features and elements to support inferences and generalizations about information.

(iii) Summarize and paraphrase complex, implicit hierarchic structures in informational texts, including relationships among concepts and details in those structures.

(D) **Analysis and evaluation.**

(i) Discriminate between fact and opinion and fiction and nonfiction.

(ii) Recognize deceptive, and/or faulty arguments in persuasive texts.

(iii) Analyze the structure and format of informational and literary documents and explain how authors use the features to achieve their purposes.

(iv) Identify techniques (e.g., language, organization, tone, context) used to convey point of view or impressions (e.g., sarcasm, criticism, praise, affection).

(3) **Standard - literature.** The student will read, construct meaning, and respond to a wide variety of literary forms. Read and respond to grade-level-appropriate historically or culturally significant works of British, American, and world literature. Conduct in-depth analysis of themes, styles, and trends of these works across historical periods. Participate productively in self-directed work teams to create observable products.

(A) **Literary genres.** Demonstrate a knowledge of and an appreciation for various forms of literature.

(i) Analyze the characteristics of genres including short story, novel, drama, poetry, and essay.

(ii) Analyze the characteristics of subgenres including tragedy, sonnet, and epic, lyric, and narrative poetry.

(B) **Literary elements.** Demonstrate knowledge of literary elements and techniques and show how they affect the development of a literary work.

(i) Recognize the theme (general observation about life or human nature) within a text.

(ii) Explain how author's voice and/or choice of a narrator affect the characterization and the point of view, tone, plot, mood, and credibility of a text.

(iii) Recognize and understand the significance of various literary devices, including figurative language, imagery, allegory (the use of fictional figures and actions to express truths about human experiences), and symbolism (the use of a symbol to represent an idea or theme), and explain their appeal.

(iv) Analyze interactions between characters in a literary text and explain the way those interactions affect the plot in narrative text.

(v) Analyze characters and identify author's point of view.

(vi) Identify literary forms and terms such as author, drama, biography, autobiography, myth, tall tale, dialogue, tragedy and comedy, structure in poetry, epic, ballad, protagonist, antagonist, paradox, analogy, dialect, and comic relief as appropriate to the selections being read.

(C) **Figurative language and sound devices.** Identify figurative language and sound devices and analyze how they affect the development of a literary work.

(i) Identify and explain figurative language including metaphor, personification, and simile.

(ii) Identify and explain sound devices including alliteration, onomatopoeia, and rhyme.

(iii) Identify the melodies of literary language, including its use of evocative words, rhythms and rhymes.

(iv) Recognize and interpret poetic elements such as metaphor, simile, personification, and the effect of sound on meaning.

(D) **Literary works.** The student will read and respond to historically and culturally significant works of literature.

(i) Analyze and evaluate works of literature and the historical context in which they were written.

(ii) Analyze and evaluate literature from various cultures to broaden cultural awareness.

~~(E)~~ (iii) Compare works that express the recurrence of archetypal (universal modes or patterns) characters, settings, and themes in literature and provide evidence to support the ideas expressed in each work.

(4) **Standard - research and information.** The student will conduct research and organize information.

(A) **Accessing information.** Select the best source for a given purpose.

(i) Access information from a variety of primary and secondary sources.

(ii) Skim text for an overall impression and scan text for particular information.

(iii) Use organizational strategies as an aid to comprehend increasingly difficult content material (e.g., compare/contrast, cause/effect, problem/solution, sequential order).

(B) **Interpreting information.** The student will analyze and evaluate information from a variety of sources.

(i) Summarize, paraphrase, and/or quote relevant information.

(ii) Determine the author's viewpoint to evaluate source credibility and reliability.

(iii) Organize and convert information into different forms such as charts, graphs and drawings to create multiple formats to interpret information for multiple audiences and purposes, and cite sources completely.

(iv) Identify complexities and inconsistencies in the information and the different perspectives found in each medium, including almanacs, ~~microfiche~~ news sources, in-depth field studies, speeches, journals, technical documents, or internet sources.

(v) Draw conclusions from information gathered.

(b) **Writing/grammar/usage and mechanics.** The student will express ideas effectively in written modes for a variety of purposes and audiences. Discuss ideas for writing with other writers. Write coherent and focused essays that show a well-defined point of view and tightly reasoned argument. Use the stages of the writing process. ~~(prewriting, writing, editing, and revising).~~ Work independently and in self-directed work teams to edit and revise.

(1) **Standard - writing process.** The student will use the writing process to write coherently.

(A) Use a writing process to develop and refine composition skills. Students are expected to:

(i) use prewriting strategies to generate ideas such as brainstorming, using graphic organizers and keeping notes and logs.

(ii) develop multiple drafts both alone and collaboratively to categorize ideas organizing them into paragraphs, and blending paragraphs into larger text.

(iii) organize and reorganize drafts and refine style to suit occasion, audience, and purpose.

(iv) proofread writing for appropriateness of organization, content, and style.

(v) edit for specific purposes such to insure standard usage, varied sentence structure, appropriate word choice, mechanics, and spelling.

(vi) refine selected pieces frequently to publish for general and specific audiences.

(B) Use extension and elaboration to develop an idea.

(C) Demonstrate organization, unity, and coherence by using transitions and sequencing.

(D) Use precise word choices, including figurative language, that convey specific meaning and tone.

(E) Use a variety of sentence structures, types, and lengths to contribute to fluency and interest.

(F) Evaluate own writing and others' writing (e.g., determine the best features of a piece of writing, determine how own writing achieves its purpose, ask for feedback, respond to classmates' writing).

(2) **Standard - modes and forms of writing.** The student will write for a variety of purposes and audiences using narrative, descriptive, expository, persuasive, and reflective modes. At Grade 9, combine the rhetorical strategies of narration, exposition, persuasion, reflection, and description to produce text of at least 500 to 750 words. Begin writing documents related to career development. Demonstrates a command of Standard English and the research, organization, and drafting strategies outlined in the writing process. Writing demonstrates an awareness of the audience (intended reader) and purpose for writing.

(A) Write biographical or autobiographical narratives or short stories that:

(i) identifies a real person, living or not, who has had a special influence on other people.

(ii) provides a sequence of factual events and communicate the significance of the events to the person.

(iii) isolates specific scenes and incidents in time and places significant to defining the persons' influence.

(iv) uses anecdotes or describe with specific details the sight, sounds, and smells of a scene and the specific actions, movements, gestures, and feelings of the person; use interior monologue (what characters say silently to self) to show the person's qualities and beliefs.

(v) presents action segments to accommodate changes in time and mood. Example: Write an autobiographical account of a time when an important decision had to be made. Write a humorous story for elementary children and give the story a local setting.

(B) Write expository compositions, including analytical essays and research reports that:

(i) includes evidence in support of a thesis (position on the topic) including information on all relevant perspectives.

(ii) communicates information and ideas from primary and secondary sources accurately and coherently.

(iii) shows distinctions between the relative value and significance of specific date, facts, and ideas.

(iv) includes a variety of reference sources, including word, pictorial, audio, and internet sources, to locate information in support of topic.

(v) includes visual aids by using technology to organize and record information on charts, data tables, maps, and graphs.

(vi) identifies and addresses reader's potential misunderstanding, biases, and expectations.

(vii) uses technical terms and notations accurately. Example: Write a research report about inventions that were first mentioned in science fiction novels or movies and later became a scientific reality.

(C) Write persuasive/argumentative compositions that:

(i) organize ideas and appeal in a sustained and effective fashion with the strongest emotional first and the least powerful one last.

(ii) use specific rhetorical (communication) devices to support assertions, such as appealing to logic through reasoning; appealing to emotion or ethical beliefs; or relating to a personal anecdote, case study, or analogy.

(iii) clarify and defend positions with precise and relevant evidence, including facts, expert opinions, quotations, expressions of commonly accepted beliefs, and logical reasoning.

(iv) address reader's concerns, counterclaims, biases, and expectations. Example: Write a letter to the principal or the president of the school board to persuade that person to support your views on some educational policy that has been adopted by the local district, such as a dress code, a change to or from block scheduling, or a decision about grade requirements to participate in extracurricular activities.

(D) Write documents related to career development, including simple business letters and job applications that:

(i) present information purposefully and in brief to meet the need of the intended audience.

(ii) follow a conventional business letter or memorandum format. Example: Write a letter requesting an informational interview with a person in a career area that interests you. Complete a job application form for a part-time job and attach a memorandum outlining the particular skill you have that fit the needs of the position.

(E) Write reflective papers that may address one of the following purposes:

(i) express the individual's insight into conditions or situations.

(ii) compare a scene from a work of fiction with a lesson learned from experience.

(iii) complete a self-evaluation on a class performance. Example: Write a reflective paper that discusses reasons for selections used in a portfolio of works that demonstrate appropriate skills in different subjects.

(F) Use appropriate essay test-taking and time-writing strategies that:

(i) address and analyze the question (prompt).

(ii) use organizational methods required by the prompt.

(G) Write responses to literature that:

(i) demonstrate a comprehensive grasp of the significant ideas of literary works.

(ii) support important ideas and viewpoints through accurate and detailed reference to the text or to other works.

(iii) demonstrate awareness of author's style and an appreciation of the effects created.

(iv) identify and assess the impact of ambiguities, nuances, and complexities within the text. Example: Write a description of a character in a novel from the viewpoint of another character. Write a comparison of different characters in the book, explaining how they are alike and different and how each serves to move the plot of the novel forward.

(H) Write for different purposes and to a specific audience or person, adjusting tone and style as necessary to make writing interesting. Example: Write stories and reports showing a variety of word choices, or review a favorite book or film~~.~~, or compose proposals or project plans.

(I) Write friendly letters and business letters, and continue to produce other writing forms introduced in earlier grades.

(J) Write documented papers incorporating the techniques of Modern Language Association (MLA) or similar parenthetical styles.

(3) **Standard - grammar/usage and mechanics.** The student will demonstrate appropriate practices in writing by applying grammatical knowledge to the revising and editing stages of writing. Participate independently and in groups to create oral presentations.

(A) **Standard English usage.** Demonstrate correct use of Standard English in speaking and writing.

(i) Distinguish commonly confused words (e.g., there, their, they're; two, too, to; accept, except; affect, effect).

(ii) Use correct verb forms and tenses.

(iii) Use correct subject-verb agreement.

(iv) Use active and passive voice.

(v) Correct pronoun/antecedent agreement and clear pronoun reference.

(vi) Use correct forms of comparative and superlative adjectives.

(B) **Mechanics and spelling.** Demonstrate appropriate language mechanics in writing.

(i) Demonstrate correct use of capitals.

(ii) Use correct formation of plurals.

(iii) Demonstrate correct use of punctuation and recognize its effect on sentence structure.

(iv) Distinguish correct spelling of commonly misspelled words and homonyms.

(C) **Sentence structure.** Demonstrate appropriate sentence structure in writing.

(i) Use parallel structure.

(ii) Correct dangling and misplaced modifiers.

(iii) Correct run-on sentences.

(iv) Correct fragments.

(c) **Oral language/listening and speaking.** The student will demonstrate thinking skills in listening and speaking. Formulate thoughtful judgment about oral communication. Deliver focused and coherent presentations that convey clear and distinct perspectives and solid reasoning. Deliver polished formal and extemporaneous presentations that combine the traditional speech strategies of narration, exposition, persuasion, and description. Use gestures, tone, and vocabulary appropriate to the audience and purpose. Use the same Standard English conventions for oral speech that are used in writing.

(1) **Standard - listening.** The student will listen for information and for pleasure.

(A) Focus attention on the speaker's message.

(B) Use knowledge of language and develop vocabulary to accurately interpret the speaker's message.

(C) Listen and respond appropriately to presentations and performances of peers or published works such as original essays or narratives, interpretations of poetry, and individual or group performances.

(D) Monitor speaker's message and clarity and understanding to formulate and provide effective verbal and nonverbal feedback.

(E) Use feedback to evaluate own effectiveness and set goals for future presentations.

(2) **Standard - speaking.** The student will express ideas and opinions in group or individual situations.

(A) Use formal, informal, standard, and technical language effectively to meet the needs of purpose, audience, occasion, and task.

(B) Prepare, organize, and present a variety of informative messages effectively.

(C) Analyze purpose, audience, and occasion to choose effective verbal and nonverbal strategies such as pitch and tone of voice, posture, and eye contact.

(d) **Visual literacy.** The student will interpret, evaluate, and compose visual messages.

(1) **Standard - interpret meaning.** The student will interpret and evaluate the various ways visual image-makers including graphic artists, illustrators, and news photographers represent meaning.

(A) Document the use of stereotypes and biases in visual media (e.g., distorted representations of society; imagery and stereotyping in advertising; elements of stereotypes such as physical characteristics, manner of speech, beliefs and attitudes).

(B) Indicate how symbols, images, sound, and other conventions are used in visual media (e.g., time lapse in films; set elements that identify a particular time period or culture).

(2) **Standard - evaluate media.** The student will evaluate visual and electronic media, such as film, as they compare with print messages.

(A) Selects people with special interests and expectations who are the target audience for particular messages or products in visual media.

(B) Define and design language and content that reflect the target audience for particular messages and products (e.g., in advertising and sales techniques aimed specifically towards teenagers; in products aimed toward different classes, races, ages, genders; in the appeal of popular television shows and films for particular audience).

(3) **Standard - compose visual messages.** The student will create a visual message that effectively communicates an idea.

(A) Create media products to include a billboard, cereal box, short editorials, and a three minute documentary or print ad to engage specific audiences.

(B) Create, present, test, and revise a project and analyze a response, using data-gathering techniques such as questionnaires, group discussions, and feedback forms.

210:15-3-21. Language arts for grade 10

(a) **Reading/literature.** The student will apply a wide range of strategies to comprehend, interpret, evaluate, appreciate, and respond to a wide variety of texts.

(1) **Standard - vocabulary.** The student will expand vocabulary through word study, literature, and class discussion. Apply a knowledge of word origins (words from other languages, history, or literature) to determine the meaning of new words encountered in reading and use of those words accurately.

(A) Apply a knowledge of Greek (e.g., tele/phone. micro/phone), Latin (e.g., flex/ible), and Anglo-Saxon (e.g., un/friend/ly) roots, prefixes, and suffixes to determine word meanings.

(B) Research word origins as an aid to understanding meaning, derivations, and spelling as well as influences on the English language.

(C) Use reference material such as glossary, dictionary, thesaurus, and available technology to determine precise meaning and usage.

(D) Discriminate between connotative and denotative meanings and interpret the connotative power of words.

(E) Use word meanings within the appropriate context and verify those meanings by definition, restatement, example, and anology.

(2) **Standard - comprehension.** The student will interact with the words and concepts on the page to understand what the writer has said. Read and understand grade-level-appropriate material. Analyze the organization patterns and evaluate authors' argument and position. At Grade 10, in addition to regular classroom reading, read a wide variety of classic and contemporary literature, poetry, magazines, newspapers, reference materials, and online information~~.~~, as well as expository (informational and technical) texts.

(A) **Literal understanding.**

(i) Identify the structures and format of various informational documents and explain how authors use the features to achieve their purpose.

(ii) Understand specific devices an author uses to accomplish purpose (persuasive techniques, style, literary forms or genre, portrayal of themes, language).

(iii) Use a range of automatic monitoring and self-correcting methods (e.g., rereading, slowing down, subvocalizing, consulting resources, questioning).

(iv) Recognize signal/transitional words and phrases and their contributions to the meaning of the text (e.g., however, in spite of, for example, consequently).

(B) **Inferences and interpretation.**

(i) Use elements of the text to defend responses and interpretations.

(ii) Draw inferences such as conclusions, generalizations, and predictions, and support them with text evidence and personal experience.

(iii) Investigatte influences on a reader's response to a text (e.g., personal experience and values; perspective shapes by age, gender, class, nationality).

(C) **Summary and generalization.**

(i) Determine the main idea, locate and interpret minor subtly stated details in complex passages.

(ii) Use text features and elements to support inferences and generalizations about information.

(iii) Summarize and paraphrase complex, implicit hierarchic structures in informational texts, including relationships among concepts and details in those structures.

(D) **Analysis and evaluation.**

(i) Discriminate between fact and opinion and fiction and nonfiction.

(ii) Evaluate deceptive, and/or faulty arguments in persuasive texts.

(iii) Analyze the structure and format of informational and literary documents and explain how authors use the features to achieve their purposes.

(iv) Analyze techniques (e.g., language, organization, tone, context) used to convey opinions or impressions (e.g., sarcasm, criticism, praise, affection).

(3) **Standard - literature.** The student will read, construct meaning, and respond to a wide variety of literary forms. Read and respond to grade-level-appropriate historically or culturally significant works of British, American, and world literature. Conduct in-depth analysis of themes, styles, and trends of these works across historical periods. Participate productively in self-directed work teams to create observable products.

(A) **Literary genres.** Demonstrate a knowledge of and an appreciation for various forms of literature.

(i) Analyze the characteristics of genres including short story, novel, drama, narrative and lyric poetry, and essay.

(ii) Analyze the characteristics of subgenres such as satire, parody, allegory, and pastorals.

(B) **Literary elements.** Demonstrate knowledge of literary elements and techniques and show how they affect the development of a literary work.

(i) Describe and analyze elements of fiction including plot, conflict, character, setting, theme, mood, and point of view ~~and~~ with emphasis on how they are addressed and resolved.

(ii) Explain how author's voice, point of view, or choice of a narrator affect the characterization and the tone, plot, mood, and credibility of a text.

(iii) Analyze characters' traits by what the characters say about themselves in narration, dialogue, and soliloquy (when they speak out loud to themselves).

(iv) Evaluate the significance of various literary devices and techniques, including imagery, irony, tone, allegory (the use of fictional figures and actions to express truths about human experiences), and symbolism (the use of symbols to represent an idea or theme), and explain their appeal.

(v) Evaluate the author's purpose and the development of time and sequence, including the use of complex literary devices, such as foreshadowing (providing clues to future events) or flashbacks (interrupting the sequence of events to include information about an event that happened in the past).

(C) **Figurative language and sound devices.** Identify and use figurative language and sound devices in writing and recognize how they affect the development of a literary work.

(i) Identify and use figurative language such as analogy, hyperbole, metaphor, personification, and simile.

(ii) Identify and use sound devices such as rhyme, alliteration, and onomatopoeia.

(iii) Analyze the melodies of literary language, including its use of evocative words, rhythms, and rhymes.

(D) **Literary works.** The student will read and respond to historically and culturally significant works of literature.

(i) Analyze and evaluate works of literature and the historical context in which they were written.

(ii) Analyze and evaluate literature from various cultures to broaden cultural awareness.

(iii) Compare works that express the recurrence of archetypal (universal modes or patterns) characters, settings, and themes in literature and provide evidence to support the ideas expressed in each work.

(4) **Standard - research and information.** The student will conduct research and organize information.

(A) **Accessing information.** Select the best source for a given purpose.

(i) Access information from a variety of primary and secondary sources.

(ii) Skim text for an overall impression and scan text for particular information.

(iii) Use organizational strategies as an aid to comprehend increasingly difficult content material (e.g., compare/contrast, cause/effect, problem/solution, sequential order).

(B) **Interpreting information.** Analyze and evaluate information from a variety of sources.

(i) Summarize, paraphrase, and/or quote relevant information.

(ii) Determine the author's viewpoint to evaluate source credibility and reliability.

(iii) Synthesize information from multiple sources to draw conclusions that go beyond those found in any of the individual studies.

(iv) Identify complexities and inconsistencies in the information and the different perspectives found in each medium, including almanacs, ~~microfiche,~~ news sources, in-depth field studies, speeches, journals, technical documents, or internet sources.

(b) **Writing/grammar/usage and mechanics.** Discuss ideas for writing with other writers. Write coherent and focused essays that show a well defined point of view and tightly reasoned argument. Use the stages of the writing process. ~~(prewriting, writing, editing, and revising).~~ Work independently and in self-directed work teams to edit and revise.

(1) **Standard - writing process.** The student will use the writing process to write coherently.

(A) Use a writing process to develop and refine composition skills. Students are expected to:

(i) use prewriting strategies to generate ideas such as brainstorming, using graphic organizers and keeping notes and logs.

(ii) develop multiple drafts both alone and collaboratively to categorize ideas organizing them into paragraphs, and blending paragraphs into larger text.

(iii) organize and reorganize drafts and refine style to suit occasion, audience, and purpose.

(iv) proofread writing for appropriateness of organization, content, and style.

(v) edit for specific purposes such as to insure standard usage, varied sentence structure, appropriate word choice, mechanics, and spelling.

(vi) refine selected pieces frequently to publish for general and specific audiences.

(B) Use extension and elaboration to develop an idea.

(C) Demonstrate organization, unity, and coherence by using transitions and sequencing.

(D) Use precise word choices, including figurative language, that convey specific meaning.

(E) Use a variety of sentence structures, types, and lengths to contribute to fluency and interest.

(F) Evaluate own writing and others' writing (e.g., determine the best features of a piece of writing, determine how own writing achieves its purpose, ask for feedback, respond to classmates' writing).

(2) **Standard - modes and forms of writing.** The student will write for a variety of purposes and audiences using narrative, descriptive, expository, persuasive, and reflective modes. At Grade 10, combine the rhetorical strategies of narration, exposition, persuasion, reflection, and description to produce text of at least 750 to 1,000 words. Compose business letters. Demonstrate a command of Standard English and the research, organization, and drafting strategies outlined in the writing process. Writing demonstrates an awareness of the audience (intended reader) and purpose for writing.

(A) Write biographical or autobiographical narratives or short stories that:

(i) identifies a real person, living or not, who has had a special influence on other people.

(ii) provides a sequence of factual events and communicate the significance of the events to the person.

(iii) isolates specific scenes and incidents in times and places significant to defining the person's influence.

(iv) use anecdotes or describe with specific details the sight, sounds, and smells of a scene and the specific actions, movements, gestures, and feelings of the person; use interior monologue (what person says silently to self) to show the persons qualities and beliefs.

(v) presents action segments to accommodate changes in time and mood. Example: After reading an example of an autobiography, use the structure to compose an autobiography of your own.

(B) Write expository compositions, including analytical essays and research reports that:

(i) include evidence in support of a thesis (position on the topic) including information on all relevant perspectives.

(ii) communicate information and ideas from primary and secondary sources accurately and coherently.

(iii) show distinctions between the relative value and significance of specific date, facts, and ideas.

(iv) include a variety of reference sources, such as word, pictorial, audio, and internet sources.

(v) include visual aids by using technology to organize and record information on charts, data tables, maps, and graphs.

(vi) identify and address reader's potential misunderstanding, biases, and expectations.

(vii) use technical terms and notations accurately. Example: Write a report on the Globe Theatre, gathering information from books, such as *Shakespeare's Theatre* by Jacqueline Morley, videos such as "Shakespeare's Globe Theatre Restored," and Web sites by using a key word search for "Shakespeare" and "Globe Theatre." Explain why the theatre was significant in the development of Shakespeare's works.

(C) Write persuasive/argumentative compositions that:

(i) presents ideas and appeals in a sustained and effective fashion with the strongest emotional first and the least powerful one last.

(ii) use specific rhetorical (communication) devices to support assertions, such as appealing to logic through reasoning; appealing to emotion or ethical beliefs; or relating to a personal anecdote, case study, or analogy.

(iii) clarify and defend positions with precise and relevant evidence, including facts. expert

opinions, quotations, expressions of commonly accepted beliefs, and logical reasoning.

(iv) address reader's concerns, counterclaims, biases, and expectations. Example: Write a letter to a television network to persuade the network to keep a program on the air despite low ratings.

(D) Write business letters that:

(i) provide clear and purposeful information and address the intended audience appropriately.

(ii) use appropriate vocabulary, tone, and style to take into account the nature of the relationship with, and the knowledge and interests of, the intended audience.

(iii) emphasize main ideas or images

(iv) follow conventional style with page formats, fonts (typeface), and spacing that contribute to the document's readability and impact. Example: Write a letter of support or complaint in response to service that you received at a store or restaurant. Address the letter to the manager include a clear account of the incident and requesting that he or she take appropriate action in response.

(E) Write reflective papers that may address one of the following purposes:

(i) express the individual's insight into conditions or situations.

(ii) compare a scene from a work of fiction with a lesson learned from experience.

(iii) complete a self-evaluation on a class performance. Example: Write a reflective paper that gives reasons for selections used in a portfolio of works that demonstrate appropriate skills in different subjects.

(F) Use appropriate essay test-taking and time-writing strategies that:

(i) address and analyze the question (prompt).

(ii) use organizational methods required by the prompt.

(G) Write responses to literature that:

(i) demonstrate a comprehensive grasp of the significant ideas of literary works.

(ii) support important ideas and viewpoints through accurate and detailed reference to the text or other works.

(iii) demonstrate awareness of author's style and an appreciation of the effects created.

(iv) identify and assess the impact of ambiguities, nuances, and complexities within the text.

(v) extend writing by changing mood, plot, characterization, or voice. Example: After reading a short story, such as "The No-Guitar Blues" by Gary Soto or "The Lottery" by Shirley Jackson, write a different ending to the story.

(H) Write for different purposes and audiences, adjusting tone, sytle, and voice as appropriate and continue to produce other writing forms introduced in earlier grades. Example: Write stories, reports and letter showing a variety of word choices, or review a favorite book or film~~.~~, or compose proposals or project plans.

(I) Write documented papers incorporating the techniques of Modern Language Association (MLA) or similar parenthetical styles.

(J) Write documented papers incorporating the techniques of Modern Language Association (MLA) or similar parenthetical styles.

(3) **Standard - grammar/usage and mechanics.** The student will demonstrate appropriate practices in writing by applying Standard English conventions of the revising and editing stages of writing. Work independently and in self-directed work teams to revise and edit.

(A) **Standard English usage.** The student will demonstrate correct use of Standard English in speaking and writing.

(i) Distinguish commonly confused words (e.g., there, their, they're; two, too, to; accept, except; affect, effect).

(ii) Use correct verb forms and tenses.

(iii) Use correct subject-verb agreement.

(iv) Distinguish active and passive voice.

(v) Use correct pronoun/antecedent agreement and clear pronoun reference.

(vi) Use correct forms of comparative and superlative adjectives.

(B) **Mechanics and spelling.** The student will demonstrate appropriate language mechanics in writing.

(i) Demonstrate correct use of capitals.

(ii) Use correct formation of plurals.

(iii) Demonstrate correct use of punctuation and recognize its effect on sentence structure.

(iv) Distinguish correct spelling of commonly misspelled words and homonyms.

(C) **Sentence structure.** The student will demonstrate appropriate sentence structure in writing.

(i) Use parallel structure.

(ii) Correct dangling and misplaced modifiers.

(iii) Correct run-on sentences.

(iv) Correct fragments.

(c) **Oral language/listening and speaking.** The student will demonstrate thinking skills in listening and speaking. Formulate thoughtful judgments about oral communication. Deliver focused and coherent presentations that convey clear and distinct perspectives and solid reasoning. Deliver polished formal and extemporaneous presentations that combine the traditional speech strategies of narration, exposition, persuasion, and description. Use gestures, tone, and vocabulary appropriate to the audience and purpose. Use the same Standard English conventions for oral speech that are used in writing.

(1) **Standard - listening.** The student will listen for information and for pleasure.

(A) Engage in critical, empathetic, appreciative, and reflective listening to interpret, respond and evaluate speaker's messages.

(B) Listen and respond appropriately to presentations and performances of peers or published works

such as original essays or narratives, interpretations of poetry, and individual or group performances.

(C) Evaluate informative and persuasive presentations of peers, public figures, and media presentations.

(D) Use feedback to evaluate own effectiveness and set goals for future presentations.

(2) **Standard - speaking.** The student will express ideas and opinions in group or individual situations.

(A) Use formal, informal, standard, and technical language effectively to meet the needs of purpose, audience, occasion, and task.

(B) Prepare, organize, and present a variety of informative and persuasive messages effectively.

(C) Use a variety of verbal and nonverbal techniques in presenting oral messages and demonstrate poise and control while presenting.

(d) **Visual literacy.** The student will interpret, evaluate, and compose visual messages.

(1) **Standard - interpret meaning.** The student will interpret and evaluate the various ways visual image-makers such as graphic artists, illustrators, and news photographers represent meaning.

(A) Identifies the use of stereotypes and biases in visual media (e.g., distorted representations of society; imagery and stereotyping in advertising; elements of stereotypes such as physical characteristics, manner of speech, beliefs, attitudes).

(B) Investigates how symbols, images, sound, and other conventions are used in visual media (e.g., time lapse in films; set elements that identify a particular time period or culture).

(2) **Standard - evaluate media.** The student will evaluate visual and electronic media, such as film, as they compare with print messages.

(A) Recall that people with special interests and expectations are the target audience for particular messages or products in visual media.

(B) Select and design language and content that reflect this appeal (e.g., in advertising and sales techniques aimed specifically towards teenagers; in products aimed toward different classes, races, ages, genders; in the appeal of popular television shows and films for particular audience).

(3) **Standard - compose visual messages.** The student will create a visual message that effectively communicates an idea.

(A) Investigate and present the sources of a media presentation or production such as who made it and why it was made.

(B) Analyze a media presentation to get the main idea of the message's content and compose one using a similar format.

215:15-3-22. Language arts for grade 11

(a) **Reading/literature.** The student will apply a wide range of strategies to comprehend, interpret, evaluate, appreciate, and respond to a wide variety of texts.

(1) **Standard - vocabulary.** The student will expand vocabulary through word study, literature, and class discussion. Apply a knowledge of word origins (words from other languages, history, or literature) to determine the meaning of new words encountered in reading and use of those words accurately.

(A) Apply knowledge of Greek, Latin, and Anglo-Saxon roots and word parts to draw inferences about the meaning of scientific and mathematical terminology.

(B) Use reference material such as glossary, dictionary, thesaurus, and available technology to determine precise meaning and usage.

(C) Analyze the meaning of analogies encountered, analyzing specific comparisons as well as relationships and inferences.

(D) Rely on context to determine meanings of words and phrases such as figurative language, connotations and denotations of words, analogies, idioms, and technical vocabulary.

(E) Use word meanings within the appropriate context and verify those meanings by definition, restatement, example, and anology.

(2) **Standard - comprehension.** The student will interact with the words and concepts on the page to understand what the writer has said. Read and understand grade-level-appropriate material. Analyze the organization patterns and evaluate authors' argument and positions. At Grade 11, in addition to regular classroom reading, read a wide variety of classic and contemporary literature, poetry, magazines, newspapers, reference materials, and online information~~.~~ as well as expository (informational and technical) texts.

(A) **Literal understanding.**

(i) Identify the structures and format of various informational documents and explain how authors use the features to achieve their purpose.

(ii) Select and explain specific devices an author uses to accomplish purpose (persuasive techniques, style, literary forms or genre, portrayal of themes, language).

(iii) Use study strategies such as note taking, outlining, and using study-guide questions to better understand texts.

(iv) Constructs images such as graphic organizers based on text descriptions and text structures.

(B) **Inferences and interpretation.**

(i) Interpret the possible inferences of the historical context on literary works.

(ii) Describe the development of plot and identify conflict and how they are addressed and resolved.

(iii) Investigate influences on a reader's response to a text (e.g., personal experience and values; perspective shapes by age, gender, class, or nationality).

(iv) Make reasonable assertions about author's arguments by using elements of the text to defend and clarify interpretations.

(C) **Summary and generalization.**

(i) Determine the main idea and supporting details by producing summaries of text.

(ii) Use text features and elements to support inferences and generalizations about information.

(iii) Summarize and paraphrase complex, implicit hierarchic structures in informational texts, including relationships among concepts and details in those structures.

(D) **Analysis and evaluation.**

(i) Compare and contrast aspects of texts such as themes, conflicts, and allusions both within and across texts.

(ii) Analyze the structure and format of informational and literary documents and explain how authors use the features to achieve their purposes.

(iii) Examine the way in which clarity of meaning is affected by the patterns of organization, repetition of the main ideas, organization of language, and word choice in the text.

(iv) Analyze the way in which authors have used archetypes (universal modes or patterns) drawn from myth and tradition in literature, film, political speeches, and religious writings.

(3) **Standard - literature.** The student will read, construct meaning, and respond to a wide variety of literary forms. Read and respond to grade-level-appropriate historically or culturally significant works of British, American, or world literature. Conduct in-depth analysis of themes, styles, and trends of these works across historical periods. Participate productively in self-directed work teams to create observable products.

(A) **Literary genres.** Demonstrate a knowledge of and an appreciation for various forms of literature.

(i) Analyze the characteristics of genres including short story, novel, drama, poetry, and essay.

(ii) Analyze the characteristics of subgenres including allegory and ballad.

(B) **Literary elements.** Demonstrate knowledge of literary elements and techniques and show how they affect the development of a literary work.

(i) Analyze the way in which the theme or meaning of a selection represents a view or comment on life, using textual evidence to support the claim.

(ii) Analyze the way in which irony, tone, mood, the author's style, and the "sound" of language achieve specific rhetorical (communication) or aesthetic (artistic) purposes or both.

(iii) Analyze characters' traits by what the characters say about themselves in narration, dialogue, and soliloquy (when they speak out loud to themselves).

(iv) Evaluate the significance of various literary devices and techniques, including imagery, irony, tone, allegory (the use of fictional figures and actions to express truths about human experiences), and symbolism (the use of symbols to represent an idea or theme), and explain their appeal.

(v) Evaluate the author's purpose and the development of time and sequence, including the use of complex literary devices, such as foreshadowing (providing clues to future events) or flashbacks (interrupting the sequence of events to include information about an event that happened in the past).

(C) **Figurative language and sound devices.** Identify figurative language and sound devices and analyze how they affect the development of a literary work.

(i) Identify and explain figurative language including analogy, hyperbole, metaphor, personification, and simile.

(ii) Identify and explain sound devices including alliteration and rhyme.

(iii) Analyze the melodies of literary language, including its use of evocative words, rhythms and rhymes.

(D) **Literary works.** Read and respond to historically and culturally significant works of literature.

(i) Analyze and evaluate works of literature and the historical context in which they were written.

(ii) Analyze and evaluate literature from various cultures to broaden cultural awareness.

(iii) Compare works that express the recurrence of archetypal (universal) characters, settings, and themes in literature and provide evidence to support the ideas expressed in each work.

(iv) Analyze the clarity and consistency of political assumptions in a selection of literary works or essays on a topic.

(4) **Standard - research and information.** The student will conduct research and organize information.

(A) **Accessing information.** Select the best source for a given purpose.

(i) Access information from a variety of primary and secondary sources.

(ii) Skim text for an overall impression and scan text for particular information.

(iii) Use organizational strategies as an aid to comprehend increasingly difficult content material (e.g., compare/contrast, cause/effect, problem/solution, sequential order).

(B) **Interpreting information.** Analyze and evaluate information from a variety of sources.

(i) Summarize, paraphrase, and/or quote relevant information.

(ii) Determine the author's viewpoint to evaluate source credibility and reliability.

(iii) Synthesize information from multiple sources to draw conclusions that go beyond those found in any of the individual studies.

(iv) Identify complexities and inconsistencies in the information and the different perspectives found in each medium, including almanacs, microfiche, news sources, in-depth field studies, speeches, journals, technical documents, or internet sources.

(v) Develop presentations by using clear research questions and creative and critical research strategies, such as field studies, oral histories, interviews, experiments, and Internet sources.

(b) **Writing/grammar/mechanics and usage.** The student will express ideas effectively in written modes for a variety of purposes and audiences. Write coherent and focused texts that show a well defined point of view and tightly reasoned argument. The writing demonstrates progression through the stages of the writing process. ~~(prewriting, writing, editing, and revising).~~ Work independently and in self-directed work teams to edit and revise.

(1) **Standard - writing process.** The student will use the writing process to write coherently.

(A) Use a writing process to develop and refine composition skills. Students are expected to:

(i) use prewriting strategies to generate ideas such as brainstorming, using graphic organizers, keeping notes and logs, to develop voice and plan

(ii) develop multiple drafts both alone and collaboratively to categorize ideas, organizing them into paragraphs, and blending paragraphs into larger text.

(iii) organize and reorganize drafts and refine style to suit occasion, audience, and purpose.

(iv) proofread writing for appropriateness of organization, content and style.

(v) edit for specific purposes such as to insure standard usage, varied sentence structure, appropriate word choice, mechanics and spelling.

(vi) refine selected pieces frequently to publish for general and specific audiences.

(B) Demonstrate an understanding of the elements of discourse, such as purpose, speaker, audience, and form when completing narrative expository, persuasive, or descriptive writing assignments.

(C) Use language in creative and vivid ways to establish a specific tone.

(D) Use point of view, characterization, style, and related elements for specific rhetorical (communication) and aesthetic (artistic) purposes.

(E) Structure ideas and arguments in a sustained and persuasive way and support them with precise and relevent examples.

(F) Evaluate own writing and others' writing to highlight the individual voice, improve sentence variety and style, and enhance subtlety of meaning and tone in ways that are consistent with the purpose, audience, and form of writing.

(2) **Standard - modes and forms of writing.** The student will write for a variety of purposes and audiences using narrative, descriptive, expository, persuasive, and reflective modes. At Grade 11, continue to combine the rhetorical strategies of narration, exposition, persuasion, reflection, and description to produce text of at least 1,500 words. Refine reflective compositions and historical investigation reports and become familiar with forms of job applications and resumes. Deliver multimedia presentations on varied topics. Demonstrate a command of Standard English and the research, organization, and drafting strategies outlined in the writing process. (Writing demonstrates an awareness of the audience [intended reader] and purpose for writing.)

(A) Write fictional, biographical or autobiographical narratives that:

(i) narrate a sequence or events and communicate their significance to the audience.

(ii) identify scenes and incidents in specific places.

(iii) describe with specific details the sight, sounds, and smells of a scene and the specific actions, movements, gestures, and feelings of the character; use interior monologue (what character says silently to self) to show the character's feelings.

(iv) present action segments to accommodate changes in time and mood. Example: Read several short essays by writers on the practice of writing such as an excerpt from Anne Lamott's *Bird by Bird* or essays by Wallace Stegner or other authors on writing. Write an essay on how reading and/or writing have been significant in your life.

(B) Job applications and resumes that:

(i) provide clear and purposeful information and address the intended audience appropriately.

(ii) indicate varied levels, patterns, and types of language to achieve intended effects and aid comprehension.

(iii) modify the tone to fit the purpose and audience.

(iv) follow the conventional style for that type of document (resume, cover letter of application) and use page format, fonts (typeface), and spacing that contribute to the readability and impact of the document. Example: Write a resume outlining job experience, extra curricular activities and other skills. Format the document so that the information is clearly represented for the intended audience.

(C) Write historical investigations that:

(i) use expository, narration, description, argumentation, or some combination of rhetorical strategies to support the main argument.

(ii) analyze several historical records of a single event, examining critical relationships between elements of the topic.

(iii) explain the perceived reason or reasons for the similarities and differences in historical records with information derived from primary and secondary sources to support or enhance the presentation.

(iv) include information from all relevant perspectives and take into consideration the validity and reliability of sources.

(v) include a formal bibliography. Example: Compose an essay on Alexis de Tocqueville's 1830's observations on American political and social life. Examine other historical documents to determine how accurate and perspective de Tocqueville's analysis was, and how his views of society reflect the United States today.

(D) Write reflective, persuasive, and argumentative compositions that may address one of the following purposes:

(i) explore the significance of personal experiences, events, conditions, or concerns by using rhetorical strategies, including narration, description, exposition, and persuasion.

(ii) draw comparisons between specific incidents and broader themes that illustrate the writer's important beliefs or generalizations about life.

(iii) maintain a balance in describing individual incidents and relate those incidents to more general and abstract ideas. Example: Select a quotation that is particularly meaningful. Explain the significance of the quotation.

(E) Write responses to literature that:

(i) demonstrate a comprehensive understanding of the significant ideas in works or passages.

(ii) analyze the use of imagery language, universal themes, and unique aspects of the text.

(iii) support important ideas and viewpoints through accurate and detailed reference to the text or to other works.

(iv) demonstrate an understanding of author's style and an appreciation of the effects created.

(v) identify and assess the impact of ambiguities, nuances, and complexities within the text. Example: After reading. "*The Fall of the House of Usher~~s~~*" by Edgar Allan Poe (an example of observer narration), *"The Prison*" by Bernard Malamud (an example of single character point of view), and *"The Boarding House*" by James Joyce (an example of the multiple character point of view), analyze in an essay how the authors' choices of literary narrator made a difference in the response of the reader. Reference examples from throughout the works in support of a position.

(F) Write for different purposes and to a specific audience or person, adjusting tone and style as necessary to make writing interesting. Continue to produce other writing forms introduced in earlier grades. Example: Write stories, reports, and letters showing a variety of word choices, or review a favorite book or film~~.~~, or compose proposals or project plans.

(G) Write documented papers incorporating the techniques of Modern Language Association (MLA) or similar parenthetical styles.

(3) **Standard - grammar/usage and mechanics.** The student will demonstrate appropriate practices in writing by applying Standard English conventions to the revising and editing stages of writing.

(A) **Standard English usage.** Demonstrate correct use of Standard English in speaking and writing. Work independently and in self-directed work teams to edit and revise.

(i) Distinguish commonly confused words (e.g., there, their, they're; two, too, to; accept, except; affect, effect).

(ii) Use correct verb forms and tenses.

(iii) Use correct subject-verb agreement.

(iv) Use active and passive voice.

(v) Use correct pronoun/antecedent agreement and clear pronoun reference.

(vi) Use correct forms of comparative and superlative adjectives.

(B) **Mechanics and spelling.** Demonstrate appropriate language mechanics in writing.

(i) Demonstrate correct use of capitals.

(ii) Use correct formation of plurals.

(iii) Demonstrate correct use of punctuation and recognize its effect on sentence structure.

(iv) Use correct spelling of commonly misspelled words and homonyms.

(C) **Sentence structure.** Demonstrate appropriate sentence structure in writing.

(i) Use parallel structure.

(ii) Correct dangling and misplaced modifiers.

(iii) Correct run-on sentences.

(iv) Correct fragments.

(D) Apply appropriate manuscript conventions in writing including title page presentation, pagination, spacing and margins, and integration of sources and support material, by citing sources within the text, using direct quotations, and paraphrasing.

(c) **Oral language/listening and speaking.** The student will demonstrate thinking skills in listening and speaking. Formulate thoughtful judgments about oral communication. Deliver focused and coherent presentations that convey clear and distinct perspectives and solid reasoning. Deliver polished formal and extemporaneous presentations that combine the traditional speech strategies of narration, exposition, persuasion, and description. Use gestures, tone, and vocabulary appropriate to the audience and purpose. Use the same Standard English conventions for oral speech that are used in writing. Participate independently and in groups to create oral presentations.

(1) **Standard - listening.** The student will listen for information and for pleasure.

(A) Demonstrate proficiency in critical empathetic, appreciative, and reflective listening to interpret, respond and evaluate speaker's messages.

(B) Use effective strategies for listening such as prepares for listening, identifies the types of listening, and adopts appropriate strategies.

(C) Listen and respond appropriately to presentations and performances of peers or published works such as original essays or narratives, interpretations of poetry, and individual or group performances.

(D) Use effective strategies to evaluate own listening such as asking questions for clarification, comparing and contrasting interpretations with others, and researching points of interest or contention.

(E) Use effective listening to provide appropriate feedback in a variety of situations such as conversations and discussions and informative, persuasive, or artistic presentations.

(2) **Standard speaking.** The student will express ideas and opinions in group or individual situations.

(A) Use a variety of verbal and nonverbal techniques in presenting oral messages such as pitch and tone of voice, posture, and eye contact, and demonstrate poise and control while presenting.

(B) Use logical, ethical, and emotional appeals that enhance a specific tone and purpose.

(C) Evaluate when to use different kinds of effects (including visuals, music, sound, and graphics) to create effective presentations.

(D) Ask clear questions for a variety of purposes and respond appropriately to the questions of others.

(d) **Visual literacy.** The student will interpret, evaluate, and compose visual messages.

(1) **Standard - interpret meaning.** The student will interpret and evaluate the various ways visual image-makers including graphic artists, illustrators, and news photographers represent meaning.

(A) Use a range of strategies to interpret visual media (e.g., draw conclusions, make generalizations, synthesizes material viewed, refer to images or information in visual media to support point of view).

(B) Describes how editing shapes meaning in visual media (e.g., omission of alternative perspectives; filtered or implied viewpoints; emphasis of specific ideas, images, or information in order to serve particular interests).

(2) **Standard - evaluate media.** The student will evaluate visual and electronic media, such as film, as they compare with print messages.

(A) Uses a variety of criteria (e.g., clarity, accuracy, effectiveness, bias, relevance of facts) to evaluate informational media (e.g., Web sites, documentaries, news programs.

(B) Identifies the rules and expectations about genre that can be manipulated for particular effects or purposes (e.g., combining or altering conventions of different genres, such as presenting news as entertainment; blurring of genres, such as drama-documentaries).

(3) **Standard - compose visual messages.** The student will create a visual message that effectively communicates an idea.

(A) Design and develop genres such as nightly news, news magazines, and documentaries and identify the unique properties of each.

(B) Compare, contrast, and critique various media coverage of the same events such as in newspapers, television, and on the Internet and compose a study of the results.

210:15-3-23. Language arts for grade 12

(a) **Reading/literature.** The student will apply a wide range of strategies to comprehend, interpret, evaluate, appreciate, and respond to a wide variety of texts.

(1) **Standard - vocabulary.** The student will expand vocabulary through word study, literature, and class discussion. Apply a knowledge of word origins (words from other languages, history, or literature) to determine the meaning of new words encountered in reading and use those words accurately.

(A) Apply knowledge of Greek, Latin, and Anglo-Saxon roots and word parts to draw inferences about new words that have been created in the fields of science and mathematics (gene splicing, genetic engineering).

(B) Research unfamiliar words based on characters or themes or historical events.

(C) Analyze the meaning of analogies encountered, analysing specific comparisons as well as relationships and inferences.

(D) Rely on context to determine meanings of words and phrases such as figurative language, connotations and denotations of words, analogies, idioms, and technical vocabulary.

(2) **Standard - comprehension.** The student will interact with the words and concepts on the page to understand what the writer has said. Read and understand grade-level-appropriate material. Analyze the organization patterns and evaluate authors' argument and positions. At Grade 12, in addition to regular classroom reading, read a wide variety of classic and contemporary literature, poetry, magazines, newspapers, reference materials, and online information~~.~~, as well as expository (informational and technical) texts.

(A) **Literal understanding.**

(i) Identify the structures and format of various informational documents and explain how authors use the features to achieve their purpose.

(ii) Explain specific devices an author uses to accomplish purpose (persuasive techniques, style, literary forms or genre, portrayal of themes, language).

(iii) Use study strategies such as note taking, outlining, and using study-guide questions to better understand texts.

(iv) Construct images such as graphic organizers based on text descriptions and text structures.

(v) Read silently with comprehension for a sustained period of time.

(B) **Inferences and interpretation.**

(i) Interpret the possible inferences of the historical context on literary works.

(ii) Describe the development of plot and identify conflict and how they are addressed and resolved.

(iii) Identify influences on a reader's response to a text (e.g., personal experience and values; perspective shapes by age, gender, class, or nationality).

(iv) Make reasonable assertions about authors' arguments by using elements of the text to defend and clarify interpretations.

(C) **Summary and generalization.**

(i) Determine the main idea and supporting details by producing summaries of text.

(ii) Use text features and elements to support inferences and generalizations about information.

(iii) Summarize and paraphrase complex, implicit hierarchic structures in informational texts, including relationships among concepts and details in those structures.

(iv) Compare and contrast elements of text such as themes, conflicts, and allusions both within and across text.

(D) **Analysis and evaluation.**

(i) Investigate both the features and the rhetorical (communication) devices of different types of public documents, such as policy statements, speeches, or debates, and the ways in which authors use those features and devices.

(ii) Examine the structure and format of informational and literary documents and explain how authors use the features to achieve their purposes.

(iii) Analyze the way in which clarity of meaning is affected by the patterns of organization, repetition of the main ideas, organization of language, and word choice in the text.

(iv) Analyze the way in which authors have used archetypes (universal modes or patterns) drawn from myth and tradition in literature, film, political speeches, and religious writings.

(v) Evaluate the credibility of information sources, including how the writer's motivation may affect that credibility.

(3) **Standard - literature.** The student will read, construct meaning, and respond to a wide variety of literary forms. Read and respond to grade-level-appropriate historically or culturally significant works of British, American, and world literature. Conduct in-depth analysis of themes, styles, and trends of these works across historical periods. Participate productively in self-directed work teams to create observable products.

(A) **Literary genres.** Demonstrate a knowledge of and an appreciation for various forms of literature.

(i) Analyze the characteristics of genres including short story, novel, drama, poetry, and essay.

(ii) Analyze the characteristics of subgenres including allegory, ballad, elegy, ode, parody, pastoral, satire and tragedy.

(B) **Literary elements.** Demonstrate knowledge of literary elements and techniques and show how they affect the development of a literary work.

(i) Evaluate the way in which the theme or meaning of a selection represents a view or comment on life, using textual evidence to support the claim.

(ii) Analyze the way in which irony, tone, mood, the author's style, and the "sound" of language achieve specific rhetorical (communication) or aesthetic (artistic) purposes or both.

(iii) Analyze characters' traits by what the characters say about themselves in narration, dialogue, and soliloquy (when they speak out loud to themselves).

(iv) Evaluate the significance of various literary devices and techniques, including imagery, allegory (the use of fictional figures and actions to express truths about human experiences), and symbolism (the use of symbols to represent an idea or theme), and explain their appeal.

(v) Evaluate the author's purpose and the development of time and sequence, including the use of complex literary devices, such as foreshadowing (providing clues to future events) or flashbacks (interrupting the sequence of events to include information about an event that happened in the past).

(C) **Figurative language and sound devices.** Identify figurative language and sound devices and analyze how they affect the development of a literary work.

(i) Identify and explain figurative language including analogy, hyperbole, metaphor, personification, and simile.

(ii) Identify and explain sound devices including alliteration and rhyme.

(iii) Analyze the melodies of literary language, including its use of evocative words, rhythms and rhymes.

(D) **Literary works.** Read and respond to historically and culturally significant works of literature.

(i) Analyze and evaluate works of literature and the historical context in which they were written.

(ii) Analyze and evaluate literature from various cultures to broaden cultural awareness.

(iii) Compare works that express the recurrence of archetypal (universal modes or patterns) characters, settings, and themes in literature and provide

evidence to support the ideas expressed in each work.

(iv) Analyze the clarity and consistency of political assumptions in a selection of literary works or essays on a topic.

(4) **Standard - research and information.** The student will conduct research and organize information.

(A) **Accessing information.** Select the best source for a given purpose.

(i) Access information from a variety of primary and secondary sources.

(ii) Skim text for an overall impression and scan text for particular information.

(iii) Use organizational strategies as an aid to comprehend increasingly difficult content material (e.g., compare/contrast, cause/effect, problem/solution, sequential order).

(B) **Interpreting information** - Analyze and evaluate information from a variety of sources.

(i) Summarize, paraphrase, and or quote relevant information.

(ii) Determine the author's viewpoint to evaluate source credibility and reliability.

(iii) Synthesize information from multiple sources to draw conclusions that go beyond those found in any of the individual studies.

(iv) Identify complexities and inconsistencies in the information and the different perspectives found in each medium, including almanacs, microfiche, news sources, in-depth field studies, speeches, journals, technical documents, or internet sources.

(v) Develop presentations by using clear research questions and creative and critical research strategies, such as field studies, oral histories, interviews, experiments, and Internet sources.

(vi) Compiles written ideas and information into reports, summaries, or other formats and draw conclusions.

(b) **Writing/grammar/ mechanics and usage.** The student will express ideas effectively in written modes for a variety of purposes and audiences. Write coherent and focused texts that show a well defined point of view and tightly reasoned argument. The writing demonstrates a progression through the stages of the writing process. ~~(prewriting, writing, editing, and revising).~~ Work independently and in self-directed work teams to edit and revise.

(1) **Standard - writing process.** The student will use the writing process to write coherently.

(A) Use a writing process to develop and refine composition skills. Students are expected to:

(i) use prewriting strategies to generate ideas such as brainstorming, using graphic organizers, notes and logs, to develop voice, and plan.

(ii) develop multiple drafts both alone and collaboratively to categorize ideas organizing them into paragraphs, and blending paragraphs into larger text.

(iii) organize and reorganize drafts and by refining style to suit occasion, audience, and purpose.

(iv) proofread writing for appropriateness of organization, content, and style.

(v) edit for specific purposes such as to insure standard usage, varied sentence structure, appropriate word choice, mechanics, and spelling.

(vi) refine selected pieces frequently to publish for general and specific audiences.

(B) Demonstrate an understanding of the elements of discourse, such as purpose, speaker, audience, and form when completing narrative expository, persuasive, or descriptive writing assignments.

(i) Enhance meaning by using rhetorical devices, including the extended use of parallelism, repetition, and analogy and the issuance of a call for action.

(ii) Use point of view, characterization, style, and related elements for specific rhetorical (communication) and aesthetic (artistic) purposes.

(iii) Structure ideas and arguments in a sustained and persuasive way and support them with precise and relent examples.

(iv) Evaluate own writing and others' writing to highlight the individual voice, improve sentence variety and style, and enhance subtlety of meaning and tone in ways that are consistent with the purpose, audience, and form of writing.

(v) Further develop unique writing style and voice, improve sentence variety, and enhance subtlety of meaning and toner in ways that are consistent with the purpose, audience, and of writing.

(2) **Standard - modes and forms of writing.** The student will write for a variety of purposes and audiences using narrative, descriptive, expository, persuasive, and reflective modes. At Grade 12, continue to combine the rhetorical strategies of narration, exposition, persuasion, and description: to produce reflective compositions, historical investigation reports, and deliver multimedia presentations. The writing demonstrates a command of Standard English and the research, organization, and drafting strategies outlined in the writing process. Writing demonstrates an awareness of the audience (intended reader) and purpose for writing.

(A) Write fictional, biographical or autobiographical narratives that:

(i) narrate a sequence or events and communicate their significance to the audience.

(ii) locate scenes and incidents in specific places.

(iii) describe with specific details the sight, sounds, and smells of a scene and the specific actions, movements, gestures, and feelings of the character; use interior monologue (what character says silently to self) to show the character's feelings.

(iv) present action segments to accommodate changes in time and mood. Example: After

reading from Geoffrey Chaucer's *The Canterbury Tales*, write your own version of a traveler's tale.

(B) Write historical investigations that:

(i) use expository, narration, description, argumentation, or some combination of rhetorical strategies to support the main argument.

(ii) analyze several historical records of a single event, examining critical relationships between elements of the topic.

(iii) explain the perceived reason or reasons for the similarities and differences in historical records with information derived from primary and secondary sources to support or enhance the presentation.

(iv) include information from all relevant perspectives and take into consideration the validity and reliability of sources.

(v) include a formal bibliography. Example: Write a historical investigation report on the death of Diana, Princess of Wales. Include perspectives from newspapers or accounts of witnesses. Place the event into the larger societal context of the time, and indicate how or if the event has impacted the British and people from around the world.

(C) Write reflective, persuasive, and argumentative compositions that may address one of the following purposes:

(i) explore the significance of personal experiences, events, conditions, or concerns by using rhetorical strategies, including narration, description, exposition, and persuasion.

(ii) draw comparisons between specific incidents and broader themes that illustrate the writer's important beliefs or generalizations about life.

(iii) maintain a balance in describing individual incidents and relate those incidents to more general and abstract ideas. Example: Write a reflective essay for fellow students on the significance of family in one's life or on growing up at the turn of the 21st century. Make personal observations, but connect them to a larger theme of interest to your audience.

(D) Write responses to literature that:

(i) demonstrate a comprehensive understanding of the significant ideas in works or passages.

(ii) analyze the use of imagery, language universal themes, and unique aspects of the text.

(iii) support important ideas and viewpoints through accurate and detailed reference to the text or to other works.

(iv) demonstrate an understanding of author's style and an appreciation of the effects created.

(v) identify and assess the impact of ambiguities, nuances, and complexities within the text. Example: Analyze the events, point of view, and characterization in Virginia Woolf's novel *Mrs. Dalloway*. Write an essay arguing whether or not criticism of her work is valid.

(E) Write for different purposes and to a specific audience or person, adjusting tone and style as necessary to make writing interesting. Continue to produce other forms of writing introduced in earlier grades. Example: Write stories, reports, and letters showing a variety of word choices, or review a favorite book or film~~.~~, or compose proposals or project plans.

(F) Write documented papers incorporating the techniques of Modern Language Association (MLA) or similar parenthetical styles.

(3) **Standard - grammar/usage and mechanics.** The student will demonstrate appropriate practices in writing by applying Standard English conventions to the revising and editing stages of writing.

(A) **Standard English usage.** Demonstrate correct use of Standard English in speaking and writing.

(i) Distinguish commonly confused words (e.g., there, their, they're; two, too, to; accept, except; affect, effect).

(ii) Use correct verb forms and tenses.

(iii) Use correct subject-verb agreement.

(iv) Distinguish active and passive voice.

(v) Use pronouns effectively, correct pronoun/antecedent agreement, and clear pronoun reference.

(vi) Use correct forms of comparative and superlative adjectives.

(B) **Mechanics and spelling.** Demonstrate appropriate language mechanics in writing.

(i) Demonstrate correct use of capitals.

(ii) Use correct formation of plurals.

(iii) Demonstrate correct use of punctuation and recognize its effect on sentence structure.

(iv) Use correct spelling of commonly misspelled words and homonyms.

(C) **Sentence structure** - The student will demonstrate appropriate sentence structure in writing.

(i) Use parallel structure.

(ii) Correct dangling and misplaced modifiers.

(iii) Correct run-on sentences.

(iv) Correct fragments.

(D) Apply appropriate manuscript conventions in writing including title page presentation, pagination, spacing and margins, and integration of sources and support material, by citing sources within the text, using direct quotations, and paraphrasing.

(c) **Oral language/listening and speaking.** The student will demonstrate thinking skills in listening and speaking. Formulate thoughtful judgments about oral communication. Deliver focused and coherent presentations that convey clear and distinct perspectives and solid reasoning. Deliver polished formal and extemporaneous presentations that combine the traditional speech strategies of narration, exposition, persuasion, and description. Use gestures, tone, and vocabulary appropriate to the audience and purpose. Use the same Standard English conventions for oral speech that are used in writing. Participate independently and in groups to create oral presentations.

(1) **Standard - listening.** The student will listen for information and for pleasure.

(A) Demonstrate proficiency in critical empathetic, appreciative, and reflective listening to interpret, respond and evaluate speaker's messages.

(B) Use effective strategies for listening such as prepares for listening, identifies the types of listening, and adopts appropriate strategies.

(C) Listen and respond appropriately to presentations and performances of peers or published works such as original essays or narratives, interpretations of poetry, and individual or group performances.

(D) Use effective strategies to evaluate own listening such as asking questions for clarification, comparing and contrasting interpretations with others, and researching points of interest or contention.

(E) Use effective listening to provide appropriate feedback in a variety of situations such as conversations and discussions and informative, persuasive, or artistic presentations.

(2) **Standard - speaking.** The student will express ideas and opinions in group or individual situations.

(A) Use a variety of verbal and nonverbal techniques in presenting oral messages such as pitch and tone of voice, posture, and eye contact, and demonstrate poise and control while presenting.

(B) Use language and rhetorical strategies skillfully in informative and persuasive messages.

(C) Use logical, ethical, and emotional appeals that enhance a specific tone and purpose.

(D) Use effective and interesting language, including informal expressions for effect, Standard English for clarity, and technical language for specificity.

(E) Evaluate when to use different kinds of effects (including visuals, music, sound, and graphics) to create a presentation.

(F) clear questions for a variety of purposes and respond appropriately to the questions of others.

(d) **Visual literacy.** The student will interpret, evaluate, and compose visual messages.

(1) **Standard - interpret meaning.** The student will interpret and evaluate the various ways visual image-makers including graphic artists, illustrators, and news photographers represent meaning.

(A) Use a range of strategies to interpret visual media (e.g., draw conclusions, make generalizations, synthesizes material viewed, refer to images or information in visual media to support point of view).

(B) Demonstrate how editing shapes meaning in visual media (e.g., omission of alternative perspectives; filtered or implied viewpoints; emphasis of specific ideas, images, or information in order to serve particular interests).

(2) **Standard - evaluate media.** The student will evaluate visual and electronic media, such as film, as they compare with print messages.

(A) Uses a variety of criteria (e.g., clarity, accuracy, effectiveness, bias, relevance of facts) to evaluate informational media (e.g., Web sites, documentaries, news programs).

(B) Identifies the rules and expectations about genre that can be manipulated for particular effects or purposes (e.g., combining or altering conventions of different genres, such as presenting news as entertainment; blurring of genres, such as drama-documentaries).

(3) **Standard - compose visual messages.** The student will create a visual message that effectively communicates an idea.

(A) Use the effects of media on constructing his/her own perception of reality.

(B) Use a variety of forms and technologies such as videos, photographs, and Web pages to communicate specific messages.

[OAR Docket #07-1208; filed 5-25-07]

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

[OAR Docket #07-1209]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 13. Special Education
210:15-13-1. Purpose [AMENDED]
210:15-13-2. Special education assurances and certification (Part B) [AMENDED]
210:15-13-3. Special education assurances and certification (Part H) [AMENDED]
AUTHORITY:
70 O. S. § 3-104, State Board of Education
DATES:
Comment period:
February 15, 2007 through March 21, 2007
Public hearing:
March 22, 2007
Adoption:
March 29, 2007
Submitted to Governor:
March 30, 2007
Submitted to House:
March 30, 2007
Submitted to Senate:
March 30, 2007
Gubernatorial approval:
May 4, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 24, 2007
Final adoption:
May 24, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATION BY REFERENCE:
N/A
ANALYSIS:
The purpose of the rule is to provide consistency with current wording of practices and statute and is necessary to prevent confusion from constituents.

CONTACT PERSON:
Connie Holland, 405-521-3308

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 13. SPECIAL EDUCATION

210:15-13-1. Purpose

The purpose of these assurances and certifications made in this Subchapter is to meet federal requirements of Parts B and ~~H~~C of the Individuals with Disabilities Education Improvement Act [20 U.S.C. 1411-1420; 1401-1420; 1483], to assure that all policies and procedures regarding special education adhere to all pertinent Oklahoma State laws [70 O.S. 13-101 through 13. 114.4 and 13-121 through 13-129], and to incorporate by reference all applicable federal and state laws, regulations, and policies.

210:15-13-2. Special education assurances and certifications (Part B)

(a) **Assurance statements.** The State Department of Education makes the following assurances and provisions as required by Part B of the Individuals with Disabilities Education Improvement Act [20 U.S.C. 1411-1420]. Additionally, the Department assures that all policies and procedures regarding special education adhere to all pertinent Oklahoma State laws [70 O.S. § 13-101 through 13-114.4 and § 13-121 through 13-129].

(1) In carrying out the requirements of 20 U.S.C. 1412, procedures are established for consultation with individuals involved in or concerned with the education of children with disabilities, including disabled individuals and parents or guardians of children with disabilities [20 U.S.C. 1412(7) (A)].

(2) Programs and procedures will be established to assure that funds received by the State or any of its political subdivisions under any other Federal program, including subpart 2 of part D of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 and section 202(1) of the Carl D. Perkins Vocational Education Act, under which there is specific authority for the provision of assistance for the education of children with disabilities, will be utilized by the State, or any of its political subdivisions, only in a manner consistent with goal of providing a free appropriate public education for all children with disabilities, except that nothing in this clause shall be construed to limit the specific requirements of the laws governing such Federal programs [20 U.S.C. 1413 (a) (2)].

(3) Federal funds made available under the Act:

(A) will not be commingled with State funds; and

(B) will be so used as to supplement and increase the level of Federal, State, and local funds (including funds that are not under the control of State of local educational agencies) expended for special education and related services provided to children with disabilities and will in no case be used to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate education, the Secretary may waive in part the requirement of this clause if the Secretary concurs with evidence provided by the State [20 U.S.C. 1413 (a) (9) (B) and 20 U.S.C. 1414 (a) (2) (B) (ii)].

(4) The State has an advisory panel, appointed by the Governor or any other official authorized under State law to make such appointments, composed of individuals involved in , or concerned with, the education of children with disabilities, including disabled individuals, teachers, parents or guardians of children with disabilities, State and local officials, which:

(A) advises the State educational agency of unmet needs within the State in the education of children with disabilities;

(B) comments publicly on any rules or regulations proposed for issuance by the State regarding the education of children with disabilities, and the procedures for distribution of funds under the Act; and

(C) assists the State in developing and reporting such data and evaluations as may assist the Secretary in the performance of his responsibilities under 20 U.S.C. 1418 [20 U.S.C. 1413 (a) (12)].

(5) The Individuals with Disabilities Education Improvement Act will not be construed by the State to permit the State to reduce medical or other assistance available under, or to alter the eligibility requirements of, programs funded in whole or in part through Title V (Maternal and Child Health) or Title XIX (Medicaid) of the Social Security Act, with respect to the prevision of a free appropriate public education for children with disabilities within the State.

(b) **General State application.** The State educational agency provides assurances that it will comply with the provisions contained in 34 CFR 76.101.

(c) **Certification.** In accordance with 34 CFR 76.104 the state educational agency assures:

(1) That the Plan is submitted by the state agency that is eligible to submit the Plan.

(2) That the State agency has authority under State law to perform the functions of the State under the program.

(3) That the State legally may carry out each provision of the Plan.

(4) That all provisions of the plan are consistent with State Law.

(5) That a State Officer, specified by title in the certification, has authority under State law to receive, hold and disburse Federal funds made available under the Plan.

(6) That the State Officer who submits this plan, specified by title in the certification, has authority to submit the Plan.

(7) That the agency that submits the Plan has adopted or otherwise formally approved the Plan.

(8) That the Plan is the basis for State operation and administration of the program.

(d) **Right to education policy statement.**

(1) The Oklahoma State Department of Education (SDE) reaffirms the continuing commitment of the State to uphold the civil right of every child with disabilities (0-21) of access to a free, appropriate, public education.

(2) As the agency empowered to coordinate the supervision of all public and private special service programs throughout the State, the State Board of Education ensures through a variety of methods that required services are provided to all eligible children with disabilities (0-21) in conformity with the requirements of P.L. 94-142 and P.L. 99-457 and amendments.

(3) To ensure all public and private agencies are fully and accurately informed of required policies and procedures that must be followed in providing appropriate public education opportunities to children and youth with disabilities, the SDE annually distributes copies of its primary resource document POLICIES AND PROCEDURES MANUAL FOR SPECIAL EDUCATION IN OKLAHOMA. This manual was originally conceived as an adjunct to the State Plan and has since evolved into a highly utilitarian guide for designing, implementing, monitoring and evaluating special education programs. Basically, the manual describes:

(A) The roles and responsibilities under P.L. 94-142 (and amendments) of the SDE, LEAs and other public and private special service providers;

(B) Policies and procedures to be followed by all parties; and

(C) Forms to be used to document IEP process.

(4) Section I and II of the manual reaffirm the State policy of providing a free, appropriate, public education to every eligible child with disabilities in Oklahoma, ages 0-21 years.

210:15-13-3. Special education assurances and certifications (Part ~~H~~C)

(a) **Assurance statements.** The State Department of Education (SDE), as lead agency, makes the following assurances and provisions as required by Part ~~H~~C of the Individuals with Disabilities Education Improvement Act [20 U.S.C. 1401-1418~~; 1420; 1483~~]. Additionally, the SDE assures that all policies and procedures regarding early intervention adhere to all pertinent Oklahoma State laws [70 O.S. § 13-121 through 129, 70 O.S. Supp. 1991 § 13-124]

(1) Funds received under Part ~~H~~C will be used by the SDE to plan, develop and implement the statewide system of early intervention services [20 U.S.C. 1473~~, 1479~~].

(2) The SDE will:

(A) provide reports containing information that the Secretary may require, and

(B) keep records and afford access to those records as the Secretary may find necessary to assure the correctness and verification of reports and proper disbursement of funds provided under Part ~~H~~C [20 U.S.C. 1478 (b) (4)].

(3) The control of Federal funds made available under Part ~~H~~C and title to property acquired with those funds is in a public agency for the uses and purposes provided by Part ~~H~~C and a public agency administers the funds and property [20 U.S.C. 1478 (b) (3)].

(4) Federal funds made available under Part ~~H~~C will not be commingled with State funds [20 U.S.C. 1478 (b) (5) (A)].

(5) Federal funds made available under Part ~~H~~C will be used to supplement and increase the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant such State and local funds [20 U.S.C. 1478 (b) (5) (B)].

(6) Fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under Part ~~H~~C [20 U.S.C. 1478 (b) (6)].

(7) The SDE will not use its Part ~~H~~C funds to satisfy a financial commitment for services which would have been paid for from another public or private source but for the enactment of Part ~~H~~C except that whenever considered necessary to prevent a delay in the timely provision of services to an eligible child or family, the Part ~~H~~C funds may be used to pay the provider of services, pending reimbursement from the agency which has the ultimate responsibility for the payment [20 U.S.C. 1481].

(8) The SDE will not construe anything in Part ~~H~~C to reduce medical or other assistance available or to alter eligibility under Title V of the Social Security Act (relating to Maternal and Child Health) or Title XIX of the Social Security Act (relating to Medicaid) within the State [20 U.S.C. 1481].

(9) Federal funds paid to the SDE under Part ~~H~~C for developing a statewide early intervention system will be expended in accordance with the provisions of Part ~~H~~C [20 U.S.C. 1478 (b) (1)].

(b) **General State application.** The SDE provides assurances that it will comply with the provisions contained in 34 CFR 76.101.

(c) **Certification.** In accordance with 34 CFR 76.104, the SDE assures:

(1) That the Plan is submitted by the state agency that is eligible to submit the Plan.

(2) That the SDE has authority under State law to perform the functions of the State under the program.

(3) That the SDE legally may carry out each provision of the Plan.

(4) That all provisions of the Plan are consistent with State Law.

(5) That a State Officer, specified by title in the certification, has authority under State law to receive, hold and disburse Federal funds made available under the Plan.

(6) That the State Officer who submits this plan, specified by title in the certification, has authority to submit the plan.

(7) That the agency that submits the Plan has adopted or otherwise formally approved the Plan.

(8) That the Plan is the basis for SDE operation and administration of the program.

(d) **Right to early intervention services policy statement.**

(1) The SDE, as lead agency, reaffirms the continuing commitment of the State to uphold the civil right of every eligible child with a disability (0-3) of access to appropriate early intervention services.

(2) The SDE, as lead agency, is responsible for the general administration, supervision and monitoring of programs and activities receiving federal funds under Part ~~H~~C of the Individuals with Disabilities Education Improvement Act and state funds appropriated for the Oklahoma Early Intervention Act. To ensure compliance with Part ~~H~~C as amended and its implementing regulations, the SDE is authorized to monitor and enforce any obligations imposed on agencies participating in accordance with 70 O.S. Supp. 1991 § 13-124 and related policies and procedures.

[OAR Docket #07-1209; filed 5-25-07]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 40. GRANTS AND PROGRAMS-IN-AID

[OAR Docket #07-1210]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 29. Oklahoma Special Education Assistance Fund
210:40-29-2. Reimbursement Claim and Funding Priorities [AMENDED]
AUTHORITY:
70 O. S. § 3-104, State Board of Education
DATES:
Comment period:
February 15, 2007 through March 21, 2007
Public hearing:
March 22, 2007
Adoption:
March 29, 2007
Submitted to Governor:
March 30, 2007
Submitted to House:
March 30, 2007
Submitted to Senate:
March 30, 2007
Gubernatorial approval:
May 4, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 24, 2007
Final adoption:
May 24, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATION BY REFERENCE:
N/A
ANALYSIS:
The proposed change would clarify the rule to state that the Oklahoma Special Education Assistance Fund would only be used when funding is available by the state legislature.
CONTACT PERSON:
Connie Holland, 405-521-3308

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 29. OKLAHOMA SPECIAL EDUCATION ASSISTANCE FUND

210:40-29-2. Reimbursement Claim and Funding Priorities

(a) Subject to funds being available, ~~An~~an annual reimbursement claim using computer-generated program expenditure reports (Project Code 366) shall be submitted to the Oklahoma State Department of Education (SDE) for the consideration of payment from the Oklahoma Special Education Assistance Fund.

(b) The deadline for the submission of such a claim shall be the second Monday of June or as otherwise established by the SDE.

(c) Available funds will be reimbursed among three (3) different categories of students with disabilities who are being served by a school district in accordance with an Individualized Education Program (IEP):

(1) Funding Priority Number 1: Students serviced in out-of-home placements as described in 70O.S. §1-113 (D);

(2) Funding Priority Number 2: Previously institutionalized students (Category 2 is subject to proration if appropriated funds are not sufficient to fully fund submitted claims); and

(3) Funding Priority Number 3: Students who require IEP services pursuant to the Individuals with Disabilities Education Act (IDEA) which result in extraordinary costs to the providing school district or district of residence (Category 3 is subject to proration if appropriated funds are not sufficient to fully fund submitted claims).

(d) If a school district's annual reimbursement claim is submitted after the established due date, the funding of such claim shall not be assured.

[OAR Docket #07-1210; filed 5-25-07]

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

[OAR Docket #07-1104]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Rationalization
265:10-3-3 [AMENDED]
265:10-3-4 [AMENDED]
AUTHORITY:
74 O.S. § 324.11a; and the State Fire Marshal Commission
DATES:
Comment period:
December 15, 2006 through January 16, 2007
Public hearing:
January 17, 2007
Adoption:
March 2, 2007
Submitted to Governor:
March 12, 2007
Submitted to House:
March 12, 2007
Submitted to Senate:
March 12, 2007
Gubernatorial approval:
April 2, 2007
Legislative approval:
Failure of the Legislature to disapprove resulted in approval on May 4, 2007
Final adoption:
May 4, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
265:10-3-3 and 265:10-3-4 amend the language to reference updates of state adopted codes. [74 O.S. § 324.11a]
CONTACT PERSON:
Jerry Pruner, Assistant State Fire Marshal, 2401 NW 23rd Street, Suite 4, Oklahoma City, OK 73107, 405-522-5005

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

SUBCHAPTER 3. RATIONALIZATION

265:10-3-3. Day nurseries (day care centers) and child care institutions

(a) **Definitions.**

(1) **"Day nursery (day care center)"** means a facility which provides care for six or more children for six or more hours of the 24-hour day.

(2) **"Child care institution"** means a 24-hour residential group care facility with a large number of unrelated children living together with adults other than parents. A specialized service to be selectively and appropriately used for certain children whose needs at the present time can not be adequately met within the family.

(b) **Installation.**

(1) Existing and new day nurseries, whether called day care, family day care, or group day care, must follow the provisions for smoke detection as outlined in sections 16.3.4.5 and 17.3.4.5 of the ~~2003~~2006 edition of the Life Safety Code, NFPA 101.

(2) Child Care Institutions shall be provided with smoke detection as follows:

(A) New facilities must meet the provisions of the ~~2003~~2006 International Building Code.

(B) Existing facilities must meet the appropriate provisions of the ~~2003~~2006 edition of the Life Safety Code based on the size of the facility.

(C) Existing child care institutions and day nurseries may use battery operated single station detectors to meet the requirements of the code provisions.

265:10-3-4. Residential

(a) **Definitions.**

(1) **"Hotels/motels"** means buildings or groups of buildings under the same management in which there are sleeping accommodations for hire, primarily used by transients who are lodged with or without meals, whether designated as a hotel, inn, club or motel, or by any other name. So-called apartment hotels, because they are potentially subject to transient occupancy like that of hotels, shall be classified as hotels.

(2) **"Dormitories"** means buildings or spaces in buildings where group sleeping accommodations are provided for persons not members of the same family group, in one room or in a series of closely associated rooms under joint occupancy and single- management, as in college dormitories, fraternity houses, sorority houses, with or without meals, but without individual cooking facilities.

(3) **"Apartment houses"** means buildings containing three or more living units with independent cooking and bathroom facilities, whether designated as Apartment House, Apartments for the Elderly, Tenement, Garden Apartments, or by any other name. Apartments for the elderly are specifically designed for housing older individuals who are capable of self-preservation.

(4) **"Rooming houses"** Includes buildings in which separate sleeping rooms are rented, providing sleeping accommodations for persons on either a transient or permanent basis, with or without meals, but without separate cooking facilities for individual occupants.

(5) **One and two-family rental property** means all detached one or two-family dwellings not more than three stories in height, and the accessory structures as indicated in the ~~2003~~2006 International Residential Code.

(b) **Approved installation.** All residential occupancies as defined in (a) of this section shall have smoke detection as

prescribed by either the ~~2003~~2006 International Building Code or the International Residential Code.

[OAR Docket #07-1104; filed 5-21-07]

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

[OAR Docket #07-1103]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
265:25-1-3 [AMENDED]
AUTHORITY:
74 O.S. § 324.11, 75 O.S. § 250 et seq.; and the State Fire Marshal Commission
DATES:
Comment period:
December 15, 2006 through January 16, 2007
Public hearing:
January 17, 2007
Adoption:
March 2, 2007
Submitted to Governor:
March 12, 2007
Submitted to House:
March 12, 2007
Submitted to Senate:
March 12, 2007
Gubernatorial approval:
April 2, 2007
Legislative approval:
Failure of the Legislature to disapprove resulted in approval on May 4, 2007
Final adoption:
May 4, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
See 265:25-1-3
ANALYSIS:
265:25-1-3 amends the language to reference updates of state adopted codes.
CONTACT PERSON:
Jerry Pruner, Assistant State Fire Marshal, 2401 NW 23rd Street, Suite 4, Oklahoma City, OK 73107, 405-522-5005

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

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

The following national codes and standards are incorporated by reference:

(1) International Building Code and its appendices, ~~2003~~2006 Edition, with the following modifications:

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

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

(ii) Building Plan Review:

(I) Preliminary review (no permit issued) - $55.00

(II) Review of plans submitted with an application for a building permit. Total permit fee is due at the time of submittal.

(iii) Alteration, Renovation, Repair:

(I) Minimum permit fee - $25.00

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

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

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

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

(I) Minimum permit fee - $25.00

(II) Rates where total exceeds the minimum

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

b. commercial occupancy: per square foot up to 50,000 - $.08; per square foot over 50,000 - $.05

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

d. sprinkler plan review only: per square foot - $.01

e. fire alarm plan review only: per square foot - $.01

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

(vi) Above Ground Fuel Storage:

(I) Inspection and permit fee - $100.00

(vii) Fireworks:

(I) Class B Fireworks display permit - $75.00

(II) Class C pyrotechnic display permit - $150.00

(viii) Change of Use of Existing Building:

(I) Analysis - $27.00 per hour

(ix) Required Plan Review Fees: Fees may be waived or reduced due to plan review charges by local authority.

(x) Marinas:

(I) On site plan review of facility will be billed at $27.00 per hour. Building Permit - $55.00

(xi) Fast-Track plan review fee schedule:

(I) Definition of Fast-Track Review; A plan review which disrupts normal plan review schedules, and requires review in 72 hours or less. Note: If plans cannot be reviewed in 72 hours or less, notification will be given, but fee schedule still applies.

(II) Check shall be made payable to: Office of the Oklahoma State Fire Marshal

a. Review time - $27.00 per hour

b. Two (2) hour minimum on all reviews.

(xii) Electrical Generation Facility Plan Review:

(I) Each turbine - $500.00

(II) Each site inspected - $54.00

(III) Fire Protection review justification - $500.00

(IV)Fire Protection Engineer review - 40 hours x $35.00 = $1,400.00

(xiii) Explosive Storage Facility: Inspection and permit fee is a minimum o $108.00 per magazine.

(B) Add new wording into paragraph "113.4 Violation penalties" Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or shall erect, construct, alter or repair a building or structure in violation of an approved plan or directive of the code official, or of a permit or certificate issued under the provisions of this code, shall be subject to an administrative fine as per State Statute 72 O.S., ~~1991~~ Section 324.9 ~~as amended July 1, 1999~~. The first repeat notice of violation or failure to provide a plan of correction a person may be subject to a warning, or a fine of $100.00. Second violation notice $150.00, third violation notice $200.00. Also, each day that a violation continues after due notice has been served shall be deemed a separate offense.

(C) Add new paragraph 112.4 "Procedures for Appeal of Condemnation," Procedures to be followed when appealing condemnation shall be those outlines in 74 O.S. Subsection 317.

(D) Add Section 101.4.8 NFPA 101 ~~2003~~2006 edition. The provisions of the NFPA 101, 2003 edition shall only apply when the AHJ approves those provisions to be applicable. Where differences occur between provisions of this code and the NFPA, the ~~provisions of this code shall~~ apply most stringent code shall apply.

(2) International Fire Prevention Code and its appendices, ~~2003~~2006 Edition, with the following modifications:

(A) Add new wording to Section 109.3 to read as follows: Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or shall erect, construct, alter or repair a building or structure in violation of an approved plan or directive of the code official, or of a permit or certificate issued under the provisions of this code, shall be subject to an administrative citation per State Statute 72 O.S. ~~1991~~, Section 324.9 ~~as amended July 1, 1999~~. The first repeat notice of violation or failure to provide a plan of correction, a person may be subject to a warning, or a fine of $100.00. Second violation notice $150.00, third violation notice $200.00. Also, each day that a violation continues after due notice has been served shall be deemed a separate offense.

(B) Section 111.4 adding new wording: Fine of not less than $50.00 or more than $200.00.

(C) Delete Section 307. Follow Oklahoma Statute Title 2 relating to unlawful burning.

(D) Add following to 102.7 NFPA 101 ~~2003~~2006 Edition is allowed to use where approved by AHJ. Where differences occur between this code and NFPA 101, the ~~provisions of this code shall apply, except approved by the AHJ~~ most stringent code shall apply.

(3) International Property Maintenance Code and its appendices, ~~2003~~2006 Edition.

(A) Delete Section 106.3.

(B) Add new wording into Section 106.4 to read as follows: Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or shall erect, construct, alter or repair a building or structure in violation of an approved plan or directive of the code official, or of a permit or certificate issued under the provisions of this code, shall be subject to an administrative fine per State Statute 74 O.S. ~~1991~~, Section 324.9 ~~as amended July 1, 1999~~. The first repeat notice of violation or failure to provide a plan of correction, a person may be subject to a warning, or a fine of $100.00. Second violation continues after due notice has been served shall be deemed a separate offense.

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

~~(4) Supplement to the International Codes, 2004 Edition.~~

(~~5~~4) NFPA #10 Portable Fire Extinguishers and its annex's, ~~2002~~2007 Edition.

(~~6~~5) NFPA #13 Installation of Sprinkler Systems and its annex's, ~~2002~~2007 Edition.

(~~7~~6) NFPA #13D Installation of Sprinklers in One and Two-Family Dwellings and its annex's, ~~2002~~2007 Edition.

(~~8~~7) NFPA #13R Sprinkler Systems in Residential Occupancies up to and including Four Stories in Height and its annex's, ~~2002~~2007 Edition.
(~~9~~8) NFPA #25 Water-Based Fire Protection Systems and its annex's, 2002 Edition.
(~~10~~9) NFPA #30 Flammable and Combustible Liquids Code and its annex's, 2003 Edition.
(~~11~~10) NFPA #30A ~~Automotive and Marine Service Station Code, 2003 Edition~~ Motor Fuel Dispensing facilities and Repair Garages and its annex's, 2003 Edition.
(~~12~~11) NFPA #54 Natural Fuel Gas Code and its annex's, ~~2002~~2006 Edition.
(12) NFPA #70 The National Electric Code and its annex's, 2005 Edition.
(13) NFPA #72 National Fire Alarm Code and its annex's, ~~2002~~2007 Edition.
(14) NFPA #90A Air Conditioning and Ventilating Systems and its annex's, 2002 Edition.
(15) NFPA #96 Installation of Equipment for the Removal of Smoke & Grease-Laden Vapors from Commercial Cooking Equipment and its annex's, ~~2001~~2004 Edition.
(16) NFPA #101 Life Safety Code and its annex's, ~~2003~~2006 Edition.
(17) Add new section 1-7 Violation Penalties to read as follows: Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or shall erect, construct, alter or repair a building or structure in violation of an approved plan or directive of the code official, or of a permit or certificate issued under the provisions of this code shall be subject to an administrative citation per State Statute 74 O.S. ~~1991~~, Section 324.9 ~~as amended July 1, 1999~~. The first repeat notice of violation or failure to provide a plan of correction, a person may be subject to a warning or a fine of $100.00. Second violation notice $150.00, third violation notice $200.00. Also, each day that a violation continues after due notice has been served shall be deemed a separate offense. Failure to comply with applicable codes, causing a re-inspection, will be billed at $27.00 per hour.
(18) NFPA #303 Fire Protection Standard for Marinas and Boatyards and its annex's, 2006 Edition.
(~~18~~19) NFPA #850 Electric Generating Plants and High Voltage Direct Converter Stations and its annex's, ~~2000~~2005 Edition.
(~~19~~20) NFPA #1123 Outdoor Display of Fireworks and its annex's, ~~2000~~2006 Edition.
(~~20~~21) NFPA #1124 Manufacturing, Transportation and Storage of Fireworks and its annex's, ~~2003~~2006 Edition.
(~~21~~22) NFPA #1126 Use of Pyrotechnics before a Proximate Audience and its annex's, ~~2001~~2006 Edition.

[OAR Docket #07-1103; filed 5-21-07]

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

[OAR Docket #07-1068]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 2. Procedures of the State Department of Health [AMENDED]
AUTHORITY:
Oklahoma State Board of Health; 63 O.S. Sections 1-101 et seq. and 1-1950.4
DATES:
Comment Period:
February 1, 2007 through March 8, 2007
Public Hearing:
March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007.
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The Department of Health is revising the procedural rules required by Article II of the Administrative Procedures Act that govern individual proceedings conducted by an Oklahoma agency. This rule proposal includes revisions governing procedures for filing administrative petitions and appeals, service of administrative process, scheduling of matters regarding individual proceedings, continuances, administrative subpoenas, discovery, pre-hearing conferences, motion practice, administrative sanctions and hearings. Additionally, this proposal includes revisions that will clarify which party has the burden of proof in a particular type of individual proceeding and also will establish differing standards of proof for administrative actions that seek only monetary penalties versus actions that impact or potentially prejudice a license, permit or other certification.

The proposal also deletes the requirement for employers to file with the State Health Department employment tracking forms for all nurse aides who are newly employed in Oklahoma. Employers affected by this proposal are nursing facilities and specialized nursing facilities, residential care homes, continuum of care facilities, assisted living centers, hospice inpatient facilities and hospice services, adult day care centers, and home care agencies. The proposal does not alter the requirement under 63 O.S. Section 1-1950.4 for employers to use a uniform employment application in the hiring of nurse aide staff. The proposal modifies the description of the uniform employment application to remove references to the tracking section of the form.

These changes will improve the efficiency of the hearing process by enhancing the clarity and consistency of procedures for parties appearing before the agency. This proposal is intended to achieve a just balance between the due process rights of the parties and the safety and health of the public in relation to the regulatory enforcement process.
CONTACT PERSON:
Ted D. Rossier, Assistant General Counsel, Office of General Counsel, telephone (405) 271-6017; facsimile: 405-271-1268; email: tedr@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 3. GENERAL OPERATION AND PROCEDURES

310:2-3-6. ~~Administrative Law Judges and clerks~~Office of Administrative Hearings

(a) **~~Administrative Law Judge.~~ Session hours.** ~~The Commissioner of Health may designate a person to serve as an Administrative Law Judge for any proceeding properly filed with the Commissioner or Department and for all proceedings within a particular departmental area, unless precluded by law. Administrative Law Judges shall be familiar with the rules of procedure and generally familiar with the substantive rules governing the matter, and shall not have had prior involvement in the matter other than as an Administrative Law Judge. The Administrative Law Judge so designated shall have full authority to conduct all aspects of the hearing.~~ Unless otherwise ordered by the assigned administrative law judge, the morning sessions shall begin at 9:00 a.m. and close at 12:00 noon, and the afternoon sessions shall begin at 1:30 p.m. and close at 4:30 p.m.

(b) **~~Hearing clerks.~~ Chief Administrative Law Judge.** ~~Deputy Commissioners shall designate a person to serve as hearing clerk for their departmental areas, if needed. The clerk shall maintain the administrative hearing files and dockets within the departmental area.~~The Chief Administrative Law Judge is the administrative officer for the Office of Administrative Hearings and shall perform all duties that the Commissioner may delegate or assign. The Chief Administrative Law Judge may assign administrative law judges to conduct individual proceedings or other hearings, or specific activities within proceedings and hearings. The Chief Administrative Law Judge shall have the discretion to issue non-dispositive orders including the scheduling of conferences and pre-hearing conferences, orders on non-dispositive motions, and orders for the conduct of the proceedings in general or in a specific proceeding.

~~(c)~~ **~~References to Administrative Law Judge.~~** ~~The Commissioner of Health and designated Deputy Commissioners may perform functions described herein for Administrative Law Judges.~~

(~~d~~c) **~~Authority.~~ Assigned administrative law judge.** The ~~Administrative~~administrative ~~Law~~law ~~Judge~~judge shall have complete authority to conduct the proceedings and may take any action not inconsistent with the provisions of the rules of this Chapter or of the APA for the maintenance of order at hearings and for the expeditious, fair, and impartial conduct of the proceedings. The assigned ~~Administrative~~administrative ~~Law~~law ~~Judge~~judge may also:

(1) arrange and issue notice of the date, time and place of hearings and conferences;

(2) establish the methods and procedures to be used in the presentation of the evidence;

(3) hold conferences to settle, simplify, determine, or strike any of the issues in a hearing, or to consider other matters that may facilitate the expeditious disposition of the hearing;

(4) administer oaths and affirmations;

(5) regulate the course of the hearing and govern the conduct of participants;

(6) examine witnesses;

(7) rule on, admit, exclude and limit evidence;

(8) establish the time for filing motions, testimony, and other written evidence, briefs, findings, and other submissions, and hold the record open for such purposes;

(9) rule on motions and other pending procedural matters; and

(10) divide the hearing into stages or combine interests of parties whenever the number of parties is large or the issues are numerous and complex.

(d) **Hearing Clerk.** The Hearing Clerk is the person designated by the Commissioner to assist the Chief Administrative Law Judge and maintain the administrative hearing files and dockets within the Office of Administrative Hearings.

310:2-3-7. Requesting individual proceedings and rulemaking [REVOKED]

~~(a) APA governs. The Administrative Procedures Act, 74 O.S. §§ 301 et seq. governs individual proceedings and rulemaking undertaken by the Department, the Board of Health or individuals authorized by law.~~

~~(b) Petitions. All initial requests for hearings or other adjudicatory, declaratory or rulemaking action of the Department should be made in the form of a petition, unless otherwise provided by specific statute or rule.~~

~~(c) Petitioner(s). The Department, and other petitioners when authorized by law, may initiate petitions for individual proceedings and for rulemaking.~~

~~(d) Motions. All requests for action in a matter already before the Department shall be made in the form of a motion.~~

~~(e) Must state reason and sign. All requests must state clearly and with specificity the reason and basis for the request, and the action or relief sought. The request shall be signed by the person presenting the same, or his attorney (75 O.S. § 310), and shall include the signer's address and phone number.~~

~~(f) Where filed. All requests shall be filed with the hearing clerk for the appropriate departmental area. If the appropriate departmental area is unknown, requests may be filed with the legal division of the Department.~~

~~(g) Response. The Department shall timely respond to such petitions or motions, either by initiating proceedings or by denying the request in writing. The Commissioner may refer rulemaking petitions, and petitions requesting declaratory rulings on the applicability of any rule, to appropriate advisory councils and committees for their recommendations, and shall do so when required by statutes. Any petition for rulemaking will be deemed to be denied if the Department has not initiated~~

~~rulemaking proceedings within thirty calendar days after the petition is submitted.~~

SUBCHAPTER 5. PROCEDURE IN INDIVIDUAL PROCEEDINGS [REVOKED]

310:2-5-1. Petition and notice [REVOKED]

~~Individual proceedings may be initiated by filing a petition with the hearing clerk of the departmental area and by serving the petition on all Respondents. Each petition shall name the Respondent and shall contain a reference to the statutes and rules involved, a brief statement of the facts giving a right to relief and of the relief requested. The petition may allege facts without stating specific facts if the specific violations are included in a document which is incorporated by reference and attached to the petition. The petition shall meet the requirements of "notice" under the APA.~~

310:2-5-2.1. Notice of hearing [REVOKED]

~~The Commissioner or the Administrative Law Judge shall schedule the date, time and place of the hearing. The hearing clerk shall notify both parties. The hearing shall be scheduled at least fifteen (15) days after the date of service of the petition. Both parties may agree to an earlier date. If a specific law requires a hearing in fewer days, that statute shall be followed. If an emergency exists, a hearing may be conducted without the filing of a petition and without the fifteen (15) day notice.~~

310:2-5-2.2. Service of petition and notice of hearing [REVOKED]

~~(a) **Service.** The Petition and notice of hearing shall be served on the Respondent by personal service or by mail.~~

~~(b) **Personal service.** Personal service of the petition and the notice of hearing upon an individual shall be made by delivering the Petition personally on the Respondent or by leaving a copy of the Petition at the individual's dwelling place or the usual place of abode with some person residing therein who is fifteen (15) years of age or older.~~

~~(c) **Department as petitioner.** Where the Department is the petitioner, personal service of the petition and notice of hearing may be made by a person designated by the Commissioner to make such service for the Department.~~

~~(d) **Service by mail.** Service of the petition and the notice of hearing may be made by certified mail, return receipt requested, restricted delivery.~~

~~(e) **Proof of service.** The person serving the petition and the notice of hearing shall file proof of service with the hearing clerk within twenty (20) days of service or before the date of the hearing whichever is sooner. Acknowledgement in writing by the Respondent or appearing at the hearing without objection to service is equivalent to service.~~

~~(f) **Substitute service.** Substitute service in a matter against a licensee may be completed after personal and mail service are attempted with the filing of an affirmation of the attempted service and that the petition and notice of hearing were mailed first class mail to the last known address of the licensee.~~

310:2-5-2.3. Service of other papers and documents [REVOKED]

~~Service of all other documents and papers connected with an individual proceeding shall be served on the parties or their counsel by delivering a copy or mailing a copy by regular mail.~~

310:2-5-3. Response [REVOKED]

~~A Respondent may file, and the Administrative Law Judge may direct a Respondent to file, a responsive pleading to the petition or order that initiated the action.~~

310:2-5-4. Prehearing conference [REVOKED]

~~A prehearing conference may be ordered and scheduled by the Administrative Law Judge on his own motion or upon the request of any party. The Administrative Law Judge may authorize such to occur by teleconference. The subjects and objectives of prehearing conferences shall be similar to those for pretrial proceedings in the district courts.~~

310:2-5-5. Continuances [REVOKED]

~~Motions for a continuance of the hearing to another date or time shall be in writing and filed with the Hearing Clerk with a copy to the parties and the Administrative Law Judge. A motion for a continuance shall state the reasons for the request and specify the length of time requested. The Administrative Law Judge shall act upon such motion promptly and shall grant or deny such request at his discretion. If the motion is denied, it may be renewed orally by the party at the hearing.~~

310:2-5-6. Subpoenas [REVOKED]

~~(a) **Issuance.** Subpoenas for the attendance of witnesses, the furnishing of information and the production of evidence shall be issued by the Hearing Clerk upon request by a party. As an officer of the court, an attorney authorized to practice law in Oklahoma may also issue and sign subpoenas. Filing a formal request for the issuance of subpoenas shall not be required. Subpoenas shall be served and a return made in the same manner as provided in the Oklahoma Pleading Code.~~

~~(b) **Failure to obey.** The Commissioner of Health or Petitioner may seek an appropriate judicial proceeding to compel compliance by persons who fail to obey a subpoena, who refuse to be sworn or make an affirmation at a hearing or who refuse to answer a proper question during a hearing. The hearing shall proceed despite any such refusal but the Administrative Law Judge may, in his discretion at any time, continue the proceedings as necessary to secure a court ruling.~~

~~(c) **Motions to quash.** Motions to quash subpoenas may be filed with the hearing clerk and will be ruled on by the Administrative Law Judge.~~

310:2-5-7. Record [REVOKED]

~~(a) **To be made.** An electronic recording of the hearing proceedings shall be made. The recording will not be transcribed as a matter of course. The Department's electronic recording of the hearing shall be the official record. Copies of the~~

~~recordings shall be provided to a party on written request. A transcript may be obtained by submitting a written request and tendering payment in an amount sufficient to pay the cost of having the recording transcribed. Cost of transcription shall be borne by the party requesting same.~~

~~(b) **Court reporter.** A party may have the proceeding transcribed by a court reporter at the expense of the party. Each party requesting copies shall make arrangements for such with the reporter, and pay the costs.~~

~~(c) **Maintained.** The record of a proceeding and the file containing the notices and the pleadings will be maintained in a location designated by the Hearing Clerk. All pleadings, motions, orders and other papers submitted for filing in such a proceeding shall be date/file stamped by the hearing clerk upon receipt. The burden of showing substantial prejudice by any failure to correctly file stamp any submittal shall be upon the party asserting such.~~

~~(d) **Designation on appeal.** On appeal, the parties may designate and counter-designate portions of the record to save costs, following the procedures in the Administrative Procedures Act.~~

310:2-5-8. Order of procedure [REVOKED]

~~(a) **Generally that of civil proceedings.** The order of procedure in hearings in all individual proceedings shall generally be governed by the Oklahoma Pleading Code and the Discovery Code. At the hearing, each party may make a brief opening statement; present witnesses, documents and exhibits on its behalf; cross-examine adverse witnesses; and make closing arguments. The rules of evidence shall be those specified by the APA. At the discretion of the Administrative Law Judge, any party may reopen the case in chief, even after the adverse party has rested. Parties may stipulate to any lawful matter.~~

~~(b) **Matters not described.** Any matter of practice or procedure not specified either by the APA or by these rules will be guided by practice or procedure followed in the district courts of this state.~~

~~(c) **Rulings.** The Administrative Law Judge shall rule on the admissibility of evidence and objections to evidence, on motions or objections raised during hearings, and may rely on the advice of counsel present and serving in an advisory capacity. Any party may object to a ruling considered erroneous. All objections shall be made promptly or be deemed waived. Parties shall be deemed to have taken exception to any adverse ruling.~~

~~(d) **Findings and conclusions.** The Administrative Law Judge shall hear all evidence and arguments applicable in a case and shall prepare Findings of Fact and Conclusions of Law. The Administrative Law Judge may allow the parties to submit briefs or proposed findings and conclusions before ruling on the matter at issue, specify the time of filing and shall rule on such proposed findings.~~

310:2-5-9. Default [REVOKED]

~~Any Respondent or other person who fails to appear as directed, after service of the petition and notice of hearing as provided by these rules, may be determined to have waived the right to appear and present a defense to the allegations contained in the petition. A final order in such proceeding may be issued by the Administrative Law Judge or the Commissioner granting by default the relief prayed for in the petition.~~

310:2-5-10. Order [REVOKED]

~~Following the hearing, the Administrative Law Judge shall either:~~

~~(1) prepare a proposed order and serve it on the parties, by regular mail, offering an opportunity for parties to file exceptions to the proposed order before a final order is entered, pursuant to 75 O.S. 1991, § 311 and giving the time, date and place at which the Commissioner will allow oral argument on the final order; or~~

~~(2) prepare a final order if authorized by law and the Commissioner.~~

310:2-5-11. Final Order [REVOKED]

~~(a) **Hearing.** If a proposed order has been filed, the Commissioner of Health shall hear any oral arguments and shall review all exceptions and briefs before rendering an order. The Commissioner may adopt, amend, or reject any findings or conclusions of the person who conducted the hearing, and may in his discretion remand the proceeding for additional argument or the introduction of additional evidence at a hearing held for that purpose.~~

~~(b) **Issuance.** At the conclusion of the oral argument and after review of the record and/or proposed Findings of Fact and Conclusions of Law, the Commissioner of Health shall issue a Final Order reflecting the findings of fact made, the conclusions of law reached, and specifying the action to be taken. If the Administrative Law Judge has been delegated the authority to make the final decision, he shall issue Findings of Fact and Conclusions of Law, and any action ordered without referral to the Commissioner.~~

~~(c) **Notice.** Parties shall be notified either personally or by mail of the issuance of an order by the Hearing Clerk. A copy of the order shall be provided to any party and its attorney.~~

310:2-5-12. Reconsideration [REVOKED]

~~Any party may petition for rehearing, reopening or reconsideration of any decision in an individual proceeding within ten days of its entry, pursuant to 75 O.S. § 317. Nothing shall prevent reconsideration of a matter in accordance with other statutory provisions.~~

310:2-5-13. Settlement [REVOKED]

~~Unless precluded by law, individual proceedings may be resolved by agreed settlement or consent order, with the concurrence of the Commissioner of Health or the designated Deputy Commissioner or Administrative Law Judge.~~

310:2-5-14. Enforcement of Final Orders [REVOKED]

~~The Commissioner may apply for judicial enforcement of Final Orders.~~

310:2-5-15. Hearings by Boards [REVOKED]

~~(a) When authorized by statute, a Board, Council or Committee shall conduct hearings and issue proposed or final orders. In such cases, the Commissioner may appoint an Administrative Law Judge to assist that Board. The person appointed shall serve as legal advisor to the Board on the individual proceeding only and shall prepare written orders documenting the actions of the Board.~~

~~(b) Hearing clerks shall perform the same functions for these cases as they do for all other individual proceedings. The Hearing Clerk shall assist the Board as needed in performing its functions.~~

310:2-5-16. Emergency actions [REVOKED]

~~When the Commissioner of Health or an Administrative Law Judge finds that the public health, safety or welfare requires that action be taken immediately and when such a finding is incorporated in an order, emergency action or summary suspension of a license may be ordered pending the filing of a petition and/or the outcome of an individual proceeding.~~

SUBCHAPTER 15. APPLICATION FORMS

310:2-15-3. Uniform Employment Application for Nurse Aide Staff

(a) The application described in OAC 310:2-15-3 is required for use pursuant to Title 63 O.S. ~~Supp. 2000,~~ Section 1-1950.4.

(b) The uniform employment application shall *be used in the hiring of nurse aide staff by a nursing facility or a specialized facility as such terms are defined in the Nursing Home Care Act, a residential care home, as such term is defined by the Residential Care Act, an assisted living center as such term is defined by the Continuum of Care and Assisted Living Act, a continuum of care facility as defined by the Continuum of Care and Assisted Living Act, a freestanding hospice or program providing hospice services as such terms are defined by the Hospice Licensing Act, an adult day care center as such term is defined by the Adult Day Care Act, and a home care agency as defined by the Home Care Act. Such uniform application shall be used as the only application for employment of nurse aides in such facilities on and after January 1, 2001.* [63:1-1950.4]

(c) The uniform employment application for nurse aide staff requires the following:

(1) personal information;
(2) employment desired;
(3) U.S. military record;
(4) prior work history;
(5) educational background;
(6) certification;
(7) references;
(8) background information;
(9) applicant's employment application certification and agreement;
(10) ~~nurse aide registry tracking section that includes:~~
~~(A) personal information;~~
(~~B~~11) previous certified nurse aide training;
(~~C~~12) applicant's signature certifying no previous conviction and authorizing criminal history record checks; and
(~~11~~13) Any additional information needed to answer all questions fully.

~~(d) An employer or contractor that is subject to the provisions of 63:1-1950.3 shall file with the Department a completed nurse aide registry tracking section of the application for each newly employed nurse aide not later than 30 days after that individual is first used as a nurse aide.~~

SUBCHAPTER 21. RULES OF PROCEDURE GOVERNING INDIVIDUAL PROCEEDINGS

310:2-21-1. Purpose and scope of Rules

These rules are promulgated to provide due process to parties appearing before the Department and are not to be construed inconsistently with the Oklahoma Administrative Procedures Act. The assigned administrative law judge has the discretion to waive, supplement or modify any requirement of the applicable law or rule of procedure where permitted by law and when the administration of justice requires.

310:2-21-2. Initiating an individual proceeding

(a) **In general.** Individual proceedings may be initiated before the Department by filing with the Office of Administrative Hearings a Petition, administrative order executed by the Commissioner or his designee, or other instrument which seeks any relief authorized by law to be granted by the Department.

(b) **Proceedings initiated by Petition.** *Each Petition shall name the Respondent and include a statement of the legal authority and jurisdiction under which the proceeding is to be held, a reference to the particular sections of the statutes and rules involved, a short and plain statement of the matters asserted giving a right to relief, the relief requested, and, unless provided in a separate written Notice of Hearing, the time, place and nature of the hearing. If the Department is unable to give a short and plain statement of the matters asserted at the time the notice is served, the initial notice may be limited to a statement of the issues involved.* [75 O.S. § 309]

(c) **Proceedings initiated by an administrative order.** Proceedings initiated by an administrative compliance order issued pursuant to 63 O.S. § 1-1701.1(A) must satisfy the requirements of that statue, the APA and this Chapter. If Section 1-1701.1(A) conflicts with provisions of the APA or this Chapter then Section 1-1701.1(A) shall control. Proceedings initiated by any other administrative order must comply with the APA and this Chapter.

310:2-21-3. Notice of Hearings

The Commissioner, the Chief Administrative Law Judge or the assigned administrative law judge shall schedule the date, time and place of any hearing in accordance with these rules. The Hearing Clerk shall notify the parties. The initial hearing shall be scheduled at least thirty (30) days after the date of service of the petition. The parties may agree to an earlier date. If a specific law requires a hearing in fewer days, that statute shall be followed. If an emergency exists, a hearing may be conducted without the filing of a petition and without prior notice to the Respondent. When such emergency hearing is held the Respondent shall be afforded a hearing within ten (10) days of the issuance of an emergency order to contest such an order.

310:2-21-4. Service of instruments initiating an administrative proceeding

Any instruments initiating an administrative proceeding shall be served upon every named Respondent in accordance with the provisions of 12 O.S. § 2004(C)(1)(c). A person designated by the Commissioner may be used to accomplish service for the Department. Service of the instrument initiating an administrative proceeding may be made by certified mail, return receipt requested, restricted delivery. The person serving the instrument initiating an administrative proceeding shall file proof of service with the Hearing Clerk within twenty (20) days of service or before the date of the first hearing, whichever is sooner. Acknowledgement in writing by the Respondent or appearing at the hearing without objection to service is equivalent to service.

310:2-21-5. Service of other papers and documents

Service of all other documents and papers connected with an individual proceeding shall be served on the parties or their counsel by delivering a copy or mailing a copy by first class mail, postage prepaid.

310:2-21-6. Responsive pleadings

A Respondent may file, and the assigned administrative law judge may direct a Respondent to file, a responsive pleading to the petition or order that initiated the action.

310:2-21-7. Appearance of parties

(a) A party in any proceeding before the Department may appear pro se, by an attorney licensed to practice law in Oklahoma, by an out-of-state attorney admitted to practice before the Department pursuant to rules of the Oklahoma Bar Association, or by a licensed legal intern. Provided further, corporate entities, limited liability companies, other business entities and governmental units or entities may appear only by an attorney as provided within this subsection.

(b) Attorneys who will appear before the Department on behalf of a party shall notify the Office of Administrative Hearings of their appearance by filing an entry of appearance.

(c) Any other attorney who files an entry of appearance on behalf of any party in the case or who is identified as a substitute attorney pursuant to a notice of substitution of attorney shall also be considered an attorney of record. The Department shall send notices to all attorneys of record until a substitution of attorney has been filed or an Application for Leave to Withdraw as Attorney has been filed and granted by the administrative law judge assigned to a case. Various attorneys may appear before the Department in a matter, but notice shall be sent only to those attorneys who are an "attorney of record" as defined in this subsection.

310:2-21-8. Ex parte communications

Communication with the assigned administrative law judge or his office regarding scheduling and procedural matters is permitted. A lawyer shall have no ex parte communication on the substance of a pending matter or proceeding with the assigned administrative law judge.

310:2-21-9. Initial scheduling conference

The Chief Administrative Law Judge or the assigned administrative law judge may set the dates for appearances and deadlines in a Scheduling Conference Order or in his discretion schedule a scheduling conference to be attended by the parties. The Chief Administrative Law Judge or the assigned administrative law judge may authorize such to occur by teleconference. The subjects and objectives of scheduling conferences shall be similar to those for pretrial proceedings in the district courts.

310:2-21-10. Pre-hearing conferences

(a) **Purpose.** In any matter set for hearing on the merits, the Chief Administrative Law Judge may order that a pre-hearing conference be held. The purpose of the pre-hearing conference is to provide the parties an opportunity to clarify and isolate the issues of fact and law which will be decided at the hearing, and to dispose of pending motions and procedural matters. A pre-hearing conference will routinely be ordered unless the Chief Administrative Law Judge determines the same to be unnecessary.

(b) **Party responsibility.** Each party or the party's counsel shall be present, on time and prepared. At least five (5) days prior to the pre-hearing conference, each party shall file the following with the Office of Administrative Hearings, and shall provide copies to the assigned administrative law judge and all parties:

(1) A brief statement of the case, together with a list of stipulations to which the party will agree, and requested remedies;

(2) A list of all witnesses who have knowledge of the facts surrounding the issues of the case and who are expected to be called at the hearing. The list shall include a brief summary of the expected testimony of each witness;

(3) A list of any documents or other exhibits together with the original or a copy of each document or exhibit to be offered into evidence at the hearing. Non-documentary

exhibits shall be described and a date given when they can be made available to the opposing party for inspection;

(4) A list of any witnesses for whom a subpoena will be required. The list shall include each witness's name, address, and a brief statement of the testimony to be offered by each witness. The Department will not issue subpoenas without this information. Amendment of this list may be granted within three (3) days of the hearing date if the witness could not be identified or was otherwise unavailable at an earlier date despite the due diligence of the party or attorney;

(5) A statement as to whether discovery is complete or ongoing. If ongoing, the party must state with specificity what elements of discovery remain to be completed, and the date of expected completion.

(c) **Conference procedure.** The assigned administrative law judge shall provide notice to the parties of the date, time, and place of the conference at least ten (10) days prior to the scheduled date. The conference shall be informal, structured by the assigned administrative law judge, and not open to the public. If a record is deemed advisable by the assigned administrative law judge or requested by the parties, the conference may be recorded by audio tape and/or transcribed by a court reporter at the requesting party's expense. No witnesses shall appear or present evidence. Dispositive motions and briefs shall be filed no later than ten (10) days prior to the pre-hearing conference, unless otherwise provided in a scheduling order.

310:2-21-11. Continuances

Each party is entitled to a single continuance of the hearing on the merits upon request submitted at least three (3) days in advance of the hearing unless exigent circumstances make such notice impractical. Additional continuances may be granted only upon good cause. Motions for a continuance based upon cause shall be in writing and filed with the Hearing Clerk with a copy to the parties and the assigned administrative law judge. A motion for a continuance shall state the reason(s) for the request and specify the length of time requested.

310:2-21-12. Subpoenas

(a) **Issuance.** Subpoenas for the attendance of witnesses, the furnishing of information and the production of evidence shall be issued by the Office of Administrative Hearings upon request by a party. The requesting party must submit the subpoena to the hearing clerk to be issued. Filing a formal request for the issuance of subpoenas shall not be required. Subpoenas shall be served and a return made in the same manner as provided in the Oklahoma Pleading Code.

(b) **Failure to obey.** The Commissioner or Petitioner may seek an appropriate judicial proceeding to compel compliance by persons who fail to obey a subpoena, who refuse to be sworn or make an affirmation at a hearing or who refuse to answer a proper question during a hearing. The hearing shall proceed despite any such refusal but the assigned administrative law judge may, in his discretion at any time, continue the proceedings as necessary to secure a court ruling.

(c) **Motions to quash.** Motions to quash subpoenas may be filed with the Office of Administrative Hearings and may be decided by the assigned administrative law judge or the Chief Administrative Law Judge.

310:2-21-13. Record

(a) **To be made.** An electronic recording of the hearing proceedings shall be made. The recording will not be transcribed as a matter of course. The Department's electronic recording of the hearing shall be the official record of the individual proceeding. Copies of the official record shall be provided to a party upon written request.

(b) **Court reporter.** A party may have the proceeding, or any part thereof, transcribed by a certified court reporter at the expense of the party. Each party requesting copies shall make such arrangements with a reporter, including costs, as required. The parties may agree to have the proceedings recorded and memorialized by a certified court reporter or may file a transcript prepared by a certified court reporter as a supplemental aid to the official record.

(c) **Maintained.** The record of a proceeding and the file containing the notices and the pleadings will be maintained in a location designated by the Office of Administrative Hearings. All pleadings, motions, orders and other papers submitted for filing in such a proceeding shall be date/file-stamped by the Hearing Clerk upon receipt. The burden of showing substantial prejudice by any failure to correctly file-stamp any submission shall be upon the party asserting same.

(d) **Designation on appeal.** On appeal, the parties may designate and counter-designate portions of the record pursuant to the APA.

310:2-21-14. Hearings open to the public

All hearings conducted by the Department shall be open to the public unless otherwise provided by law or these rules. The use of cameras or other audio-visual recording equipment during a hearing may be permitted at the discretion of the assigned administrative law judge.

310:2-21-15. Hearing procedure

(a) **APA Governs.** The order of procedure in hearings in all individual proceedings shall be governed by the Oklahoma APA and this Chapter. At the hearing, each party may make a brief opening statement; present witnesses, documents and exhibits on its behalf; cross-examine adverse witnesses. The right to make a closing statement or argument shall be at the discretion of the assigned administrative law judge. The rules of evidence shall be those specified by the APA. At the discretion of the assigned administrative law judge, any party may reopen the case in chief, even after the adverse party has rested. Parties may stipulate to any lawful matter.

(b) **Rulings.** The assigned administrative law judge shall rule on the admissibility of evidence and objections to evidence, on motions or objections raised during hearings. All objections shall be made promptly or be deemed waived. Parties shall be deemed to have taken exception to any adverse ruling.

(c) **Standards of Proof.** The standard of proof in all individual proceedings affecting or prejudicing an individual's license, registration, permit, certification or other authorization to engage in a given livelihood or occupation shall be clear and convincing evidence. In all other matters the standard of proof shall be a preponderance of the evidence.

(d) **Findings and conclusions.** The assigned administrative law judge shall hear all evidence and arguments applicable in a case and shall prepare the final order in the proceeding, which shall include Findings of Fact and Conclusions of Law, separately stated. The record of the proceedings may be deemed to be closed when the parties announce that the matter has been fully submitted to the assigned administrative law judge. The assigned administrative law judge may allow the parties to submit briefs or proposed findings of fact and conclusions of law before ruling on the matter at issue. The assigned administrative law judge shall specify the time of filing and must rule on each proposed finding of fact and conclusion of law. The assigned administrative law judge may take the cause of action under advisement for a period not to exceed fifteen (15) days and will then issue a final order in writing to the parties.

310:2-21-16. Signatures upon documents filed or submitted

(a) Any document, correspondence or order submitted to the Office of Administrative Hearings, or to any administrative law judge, shall be typed or printed legibly and shall bear the typed or printed name and the signature of the person who prepared the document or correspondence; the firm name if applicable; the complete address, including the zip code; the telephone number, including the area code; and the assigned case number. If the document or correspondence has been prepared by an attorney, the attorney's Oklahoma Bar Association number shall also be listed.

(b) The signature of an attorney or party constitutes the following:

(1) a certification that the form, motion or other paper has been read;

(2) that to the best of the attorney's or party's knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and

(3) that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(c) Any document or correspondence submitted to the Court shall include a certificate of mailing to all parties.

310:2-21-17. Motions and Briefs

(a) **Margins and page length.** All briefs and other written submissions shall be typewritten in clear type not less than 12-point, with single spaced lines of quoted matter and double spaced lines of unquoted matter. The margins of the printed page shall be one and one-quarter ($1\frac{1}{4}$) inches on the left side and one (1) inch on the other three sides.

(b) **Accompanied by proposed order.** Motions and applications are to be accompanied by a proposed order.

(c) **Length.** All motions, applications and responses thereto, including briefs, shall not exceed ten (10) pages in length, excluding exhibits, without prior permission of the assigned administrative law judge. A request for enlargement of page length may accompany the written instrument filed. Reply briefs shall be limited to five (5) pages in length. Page limitations herein exclude only the cover, if used, index, appendix, signature line and accompanying information identifying attorneys and parties, and certificate of service. No further briefs shall be filed without prior permission of the assigned administrative law judge. Exceptions to this requirement are not favored.

(d) **When responses are due.** Objections to motions and replies to objections are due within ten (10) and five (5) days of receipt, respectively. Exceptions to this requirement may be granted upon application and for good cause shown.

(e) **Hearings upon motions.** The assigned administrative law judge shall decide any motion without hearing and upon the written submissions of the parties unless the assigned administrative law judge determines that a hearing is necessary for a proper resolution of the issue(s) submitted.

(f) **Disposition of unopposed motions.** Dispositive motions that are unopposed may be deemed to be confessed and, where appropriate, may result in the summary disposition of a claim or defense as applicable.

(g) **Motions filed close to hearing.** Motions may not be filed within ten (10) days of hearing unless based upon a sudden emergency of facts that could not have been previously known. Copies of such motions must be hand delivered to all parties of record.

(h) **Motions will not stay discovery.** Motions to Dismiss or for Summary Judgment will not stay any discovery deadline unless by a written agreement of the parties that has been communicated to the assigned administrative law judge.

310:2-21-18. Default

Any Respondent or other person who fails to appear as directed, after service of the instrument initiating an administrative proceeding as provided by these rules, may be determined to have waived the right to appear and present a defense to the allegations contained in the instrument that initiates the individual proceeding. A final order in such proceeding may be issued by the assigned administrative law judge or the Commissioner granting by default the relief prayed for in the petition.

310:2-21-19. Final Order

Following the hearing, the assigned administrative law judge or hearing officer shall issue a Final Order resolving all of the issues submitted by the parties or identified by the assigned administrative law judge or hearing officer. The final order must comply with 75 O.S. § 312 and contain findings of fact and conclusions of law. Parties shall be notified by the Hearing Clerk either personally or by certified mail, return receipt requested, of the issuance of a Final Order. Upon

request, a copy of the order shall be delivered or mailed to each party and to his attorney of record.

310:2-21-20. Proposed Final Orders

In any case or matter in which the Commissioner has decided, or is required by law, to issue a Final Order the parties may submit a proposed final order.

310:2-21-21. Reconsideration

Any party may petition for rehearing, reopening or reconsideration of any decision in an individual proceeding within ten days of its entry, pursuant to 75 O.S. § 317. Nothing shall prevent reconsideration of a matter in accordance with other statutory provisions.

310:2-21-22. Settlement agreements and consent orders

(a) **Settlement agreements.** The resolution of an administrative proceeding that is reduced to writing by the parties shall be considered a settlement agreement. Settlement agreements may be approved by the assigned administrative law judge by agreement of the parties. Settlement agreements may be executed and tendered to the assigned administrative law judge at any time. The Department may retain jurisdiction of any settlement agreement, and the case may be re-opened if a breach of the agreement is alleged by any party. The settlement agreement may be used as evidence in any proceeding subsequent to an allegation of breach.

(b) **Consent orders.** The resolution of an administrative proceeding that is reduced to writing by the parties and submitted to the assigned administrative law judge or Commissioner for approval shall be considered a Consent Order. Consent Orders must conform to the requirements of OAC 310:2-21-19. A Consent Order may substitute for a settlement agreement at any time by agreement of the parties. A consent order shall constitute a Final Order in the case. By agreeing to the entry of a consent order, the parties expressly agree not to seek judicial review. Consent orders may be enforced as judgments in District Court as provided by law.

310:2-21-23. Emergency actions

When the Commissioner of Health or an assigned administrative law judge finds that the public health, safety or welfare requires that action be taken immediately and when such a finding is incorporated in an order, emergency action or summary suspension of a license may be ordered pending the filing of a petition and/or the outcome of an individual proceeding.

310:2-21-24. Sanctions for noncompliance

The assigned administrative law judge may take any action allowed by law against any party as a sanction for any non-compliance with the rules in this chapter, including, but not limited to, assuming an adverse evidentiary inference, continuing any proceeding, striking any pleading, imposition of costs and fees, including attorneys fees, granting default, as applicable.

SUBCHAPTER 23. [RESERVED]

310:2-23-1. [RESERVED]

SUBCHAPTER 25. DISCOVERY

310:2-25-1. Purpose and scope

(a) This Subchapter shall govern the procedure for discovery in matters before the Department to provide for the just, speedy and inexpensive determination of actions. Each party shall participate in the discovery process, to the maximum extent possible, without intervention by the Office of Administrative Hearings. If a dispute over discovery should arise between the parties, the parties shall in good faith attempt to resolve their differences informally, without resort to motion or request filed with the Department. Subsequent to such attempt, any request or motion to compel discovery must be accompanied by a verified affidavit from both parties or their attorneys, stating that informal conference did not resolve the dispute, and the reasons why such resolution was not achieved.

(b) Discovery may be obtained by interrogatories (written questions), requests for production of documents or entry on land for inspection and other purposes, requests for admission, and depositions. Discovery may be obtained on any matter, not privileged, which is relevant to the subject matter involved in the pending case, and which is reasonably calculated to lead to the disclosure of admissible evidence. It is not a ground for objection that an answer relates to an ultimate fact in the case or the application of law to fact.

(c) A request, response or objection to discovery shall be signed by the party or the party's attorney. A party responding to a request that was complete when it was made shall supplement the response if and when it is discovered that the response was incorrect when made, or that the response is no longer true.

(d) An evasive or incomplete answer to a discovery request may be treated as a failure to answer. If a party or his or her attorney knowingly fails to obey an order to provide or permit discovery, the assigned administrative law judge may issue such order(s) which are just and will remediate the failure to obey, including an order that the party or other person failing to act pay reasonable discovery fees and costs, including attorney fees. Failure to act as described in this section may not be excused on the ground that the discovery sought was objectionable.

310:2-25-2. Commencing discovery; time for completion

(a) The parties may begin discovery at any time after a scheduling order has been entered in the case; or, if no scheduling order is entered, discovery may begin once the matter has been set for hearing on the merits.

(b) Discovery shall be completed in accordance with the scheduling order entered in the case. If no scheduling order is entered, the parties shall complete their discovery on or before the date of the pre-hearing conference. If no pre-hearing conference is ordered, discovery shall be completed at least ten (10) days prior to hearing on the merits.

310:2-25-3. Discovery conference

A discovery conference may be ordered and conducted by the assigned administrative law judge or the Chief Administrative Law Judge. Protective orders may be entered if deemed advisable, which may limit the information sought and/or the manner in which it will be provided.

310:2-25-4. Methods of discovery

(a) **Interrogatories.** A party may serve on any other party written questions not to exceed 20 in number, including discrete subparts. Interrogatories inquiring as to the names and locations of witnesses, or the existence, location and custodian of documents or physical evidence shall be construed as one interrogatory. All other interrogatories, including subdivisions of one numbered interrogatory, shall be construed as separate interrogatories. Each question shall be answered separately and fully in writing or shall be objected to by the person making the answer. If objected to, the reasons shall be stated. Answers or objections shall be made within 10 calendar days after service unless a shorter or longer time is ordered or agreed upon by the parties. Where the answer to a question may be obtained from the records kept by a party, it is a sufficient answer to specify the records from which the answer may be obtained. The answer shall afford the party making the request an opportunity to examine, audit or inspect such records.

(b) **Requests for Production or entry upon land.** A party may serve on any other party a request to produce, inspect and copy any designated documents not confidential or privileged; or to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation thereon. A request shall describe with particularity the items to be produced or inspected and shall indicate a reasonable time, place and manner of making the inspection and performing any related acts. A written response to each item or category shall be made within 10 calendar days after the service of a request unless a shorter or longer time is ordered or agreed upon by the parties. The response shall either state that the production or inspection will be permitted, or if objected to, the reasons shall be stated. A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(c) **Requests for Admission.** A party may serve on any other party written requests for admissions, not to exceed 20 in number, regarding the truth of any matters that relate to statements or opinions of fact or of the application of law to fact. This includes the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have otherwise been furnished or made available for inspection and copying. Each matter for which an admission is requested shall be answered separately. The answer shall admit or deny the matter or state why the answering party can not admit or deny the matter. A written response shall be made within 10 calendar days after the service of a request unless a shorter or longer time is ordered or agreed upon by the parties. If an objection is made the reasons shall be stated. Any matter admitted is established unless withdrawal or amendment of the admission is permitted by the assigned administrative law judge.

(d) **Depositions.** A party may ask questions of any other party or person, under oath, before a person authorized to administer such oath. A written transcript shall be made by the person seeking the deposition and that person shall provide a copy to the other party or person. The requirements for conduct of depositions set forth in 12 O.S. § 3230 shall be applicable to depositions in cases before the Department, unless such would conflict with the Administrative Procedures Act, or these rules. At the discretion of the assigned administrative law judge, depositions may be taken by videoconference and/or recorded on videotape or other electronic medium. Depositions so taken shall also be transcribed by stenographic means. The admissibility of video deposition evidence shall be at the discretion of the assigned administrative law judge. Video depositions for purposes of submission as testimony at the hearing, where the witness is unavailable, may be permitted on a case by case basis, subject to approval of the assigned administrative law judge.

310:2-25-5. Enforcement of discovery rules and orders

The sanctions available in OAC 310:2-21-25 are applicable to this Subchapter, and failure or refusal to comply with a discovery order may result in the imposition of one or more sanctions against the offending party. In addition, the Department may seek enforcement by District Court order if deemed necessary for the proper and just disposition of the case.

[OAR Docket #07-1068; filed 5-18-07]

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

[OAR Docket #07-1069]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Birth Registration
310:105-3-3 [AMENDED]
310:105-3-4 [AMENDED]
Subchapter 5. Death Registration
310:105-5-4 [AMENDED]
AUTHORITY:
Oklahoma State Board of Health; 70 O.S.2001, §§ 1210.191 et seq.; 10 O.S.2001, § 412; 63 O.S.2001, § 1-104; 63 O.S.2001, § 1-502

DATES:
Comment Period:
February 1, 2007 through March 8, 2007
Public Hearing:
March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
This rule change establishes administrative hearing procedures in those instances where interested individuals wish to appeal decisions made by Vital Records division program staff rejecting requests to amend information contained in birth or death records. The rule change will provide an administrative forum for such appeals rather than oblige those persons to petition a state district court for relief. Furthermore, the proposed rule change will add a provision to permit an individual or an entity that has legal custody or guardianship of a child born out of wedlock to obtain a full copy of the birth record. This rule change will facilitate adoptions of children born out of wedlock in Oklahoma and facilitate obtaining benefits from Indian Tribes and Governmental Agencies for these children.
CONTACT PERSON:
Kelly Baker, Director, Center for Health Statistics, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405) 271-6225; kellyb@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 3. BIRTH REGISTRATION

310:105-3-3. Additions and amendments to birth certificates and records

(a) **No alterations on face of certificate-application to amend.** After its acceptance for filing, no birth certificate or other record made in compliance with statutes or this Chapter shall be altered or changed in any respect on its face, except as provided in paragraph (b) of this Section.~~, but amendments other than on the face of the certificate may be made upon application. Application together with documentation may be presented in order to request the filing of an amendment to the record, setting forth the facts alleged to be correct.~~

(b) **Name added to certificate if item blank.** The addition of the registrant's name to a birth certificate within the first twelve (12) months after the date of birth may be made by writing the name in the space provided, upon receipt by the State Registrar of the required documents, if the name is blank on the certificate originally filed.

~~(c) **Requirements of application for amendment.** Application for amendment of records must meet the following requirements:~~

~~(1) Be presented on the form and in accordance with the instructions of the Commissioner of Health.~~

~~(2) Provide the documentary evidence required.~~

(~~d~~c) **Erroneous entries.** When a name is erroneously entered by the attendant on a certificate of birth, the certificate may be amended to indicate the name the registrant has used since birth when sufficient documentation is presented to prove the same. Such documentation shall consist of a statement from the hospital where the birth occurred on a certificate from the attendant at birth that completed the certificate of birth, or if unable to obtain either of the above at least two records indicating the correct name will be required, one of which shall have been established at least ten (10) years prior to the date the amendment is requested.

(~~e~~d) **Refusal to amend.** In the event the State Registrar finds reason to believe that an attempt is being made to circumvent the provisions of Oklahoma Statutes concerning legally changing a name, the State Registrar shall not amend the certificate based on documentary evidence but shall advise the registrant of the necessity of obtaining a legal change of name as provided for in Oklahoma Statutes.

(e) **Other Changes.** Any applicant that desires to make a change, alteration or amendment not provided for in paragraphs (a) through (d) of this section may file a petition with the Administrative Hearing Clerk pursuant to OAC 310:2 and seek a final decision by an Administrative Law Judge granting the relief requested. The applicant shall bear the burden of proof, by clear and convincing evidence that the proposed change, alteration or amendment sought by the Applicant corrects an error or misstatement of fact as to any non medical information supplied to the State Registrar by the parent(s), facility or attendant.

310:105-3-4. Birth certificate for children born out of wedlock; confidentiality

In those instances where a child is born out of wedlock, a full copy of the certificate may be issued under the following conditions:

(1) A written request is received signed by the mother specifically requesting the same if the registrant is a minor.

(2) A written request is received signed by the registrant, if of legal age - 18 years or older.

(3) A written request is received signed by an attorney stating that the full copy is necessary for presentation to the courts for adoption purposes.

(4) A written request is received by an individual, a licensed child placing agency, or other entity that has legal custody or guardianship of a child born out of wedlock.

(5) Upon order of a court of competent jurisdiction.

SUBCHAPTER 5. DEATH REGISTRATION

310:105-5-4. Amendments of death registrations.

(a) **Causes of death.** The cause of death or any other medical portion of the death certificate may be amended only upon the application of the medical examiner or the attending physician.

(b) **Minor corrections.** Minor corrections to a death certificate shall be made only upon the application of the funeral home which must attest that the corrections are being made based on mistake made by the funeral home.

(c) **Other corrections.** ~~No other correction, amendment or other alteration shall be made to a death certificate without a court order from an Oklahoma court or upon investigation of the Department.~~Any applicant that desires to make a change, alteration or amendment not provided for in paragraphs (a) through (b) of this section may file a petition with the Administrative Hearing Clerk pursuant to OAC 310:2 and seek a final decision by an Administrative Law Judge granting the relief requested. The applicant shall bear the burden of proof, by clear and convincing evidence that the proposed change, alteration or amendment sought by the Applicant corrects an error or misstatement of fact as to any information supplied to the State Registrar by the funeral home.

[OAR Docket #07-1069; filed 5-18-07]

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

[OAR Docket #07-1070]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Administrative Fine Schedule
310:110-5-5 [AMENDED]
310:110-5-7 [AMENDED]
AUTHORITY:
Oklahoma State Board of Health; Fee and Fine Schedule For Occupation Licensing Service, 59 O.S., Section 61.1 et seq. and 1800.1 et seq.; 63 O.S. Section 1-106.1
DATES:
Comment Period:
February 1, 2007 through March 8, 2007
Public Hearing:
March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The proposed rule changes are necessary to implement the provisions of Senate Bill 1741, which require licensing for the Locksmith Industry. Additionally the proposed changes authorize a fine for supervising barbers and for barber schools who fail to provide quarterly reports of the hours of completion for their apprentices and students respectively.
CONTACT PERSON:
Matt Schue, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299; telephone:(405) 271-5779, ext. 57905; facsimile: (405) 271-5286 electronic mail: Matts@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 5. ADMINISTRATIVE FINE SCHEDULE

310:110-5-5. Schedule of fines for the alarm and locksmith industry

The fine schedule for citations issued by the Department for violations of the Alarm and Locksmith Industry Act or the rules promulgated thereunder shall be subject to the fines as follows:

(1) Engaging in ~~alarm~~an Alarm and Locksmith Industry business without a license in the appropriate category or classification:
(A) First - $200
(B) Subsequent - $200

(2) Company employing unlicensed person to perform ~~alarm~~Alarm and Locksmith Industry work (per person):
(A) First - $100
(B) Subsequent - $200

(3) Altering a license:
(A) First - $200
(B) Subsequent - $200

(4) Failure to display company license in conspicuous place:
(A) First - 50
(B) Subsequent - $200

(5) Individual not carrying a personal license:
(A) First - $ 50
(B) Subsequent - $200

(6) Failure to display company license number as required by statute or rule:
(A) First - $200
(B) Subsequent - $200

(7) Company employing person to perform ~~alarm~~Alarm and Locksmith Industry work without supervision of properly licensed manager:
(A) First - $200
(B) Subsequent - $200

(8) Failure to have properly licensed manager or technician on site:
(A) First - $200
(B) Subsequent - $200
(9) Failure to correct code violations per day after NOV compliance date:
(A) First - $200
(B) Subsequent - $200
(10) Failure to comply with a specific provision of the Alarm and Locksmith Industry Regulations:
(A) First - $50
(B) Subsequent - $200

310:110-5-7. Schedule of fines for the Barber Industry

The fine schedule for citations issued by the Department for violations of the Barber Act or rules promulgated thereunder shall be subject to the fines as follows providing each day a violation continues shall be a separate offense:
(1) Engaging in barbering as an instructor, barber or apprentice without a license in the appropriate category:
(A) First: $250
(B) Subsequent: $500
(2) Employing an unlicensed person to perform barbering (per person):
(A) First: $50
(B) Subsequent: $50
(3) Allowing a graduate apprentice or a barber apprentice to work without direct supervision:
(A) First: $50
(B) Subsequent: $50
(4) Employing more than one barber apprentice and one graduate apprentice per shop (fine per apprentice):
(A) First: $50
(B) Subsequent: $50
(5) Operating a barber work station in violation of any general sanitation requirement found in Subchapter 7 of the Barber Regulations, 310:210-7-1 et seq.:
(A) First: $50
(B) Subsequent: $50
(6) Failure to comply with a specific provision of the Barber Act or Regulations by a graduate apprentice, barbers, ~~or~~ barber apprentice~~:~~, or school:
(A) First: $50
(B) Subsequent: $50
(7) Failure to comply with a specific provision of the Barber Act or Regulations by an individual not licensed under the Barber Act:
(A) First: $250
(B) Subsequent: $500
(8) Operating a barber school without a state barber school license:
(A) First: $250
(B) Subsequent: $500
(9) Operating a barbershop or school without notifying the appropriate authority for a sanitation and equipment inspection:
(A) First: $50
(B) Subsequent: $50
(10) Operating a barber college without the appropriate number of licensed instructors:
(A) First: $50
(B) Subsequent $50

[OAR Docket #07-1070; filed 5-18-07]

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

[OAR Docket #07-1071]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Oklahoma State Board of Health; Alarm Industry Act, 59 O.S. Sections 1800.1 et seq., as amended by Enrolled Senate Bill No. 1741 of the Second Regular Session of the 50th Oklahoma Legislature, effective January 1, 2007.
DATES:
Comment Period:
February 1, 2007 through March 8, 2007
Public Hearing:
March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded 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:
December 21, 2006

Register publication:
24 Ok Reg 584

Docket number:
07-102

INCORPORATION BY REFERENCE:
n/a

ANALYSIS:
This action provides for permanent adoption of an emergency rule adopted by the Oklahoma State Board of Health on November 9, 2006. The proposed rule changes are necessary to implement the provisions of Senate Bill 1741, which require licensing for the Locksmith Industry. This includes licensing of four newly defined categories, which are Closed Circuit TV, Nurse Call, Electronic Access Control, and Locksmith. The proposed changes include the criteria to qualify for initial licensing and the minimum qualifications for licensing thereafter. Additionally the proposed rule changes include the creation of subcategories, qualifications, and requirements for companies, managers, technicians, salespersons, and trainees along with the respective licensing fees, within each category. In order to facilitate the transition for licensing of the new categories in a uniform and consistent manner, minor changes were made within the existing alarm industry categories.

CONTACT PERSON:
Matt Schue, Investigator, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299; telephone:(405) 271-5779, ext. 57905; facsimile: (405) 271-5286 electronic mail: Matts@health.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

310:205-1-1. Purpose

The rules in this Chapter implement the Alarm and Locksmith Industry Act, Title 59 O.S. ~~Supp. 1996,~~ Section 1800.1 et seq.

310:205-1-2. Definitions

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

"Approved provider" means a person or entity that has been approved by the Committee to provide pre-licensing education courses.

"BOCA" means Building Officials and Code Administrators International, Inc.

"Burglar alarm company" ~~means an alarm industry business which offers to, or engages in the planning, installation, repair, alteration, maintenance, service, sale, inspection or advertisement of burglar alarms.~~means a business that provides burglar alarm systems to others by any means, including, but not limited to, the sale, lease, rent, design, planning with the intent to pre-wire, pre-wiring, installation, maintenance, repair, testing, modification, improvement, alteration, inspection, or servicing of a burglar alarm system; holding oneself or one's company out for hire to perform any such task; or otherwise offering to perform any such task for compensation, either directly or indirectly.

"Burglar alarm company manager" means an officer or manager of a company, corporation, partnership or proprietorship, with the authority to bind the company by contract, who shall provide direct supervision over the function and local operations of such alarm industry business or a branch thereof.

"Burglar alarm salesperson" ~~means an individual who is employed by an Oklahoma licensed burglar alarm company to sell burglar alarm equipment.~~means a person who sells to others on behalf of a licensed Oklahoma burglar alarm company by any means, including, but not limited to, telephone or electronic device, public notice or advertisement, door-to-door, or any other type of personal interaction, and/or a person who participates in design, plan, specification and/or lay out of a burglar alarm system on behalf of a burglar alarm company.

"Burglar alarm technician" means an individual who is employed by an Oklahoma licensed burglar alarm company to ~~install, service and sell burglar alarm equipment.~~design, plan, lay out, sell, pre-wire, install, maintain, repair, test, inspect, or service burglar alarm equipment.

"Burglar alarm ~~technician~~trainee" means an individual who is employed by an Oklahoma licensed burglar alarm company to assist burglar alarm technicians or managers and learn to properly install, service, and sell burglar alarm equipment.

"CABO" means The Council of American Building Officials.

"Certificate of course completion" means a document acceptable to the Committee which signifies satisfactory completion of course work.

"Certification of ~~an alarm~~a system" shall mean testing per applicable code of any burglar alarm, fire alarm, electronic access control, closed circuit television, nurse call, locksmithing equipment, or fire sprinkler alarm system by a properly licensed ~~alarm~~ individual working for a properly licensed ~~alarm~~ company to verify that the system complies with all of the requirements of the applicable code or standard.

"Certification of Personnel" shall mean proof of successful completion of a standardized formal program of related instruction and testing as provided by a recognized ~~organization~~provider and approved by the Alarm and Locksmith Industry Committee in compliance with section 310:205-3-2(f) of this ~~chapter~~Chapter.

"Closed circuit television" or **"(CCTV)"** means a system that provides video surveillance of an area or a client-prescribed area primarily by means of transmitting

and/or recording of visual signals through cameras, receivers, monitors, and/or other visual imaging equipment.

"Closed circuit television company" means a business that provides closed circuit television systems to others by any means, including but not limited to, the sale, lease, rent, design, planning with the intent to pre-wire, pre-wiring, installation, maintenance, repair, testing, modification, improvement, alteration, inspection, and/or servicing of a CCTV system; holding one's company out for hire to perform any such task; or otherwise offering to perform any such task for compensation, either directly or indirectly.

"Closed circuit television manager" means an officer or manager of a company, corporation, partnership, or proprietorship with the authority to bind the company by contract and who provides direct supervision over the function and local operations of such closed circuit television business or a branch thereof.

"Closed circuit television technician" means an individual who is employed by an Oklahoma licensed closed circuit television company to design, plan, lay out, sell, pre-wire, install, maintain, repair, test, inspect, or service closed circuit television equipment.

"Closed circuit television trainee" means an individual who is employed by an Oklahoma licensed closed circuit television company to learn to properly install and service closed circuit television equipment.

"Closed circuit television salesperson" means a person who sells to others on behalf of a closed circuit television company by any means, including but not limited to, telephone or electronic device, public notice or advertisement, door-to-door, or any other type of personal interaction, and/or a person who participates in the sale, design, plan, and/or lay out of a closed circuit television system on behalf of a closed circuit company.

"Commercial building" means a building or structure used for any purpose or occupancy that is not defined in this section as a Residential Building.

"Commercial fire alarm license" means the category of license which authorizes a fire alarm company, manager, technician, trainee or salesperson to engage in the fire alarm industry activities in compliance with this Chapter for any work performed in residential or commercial application.

"Commercial fire sprinkler license" means the category of license which authorizes a fire sprinkler company, manager, trainee, and/or technician to engage in the fire sprinkler alarm industry activities in compliance with this chapter for any residential or commercial application.

"Committee" means the Alarm and Locksmith Industry Committee.

"Department" means the Oklahoma State Department of Health.

"Electronic access control company" means a business that offers to, or engages in, the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of electronic access control systems.

"Electronic access control company manager" means an officer or manager of a company, corporation, partnership, or proprietorship with the authority to bind the company by contract and who provides direct supervision over the function and local operations of such electronic access control business or a branch thereof.

"Electronic access control technician" means an individual who is employed by an Oklahoma licensed electronic access control company to design, plan, lay out, sell, pre-wire, install, maintain, repair, test, inspect, and/or service electronic access control equipment.

"Electronic access control trainee" means an individual who is employed by an Oklahoma licensed electronic access control company to learn to properly install and service electronic access control equipment.

"Electronic access control salesperson" means a person who sells to others on behalf of an electronic access control company by any means, including, but not limited to, telephone or electronic device, public notice or advertisement, door-to-door or any other type of personal interaction, and/or a person who participates in design, plan, and/or lay out of an electronic access control system on behalf of a electronic access control company.

"Fire alarm company" ~~means an alarm industry business which offers to, or engages in the planning, installation, repair, alteration, maintenance, service, sale, inspection or advertisement of fire alarms. The company will be licensed as a limited or unlimited fire alarm company as defined by this chapter.~~means a business that provides fire alarm systems to others by any means including but not limited to, the sale, lease, rent, design, planning with the intent to pre-wire, pre-wiring, installation, maintenance, repair, testing, modification, improvement, alteration, inspection, and/or servicing of fire alarm system; holding oneself or one's company out for hire to perform any such task; or otherwise offering to perform any such task for compensation, either directly or indirectly. The company shall be licensed as a residential or commercial fire alarm company as defined by this Chapter.

"Fire alarm company manager" means an officer or manager of a company, corporation, partnership or proprietorship, with the authority to bind the company by contract~~,~~ and who ~~shall provide~~provides direct supervision over the function and local operations of such alarm industry business or a branch thereof.

"Fire alarm salesperson" ~~means an individual who is employed by an Oklahoma licensed fire alarm company to sell fire alarm equipment~~means a person who sells to others on behalf of a fire alarm company by any means including but not limited to, telephone or electronic device, public notice or advertisement, door-to-door or any other type of personal interaction, and or a person who participates in design, plan and/or lay out of an fire alarm system on behalf of an fire alarm company. The salesperson shall be licensed as a residential or commercial fire alarm salesperson as defined by this Chapter.

"Fire sprinkler inspector" means an individual who is employed by an Oklahoma licensed alarm company to inspect and test a fire alarm sprinkler system to determine if it has been installed and is operating according to the appropriate code or standard.

"Fire alarm technician" means an individual who is employed by an Oklahoma licensed Fire Alarm Company to ~~install, service and sell~~design, plan, lay out, sell, pre-wire,

install, maintain, repair, test, certify, inspect, or service fire alarm equipment. The fire alarm technician shall be licensed as a residential or commercial fire alarm technician as defined by this Chapter

"Fire alarm ~~technician~~ trainee" means an individual who is employed by an Oklahoma licensed Fire Alarm Company to assist fire alarm technicians or managers and learn to properly install, service and sell fire alarm equipment.

"Fire sprinkler company" ~~means an Alarm Industry Business which employs a Fire Sprinkler Company Manager. An Oklahoma licensed Fire Sprinkler Technician or Manager shall be on any job site where fire sprinkler work is being performed.~~ means a business that provides fire sprinkler systems to others by any means, including but not limited to, the sale, lease, rent, design, planning with the intent to install, maintenance, repair, testing, modification, improvement, alteration, inspection, or servicing of a fire sprinkler system; holding oneself or one's company out for hire to perform any such task; or otherwise offering to perform any such task for compensation either directly or indirectly. The company ~~will~~shall be licensed as a ~~limited~~residential or ~~unlimited~~commercial company as defined by this ~~chapter~~Chapter.

"Fire sprinkler company manager" means an officer or manager of a company, corporation, partnership or proprietorship, with the authority to bind the company by contract~~,~~ who shall provide direct supervision over the function and local operations of such alarm industry business or a branch thereof.

"Fire sprinkler technician" means an individual who is employed by an Oklahoma licensed ~~alarm~~ fire sprinkler company to install, service and sell, maintain, repair, and/or test fire sprinkler equipment. The fire sprinkler technician shall be licensed as a residential or commercial fire sprinkler technician as defined by this Chapter.

"Fire sprinkler technician trainee" means an individual who is employed by an Oklahoma licensed fire sprinkler company to assist fire sprinkler technicians or managers and learn to properly install and service fire sprinkler systems.

"IBC" means the International Building Code.

"ICC" means the International Code Council, Inc.

"Inspection" shall mean the visual observation or ~~alarm~~ system test of any burglar alarm system, fire alarm system, electronic access control system, closed circuit television system, nurse call system, lock system, or fire sprinkler system to determine if the ~~alarm~~ system has been installed and is operating according to the applicable code or standard.

~~**"Limited fire alarm license"** means the category of license which authorizes a fire alarm company, manager, technician or salesperson to engage in the alarm industry activities in compliance with this Chapter for fire alarm systems used in Residential Building and manufactured housing.~~

~~**"Limited fire sprinkler license"** means the category of license which authorizes a fire sprinkler company, manager, or technician to engage in the alarm industry activities in compliance with this Chapter for fire sprinkler systems used in Residential Building and manufactured housing.~~

"Locksmith company" means a business that provides locksmithing to others by any means, including but not limited to, design, install, service, repair, re-key, re-pin, sell, inspect, rebuild, record, adjust, unlock mechanical or electronic locks or advertisement of locksmith services; holding oneself or one's company out for hire to perform any such task; or otherwise offering to perform any such task for compensation, either directly or indirectly.

"Locksmith company manager" means an officer or manager of a company, corporation, partnership, or proprietorship with the authority to bind the company by contract and who provides direct supervision over the function and local operations of such locksmith business or branch thereof.

"Locksmith salesperson" means a person who sells to others on behalf of a locksmith company by any means, including, but not limited to, telephone or electronic device, public notice or advertisement, door-to-door, or any other type of personal interaction, or a person who participates in design, plan, and/or lay out of locksmithing equipment on behalf of a locksmith company.

"Locksmith technician" means an individual who is employed by an Oklahoma licensed locksmith company to design, install, service, inspect, repair, re-key, re-pin, sell, rebuild, record, adjust, or unlock mechanical or electronic locks on behalf of a locksmith company.

"Locksmith trainee" means an individual who is employed by an Oklahoma licensed locksmith company to learn to properly install, service, repair, rebuild, re-key, re-pin, sell, or unlock mechanical or electronic locks on behalf of a locksmith company.

"Locksmith tool" means any tool designed specifically to aid in removal, disassembly, re-assembly, installation, or maintenance of, or to be used to defeat or by-pass any electric or mechanical lock or system.

"Manufactured Housing" means a structure, transportable in one or more sections, which in the traveling mode is 8 body feet (2438 body mm) or more in width or 40 body feet (12 192 body mm) or more in length, or, when erected on site, is 320 square feet (30 m^2)or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein. For the purpose of these rules, a mobile home shall be considered a manufactured home, and each shall be regarded as manufactured housing.

"Monitoring company" means ~~an alarm industry~~a business ~~which~~that offers to, or does monitor burglar alarms, electronic access control systems, closed circuit television, nurse call systems, and/or fire alarms located in Oklahoma.

"Monitoring company manager" means an individual who is employed by an Oklahoma licensed ~~alarm~~monitoring company and has control of the monitoring of ~~alarm~~ systems located in Oklahoma.

"Multiple activity office" means a location where more than one regulated activity is performed or conducted.

"Multipurpose Fire Sprinkler System" means a single piping system within residential building and manufactured

housing where the same piping system simultaneously serves both domestic and fire protection needs and are not independent systems in any manner as described by the 1999 edition Standard for the installation of Sprinkler Systems in One and Two Family Dwellings (NFPA 13D).

~~**"NESA"** means the National Electronic Security Alliance.~~

"NFPA" means the National Fire Protection Association.

"NICET" means the National Institute of Certification in Engineering Technologies, a certification program sponsored by the National Society of Professional Engineers.

"Nurse call system" means a device or a series or assembly of interconnected devices which, when activated by automatic or manual means, produces an audible, visual, or electronic signal intended to detect or annunciate a need to summon response by a local medical staff or local medical personnel.

"Nurse call company" means a business that provides nurse call systems to others by any means, including but not limited to, the sale, lease, rent, design, planning with the intent to pre-wire, pre-wiring, installation, maintenance, repair, testing, modification, improvement, alteration, inspection, or servicing of nurse call systems; holding oneself or one's company out for hire to perform any such tasks; or otherwise offering to perform any such tasks for compensation, either directly or indirectly.

"Nurse call company manager" means an officer or manager of a company, corporation, partnership or proprietorship, with the authority to bind the company by contract and who provides direct supervision over the function and local operations of such nurse call system business or a branch thereof.

"Nurse call technician" means an individual who is employed by an Oklahoma licensed nurse call system company to design, plan, lay out, sell, pre-wire, install, maintain, repair, test, inspect, or service nurse call system equipment.

"Nurse call trainee" means an individual who is employed by an Oklahoma licensed nurse call system company to learn to properly install and service nurse call system equipment.

"Nurse call system salesperson" means a person who sells to others on behalf of an nurse call company by any means, including, but not limited to, telephone or electronic device, public notice or advertisement, door-to-door or any other type of personal interaction, and/or a person who participates in design, plan and/or lay out of an nurse call system on behalf of a nurse call company.

"Ownership" means the dominion, title, or proprietary right in a company subject to the Alarm and Locksmith Industry Act and this Chapter.

"Qualifying devices" means a device or combination of devices such as retina readers, finger print pads, bio-metric readers, card swipes, etc. that are used to identify persons who have authorized entry through electronic access control systems.

"Residential building" shall mean buildings arranged for the use of one (1)- or two (2)-family dwelling units, including not more than five (5) lodgers or boarders per family and multiple single-family dwellings where each unit has an independent means of egress and is separated by a two (2)-hour fire separation assembly and all detached one (1)- or two (2)-family dwellings not more than three (3) stories in height, and the accessory structures as indicated in the 1995 edition of the CABO One and Two Family Dwelling Code.

"Residential fire alarm license" means the category of license which authorizes a fire alarm company, manager, technician, trainee or salesperson to engage in the fire alarm industry activities in compliance with this Chapter for fire alarm systems used in Residential Building and manufactured housing.

"Residential fire sprinkler license" means the category of license which authorizes a fire sprinkler company, manager, or technician or trainee to engage in the fire sprinkler industry activities in compliance with this Chapter for fire sprinkler systems used in Residential Building and manufactured housing.

"Security verification" means information submitted to the appropriate authority on each applicant to verify any criminal records.

"Supervision" means on-site supervision by a licensed manager, technician or salesperson.

"System" means a burglar alarm system, fire alarm system, fire sprinkler system, closed circuit television system, electronic access control system, locksmithing system, or a nurse call system, all as defined in these rules, or a portion or combination of such alarms or systems. However, the term "system" shall not include the following: (i) an alarm system installed in a motor vehicle; (ii) a burglar alarm system or household fire warning system sold at retail to an individual end user for self-installation; (iii) a single station fire alarm device sold at retail to an individual end user for self-installation or installed by a fire department, the State Fire Marshal, a public agency, a volunteer fire association, or their designated representatives.

"Trainee" means an individual who is employed by an Oklahoma licensed company to learn to properly engage in the activities regulated by this Chapter that can engage in any licensed category pursuit to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.

~~**"Unlimited fire alarm license"** means the category of license which authorizes a fire alarm company, manager, technician or salesman to engage in the alarm industry activities in compliance with this Chapter for any work performed in residential or commercial application.~~

~~**"Unlimited fire sprinkler license"** means the category of license which authorizes a fire sprinkler company, manager or technician to engage in the alarm industry activities in compliance with this chapter for any residential or commercial application.~~

310:205-1-3. Adopted references

The Board of Health hereby incorporates by reference the International Code Council (ICC) 2003 (IBC) Edition International Building Code; the (2002) Edition National Electrical Code (NFPA 70); the 2002 Edition National Fire Alarm Code (NFPA 72); the 2002 Edition Standard for the Installation of Sprinkler Systems(NFPA 13); the 2002 Edition Standard for

the installation of Sprinkler Systems in One and Two Family Dwellings (NFPA 13D); the 2002 Edition Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four stories in Height (NFPA 13R); the 2003 Edition Standard for the Installation of Standpipe and Hose Systems (NFPA 14); the 2001 Edition Standard for Water Spray Fixed Systems for Fire Protection (NFPA 15); the 2003 Edition Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems (NFPA 16); the 2003 Edition Standard for the Installation of Stationary Pumps for Fire Protection (NFPA 20); the 2002 Edition Standard for the Installation of Private Fire Service Mains and Their Appurtenances (NFPA 24); the 2002 Edition Standard for the Inspection, Testing, and Maintenance Water-Based Fire Protection Systems (NFPA 25); and the 2003 Edition Code for Safety to Life from Fire in Buildings and Structures (NFPA 101) as the minimum standard of installation for the alarm and locksmith industry in Oklahoma. If a conflict exists between any of the above referenced installation standards, the more stringent standard shall apply. If a conflict exists between any of the above referenced codes or standards and ~~any rule in this chapter~~ this Chapter, the ~~rule~~requirements in this ~~chapter~~Chapter shall apply.

310:205-1-3. 1 Compliance with intent of chapter

Where no specific standards or requirements are specified in this chapter or within other codes or regulations adopted by the State Department of Health, compliance with the applicable standards of the National Fire Protection Association, American National Standard Institute (ANSI), or other nationally recognized fire safety standards approved by the State is prima facie evidence of compliance with the intent of this chapter.

SUBCHAPTER 3. LICENSE REQUIREMENTS

310:205-3-1. General ~~alarm~~ application and license requirements

The categories of licensing in the alarm and locksmith industry shall be:

(1) Burglar alarm;
(2) ~~Limited~~Residential fire alarm;
(3) ~~Unlimited~~Commercial fire alarm;
(4) Alarm Monitoring; ~~or~~
(5) Fire sprinkler~~.~~;
(6) Locksmith;
(7) Electronic access control;
(8) Closed circuit television; and,
(9) Nurse call.

310:205-3-2. Application and license fees, period and display, and examination alternatives or prerequisites

(a) **Application and license fees.** The following fees apply to alarm and locksmith industry licensure:

(1) **Initial application and licensing fees.**

(A) ~~Alarm~~ Company application and License - $250.00; license issued after February 1, but before the end of the State fiscal year - $125.00 A company that is owned and operated by the company manager, with only a locksmith category license and which employs no additional employees, shall be exempted from a company license fee.

(B) Company Manager - Application $100.00 and Licensing fee $100.00

(C) ~~Alarm Technician/Alarm~~ Inspector, technician, salesperson, technician trainee - Application $40.00 and Licensing fee $35.00

~~(D) Alarm Salesperson - Application $40.00 and Licensing $35.00~~

(~~E~~D) Re-Examination, Per Attempt - $50.00

~~(F) Inspector - Application $40.00 Licensing $35.00~~

~~(G) Fire Sprinkler Technician - Application $40.00 and Licensing fee $35.00~~

(~~H~~E) Fire Sprinkler Technician Trainee $20.00

(~~I~~F) Duplicate or Revised license $25.00

(2) **Renewal fees.**

(A) Company License - $250.00 A company that is owned and operated by the company manager, with only a locksmith category license and which employs no additional employees, shall be exempted from a company license fee.

(B) Company Manager - $100.00

(C) Inspector, Technician, Salesperson - $35.00

(D) ~~Alarm~~ Technician Trainee - $25.00

~~(E) Alarm Salesperson $35.00~~

~~(F) Inspector $35.00~~

(~~G~~E) Fire Sprinkler Technician Trainee $15.00

(b) **License period.**

(1) A license shall expire on June 30, 1991, and each year thereafter. Beginning on July 1, a license may be renewed by paying double the renewal fee.

(2) Initial application for ~~Alarm Technicians, Sales and Trainees~~ managers, technicians, salespersons and trainees shall be submitted within three (3) working days of employment to the Department. This registration shall be contingent on a security background investigation.

(3) A license which has been expired for more than two (2) years shall not be renewed. An individual may obtain a valid license by successful completion of the appropriate examination and/or certification and other licensure requirements.

(4) Effective January 1, 2007, the Commissioner shall, upon proper application and payment of fee made with ninety (90) days from and after the effective date of the Alarm and Locksmith Industry Act, but not thereafter, license without examination those persons who can provide evidence that they were engaged in locksmithing, electronic access control, nurse call or closed circuit television work prior to January 1, 2007. Example of evidence includes but not is limited to;

(A) Invoices for work performed;

(B) Purchase receipts for industry related equipment;

(C) Documents of installation or services by employee;

(D) Other documents as approved by the Committee.

(c) Examination and Re-examination. Any applicant failing to pass the appropriate examination shall be required to retake the same category examination after payment of the appropriate retest fee. Any person who fails to appear for a scheduled examination shall forfeit his/her examination fee. However, if the examinee notifies the Department within seventy two (72) hours before scheduled exam, the Department will reschedule the examination date with no additional fee required pursuant to 310:205-3-2(a)(1).

(d) **Company license display.** The state issued company license number shall be placed on all letterhead stationery, business cards, invoices, statements, contracts, bids, estimates, and printed advertisements, and shall be included in electronic media advertisements. Decals and yard signs shall display the state issued company license number. The state issued license number shall be located on all vehicles that display the ~~alarm~~ company name.

(e) **Personal license display.** Each ~~Manager, Technician, Technician Trainee, or Salesperson,~~manager, technician, technician trainee, or salesperson, shall possess the state issued card any time the person is working in such capacity. The ~~card~~ individual license shall be ~~shown when requested.~~ presented to any authorized representative of the Oklahoma State Department of Health or other authorities having jurisdiction. In addition the individual shall have a photo I.D. in their possession while engaged in the licensed activity.

(f) **~~Certification.~~ Pre-licensing and course approval requirements.**

(1) An applicant for ~~an alarm~~a license may submit certification or proof of passing the appropriate examination(s) from a nationally recognized ~~organization~~ approved provider as a prerequisite to~~, or as a substitute for,~~ an ~~alarm~~ examination administered by the Department as provided for in ~~Sections 310:205-3-3, 310:205-3-4 or 310:205-3-7 of~~ this Chapter.

(2) In order to qualify, certification submitted by an applicant for ~~alarm~~ licensure shall be from an ~~organization~~ approved provider that issues ~~national~~ certification to individuals in the alarm and locksmith industry and is based on successful completion of an examination which determines if the applicant is sufficiently knowledgeable in burglar alarm systems, fire alarms, fire sprinkler, electronic access control, closed circuit television, nurse call, locksmithing, and/or technical sub-fields of ~~alarm~~ these systems to plan, install, repair, alter, maintain, service, sell, inspect, advertise, and/or monitor ~~alarm~~ systems or technical sub-fields of ~~alarm~~these systems according to nationally acceptable code standards.

(3) The Department shall accept certification from an ~~organization~~ approved provider if the certification standards have been verified by the Alarm and Locksmith Industry Committee to include that the certifying ~~organization~~ approved provider:

(A) shall conduct certification activities which are national in scope;

(B) shall be administratively independent in matters pertaining to certification. Administratively independent means that all policy decisions relating to certification matters are the sole decision of the certifying ~~organization~~ approved provider and not subject to approval by any other body or the membership of an affiliated body, and that all financial matters related to the operation of the certifying ~~organization~~ approved provider are segregated from those of the parent or any affiliated ~~organization~~ approved provider;

(C) shall demonstrate that the ~~organization~~ approved provider staff possesses the knowledge and skills necessary to conduct the certification or re-certification programs or that non-staff consultants and professionals are available to sufficiently supplement staff knowledge and skills;

(D) shall use reliable testing mechanism(s) to evaluate individual knowledge that is objective, fair to all candidates, job-related, and based on the knowledge and skills needed to function in the alarm and locksmith industry or technical sub-field of the alarm and locksmith industry;

(E) shall establish pass/fail levels that protect the public determining if the applicant is sufficiently knowledgeable in alarm and locksmith industry~~systems to design, install, service, and sell alarm systems~~ or technical sub-fields of the alarm and locksmith industry that meet applicable code standards, and that are generally acceptable in the psychometric community as being fair and reasonable; and

(F) shall publish and make available to the Department general descriptive materials on the procedures used in examination construction and validation, all eligibility requirements and determination procedures, and the procedures for examination administration including exam dates and locations, fees, reporting of results, re-certification requirements, and grievance or appeals procedures~~.~~;

(G) Name and address of the approved provider;

(H) Contact person and his or her address, telephone number and fax number;

(I) If a prior approved course has substantially changed, a summarization of such changes; and

(J) The Department may automatically accept without further review, courses pre-approved by the Committee.

(K) The Committee may withhold or withdraw approval of any provider for violation of or non-compliance with any provision of this section.

(L) No person or entity sponsoring or conducting a course shall advertise that it is endorsed, recommended, or accredited by the Committee. Such person or entity may indicate that the Committee has approved a course of study if that course of study has been pre-approved by the Committee before it is advertised or held.

(M) Providers shall maintain course records for at least five (5) years. The Committee may order an examination of the records for good cause shown.

(g) Personal license information.

(1) Each individual license holder shall notify the Oklahoma State Department of Health, on a form specified and provided by the Oklahoma State Department of Health, within fourteen (14) days of the following:

(A) Any change in the home address.

(B) Any separation from an employer or change in employer.

(C) Any conviction for a felony or entry of a plea of guilty or nolo contendere to a felony charge.

(2) No individual licensed under this Chapter shall contract for his services as an independent contractor without applying for and being issued a company and manager license under this Chapter. No company shall contract for the independent services of a holder of an individual license under this Section.

310:205-3-3. Burglar alarm license requirements

Licensing requirements for the burglar alarm industry are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed burglar alarm company manager who is responsible for the operations of the company's office. Any company maintaining multiple activity offices within Oklahoma, shall have a licensed burglar alarm manager at each office. Each burglar alarm company shall employ an Oklahoma licensed burglar alarm company manager. After January 1, 2003, all burglar alarm companies applying for initial licensure and/or any burglar alarm company which changes its burglar alarm company manager or ownership shall comply with Section 310:205-3-3(2)(C) of this chapter. After July 1, 2003, all burglar alarm companies will comply with section 310:205-3-3(2)(C) of this ~~chapter~~Chapter. A burglar alarm company shall notify the Department within fourteen (14) days in event of the death of the burglar alarm company manager or the manager's separation from the company for any other reason, and the company shall designate another licensed burglar alarm manager within (30) thirty days from separation.

(B) A licensed burglar alarm technician or manager shall be on site for any work being performed.

(C) A burglar alarm company may operate multiple activity offices provided each office has the same name and ownership of the parent company and shall operate in compliance with 310:205-3-3(1)(A). The company will notify the ~~department~~ Department of the physical address and telephone number for each multiple activity office in accordance with 59 O.S. Section 1800.10.

(D) ~~The alarm company shall remove access and "lockout" codes from the alarm system after the legal termination of the monitoring agreement on customer-owned equipment upon the receipt of a written request from the owner to remove such codes.~~ Each alarm company engaged in alarm business that sells a burglar alarm system to a consumer upon request from the consumer shall within forty-eight (48) hours return the lockout, installer, or programming code of the system to the factory default setting when the consumer cancels the contract on customer-owned equipment. If a system is installed without a written contract with the consumer, the system shall have the lockout code, installer or programming code set at default.

(E) The customer shall be given a copy of all documents at the time of the sale and the company shall maintain a copy of all of the documents. All monitoring and/or lease contracts shall include, as a minimum, the following information: the initial term of the agreement, the renewal term of the agreement, the terms for notification of cancellation of the agreement as well as the costs involved of all the terms of the agreement, the company name and the state issued license number, the sales representative's name and state issued license number, and the customer's name and address. The minimum information described above shall be disclosed in one of the following two ways:

(i) Printed on the front or face of the written contract in not less than twelve (12) point bold type and at least two (2) points larger than the rest of type size of the remaining text in the written contract; or,

(ii) On a separate disclosure form appended to the written contract and dated, and signed by the customer and the licensed alarm company representative who made the sale.

(2) **Manager.**

(A) Each application for licensure as a manager shall include verification of ~~at least eight thousand (8,000) hours~~four (4) years of experience in the burglar alarm business. The experience shall include ~~4000 hours~~two (2) years verified/or licensed experience as a Burglar Alarm technician or other related experience approved by the Committee.

(B) ~~Each licensed burglar alarm company manager shall pass an examination administered by the Department which qualifies him and determines if the applicant is sufficiently knowledgeable in burglar alarms to plan, install, repair, alter, maintain, service, sell, inspect, advertise, and monitor burglar alarm systems according to acceptable code standards.~~As of July 1, 2007, each applicant for licensure as a burglar alarm

manager shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f) of this Chapter.

(C) Each licensed burglar alarm company manager shall be responsible for all activities conducted within the State of Oklahoma by the ~~multi-activity~~ office where they are listed as manager.

(D) Each licensed burglar alarm company manager shall have a security background verification.

(E) Each licensed burglar alarm company manager that engages in residential systems must also be licensed as a residential fire alarm manager.

(3) **Technician.**

(A) Each technician shall work for a licensed burglar alarm company and under the supervision of a burglar alarm company manager.

(B) ~~Each technician shall pass an examination administered by the Department which determines if the applicant is sufficiently knowledgeable in burglar alarms to design, install, service, and sell burglar alarm systems that meet applicable code standards when installed; or in lieu of examination by the Department, an applicant for a license as a burglar alarm technician shall submit proof of Level 1 certification by NESA or proof of certification by another a organization approved provider that offers national certification to individuals in the burglar alarm industry~~ As of July 1, 2007, each applicant for licensure as a burglar alarm technician shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f) of this Chapter.

(C) Each technician shall have a security background verification.

(D) Each licensed burglar alarm technician that engages in residential systems must also be licensed as a residential fire alarm technician.

(E) An individual that holds a technician license in this category can engage in any licensed category as a trainee pursuit to this Chapter.

(4) **Technician/~~Salesman~~Salesperson Trainee.**

(A) A technician/~~salesman~~salesperson trainee shall be employed by a licensed Oklahoma burglar alarm company.

(B) A technician/~~salesman~~salesperson trainee shall work under the direct supervision of a licensed burglar alarm company manager, burglar alarm technician or a burglar alarm ~~salesman~~salesperson.

(C) There shall be no more than three (3) technician/~~salesman~~salesperson trainees per burglar alarm company manager, burglar alarm technician or burglar alarm ~~salesman~~salesperson per job site.

(D) Each technician/~~salesman~~salesperson trainee shall have security background verification.

(E) Each licensed burglar alarm trainee that engages in residential systems must also be licensed as a residential fire alarm trainee.

(F) An individual that holds a trainee license can engage in any licensed category pursuit to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.

(5) **Salesperson.**

(A) Each salesperson shall work for a licensed burglar alarm company and under the supervision of a burglar alarm company manager.

(B) ~~Each salesperson shall pass an examination administered by the Department which determines if the applicant is sufficiently knowledgeable in burglar alarms to design and sell burglar alarm systems that meet applicable code standards when installed; or in lieu of examination by the Department, an applicant for a license as a burglar alarm salesperson may submit proof of Level 1 certification by NESA or proof of certification by another organization that offers national certification to individuals in the burglar alarm industry~~As of July 1, 2007, each applicant for licensure as a burglar alarm salesperson shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f) of this Chapter.

(C) Each salesperson shall have a security background verification.

(D) Each licensed burglar alarm salesperson that engages in residential systems must also be licensed as a residential fire alarm salesperson.

310:205-3-4. Fire alarm license requirements

Licensing requirements for the fire alarm industry are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed fire alarm company manager who is responsible for the operations of the company's office. Any company maintaining multiple activity offices within Oklahoma shall have a licensed manager at each office regarding each regulated activity. Each company shall employ an Oklahoma licensed fire alarm company manager. After July 1, 2002, all fire alarm companies applying for initial licensure or any fire alarm company which changes managers or ownership shall comply with section 310:205-3-4 (2)(H) of this ~~chapter~~Chapter. After July 1, 2003, all fire alarm companies will comply with section 310:205-3-4 (2)(H) of this ~~chapter~~Chapter. In the event of the death of the fire alarm company manager or his/her separation from the company for any other reason, a burglar alarm company shall notify the Department within fourteen (14) days and name a licensed

burglar alarm manager within thirty (30) days after separation.

(B) A licensed fire alarm technician or manager shall be on site for any work being performed.

(C) A company whose manager only holds a ~~limited~~residential fire alarm manager license shall be issued a ~~limited~~residential fire alarm company license.

(D) A company whose manager holds ~~an unlimited~~a commercial fire alarm manager license shall be issued ~~an unlimited~~a commercial fire alarm company license.

(E) A company with a ~~limited~~residential fire alarm company license shall only offer to, or engage in the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire alarms for use in Residential Building and manufactured housing.

(F) A company with ~~an unlimited~~a commercial fire alarm company license may offer to, or engage in the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire alarm systems for any residential or commercial use.

(G) Any equipment installed by a company as part of a fire alarm system shall be listed by Underwriters Laboratories, Factory Mutual or any other nationally recognized testing entities for such purpose.

(H) A fire alarm company may operate multiple activity offices provided each office has the same name and ownership of the parent company and shall operate in compliance with 310:205-3-4(1)(A). The company will notify the ~~department~~Department of the physical address and telephone number for each multiple activity office in accordance with 59 O.S. Section 1800.10.

(I) A properly licensed fire alarm technician or manager of a properly licensed alarm company shall perform the initial testing, inspection, or certification of the entire fire alarm system, and that licensed alarm company shall assume full responsibility for the installation of the alarm system.

(J) Each fire alarm company that sells a fire alarm system to a consumer upon request from the consumer shall within forty-eight (48) hours return the central station monitoring programming code of the system to the factory default setting when the consumer cancels the contract on customer owned equipment. If a system is installed without a written contract with the consumer, the system shall have the central station monitoring programming code set at default.

(2) **Manager.**

(A) Each application for licensure as a fire alarm manager shall include verification of ~~at least eight thousand (8,000) hours~~four (4) years of experience in the fire alarm business. The experience shall include ~~4000 hours~~two (2) years verified/or licensed experience as a fire alarm technician. If applying for ~~limited~~residential fire alarm manager, experience must show ~~4000 hours limited~~residential technical experience. If applying for ~~unlimited~~commercial fire alarm manager, experience must show ~~4000 hours unlimited~~commercial technical experience.

(B) ~~Each manager shall pass an examination administered by the Department which qualifies him and determines if the applicant is sufficiently knowledgeable in fire alarms to plan, install, repair, alter, maintain, service, sell, inspect, advertise, and monitor fire alarm systems according to acceptable code standards.~~As of July 1, 2007, each applicant for licensure as a residential fire alarm manager shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f) of this Chapter.

(C) As of July 1, 2007, each applicant for licensure as a commercial fire alarm manager shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f) of this Chapter.

(~~C~~D) Each licensed company manager shall be responsible for all activities of the office they are listed as manager for within the State of Oklahoma.

(~~D~~E) Each licensed company manager shall have a security background verification.

(~~E~~F) A manager with a ~~limited~~residential fire alarm manager license shall only offer to, engage in, or supervise the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire alarm systems for use in Residential Building and manufactured housing. Each licensed Fire alarm company manager that engages in residential systems must also be licensed as a burglar alarm manager.

(~~F~~G) A manager with ~~an unlimited~~a commercial fire alarm manager license may offer to, engage in, or supervise the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire alarm systems for any residential or commercial use.

~~(G) An applicant for initial licensure as, or renewal of, an unlimited, fire alarm manager license shall submit proof of NICET II, technical sub-field Fire Alarm Systems, certification, NESA Level II Fire Installation & Wiring Codes and NESA Level II Electronics certification or certification by another organization that offers national certification to individuals in the fire alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter. After July 1, 2002, an applicant for initial licensure as an unlimited fire alarm manager license shall submit proof of NICET II, technical sub-field Fire Alarm Systems,~~

~~certification; or NESA Level II Fire Installation & Wiring Codes and NESA Level II Electronics certification; or proof of certification by another organization which offers national certification to individuals in the fire alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter. After July 1, 2003, an applicant for initial licensure as, or renewal of, an unlimited fire alarm manager license shall submit proof of NICET II, technical sub-field Fire Alarm Systems, certification; or NESA Level II Fire Installation & Wiring Codes and NESA Level II Electronics, certification or proof of certification by another organization which offers national certification to individuals in the fire alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter.~~

(3) **Technician.**

(A) Each technician shall work for a licensed Oklahoma fire alarm company and under the supervision of a fire alarm company manager.

(B) ~~Each technician shall pass an examination administered by the Department which determines if the applicant is sufficiently knowledgeable in fire alarms to design, install, service, and sell fire alarm systems that meet applicable code standards when installed.~~As of July 1, 2007, each applicant for licensure as a residential fire alarm technician shall as a prerequisite for licensing successfully complete a pre-licensing course from an approved provider and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f) of this Chapter.

(C) As of July 1, 2007 each applicant for licensure as a commercial fire alarm technician shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f) of this Chapter.

(~~C~~D) Each technician shall have a security background verification.

(~~D~~E) Each technician shall perform or supervise only fire alarm work within the fire alarm license category for which the fire alarm company is licensed. Each licensed fire alarm technician that engages in residential systems must also be licensed as a burglar alarm technician.

~~(E) An initial applicant for a limited technician license shall be issued a limited license after successful completion of the appropriate technician examination; or in lieu of examination by the Department, an applicant for a license as a limited fire alarm technician shall submit proof of Level 1 certification by NESA or proof of certification by another organization that offers national certification to individuals in the limited fire alarm industry in accordance with subsection 310:205-3-2(f) of this chapter.~~

~~(F) A technician with a limited technician license shall only install, repair, alter, maintain, service, sell, or inspect fire alarm systems for use in Residential Building. A technician with a limited technician license may be a trainee on commercial installations and service work including the install, repair, alter, maintenance, service and inspections as long as he or she is under the direct supervision of a licensed unlimited technician.~~

~~(G) A technician with an unlimited technician license may install, repair, alter, maintain, service, sell, or inspect fire alarm systems for any residential or commercial use.~~

~~(H) Beginning July 1, 2000, an applicant for an initial unlimited technician license, or an applicant for renewal of an unlimited technician license, may be issued an unlimited technician license after successful completion of the appropriate technician examination and submission of proof of passing the examinations required for NICET II certification, sub-field Fire Alarm Systems; or proof of NESA Level II Fire Installation & Wiring Codes and NESA Level II Electronics; or proof of certification by another organization which offers national certification to individuals in the fire alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter.~~

(F) An individual that holds a technician license in this category can engage in any licensed category as a trainee pursuit to this Chapter.

(4) **Technician/~~Salesman~~Salesperson trainee.**

(A) A technician/~~salesman~~salesperson trainee shall be employed by a licensed Oklahoma fire alarm company.

(B) A technician/~~salesman~~salesperson trainee shall work under the direct supervision of a licensed fire alarm company manager, fire alarm technician or a fire alarm ~~salesman~~salesperson.

(C) There shall be no more than three (3) technician/~~salesman~~salesperson trainees per fire alarm company manager or fire alarm technician per job site.

(D) Each technician/~~salesman~~salesperson trainee shall have a security background verification.

(E) Each technician/~~salesman~~salesperson trainee shall only install, repair, alter, maintain, service, sell, or inspect fire alarm systems within the fire alarm license category for which the supervisor is licensed. Each licensed fire alarm trainee that engages in residential systems must also be licensed as a burglar alarm trainee.

(F) An individual that holds a trainee license can engage in any licensed category pursuit to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.

(5) **Salesperson.**

(A) Each salesperson shall work for a licensed Oklahoma fire alarm company and under the supervision of a fire alarm company manager.

(B) Each salesperson shall pass an examination administered by the Department which determines

if the applicant is sufficiently knowledgeable in fire alarms to design and sell fire alarm systems that meet applicable code standards when installed.

(C) Each salesperson shall have a security background verification.

(D) ~~An applicant for an initial limited salesperson license shall be issued a limited license after successful completion of the appropriate salesperson examination; or in lieu of examination by the Department, an applicant for a license as a limited fire alarm salesperson shall submit proof of certification by NESA or proof of certification by another organization that offers national certification to individuals in the limited fire alarm industry in accordance with subsection 310:205-2-3(f) of this chapter.~~As of July 1, 2007, each applicant for licensure as a residential fire alarm salesperson shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f) of this Chapter.

(E) As of July 1, 2007, each applicant for licensure as a commercial fire alarm salesperson shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f) of this Chapter.

(~~E~~F) Each salesperson shall design and sell only fire alarm systems in the license category for which the fire alarm company is licensed. Each licensed fire alarm salesperson that engages in residential systems must also be licensed as a burglar salesperson.

~~(F) An initial applicant for an unlimited salesperson license shall be issued an unlimited license after successful completion of the appropriate salesperson examination or submission of proof of NICET II certification, sub-field Fire Alarm Systems, or NESA Level II Codes and Standards, or certification by another organization which offers national certification to individuals in the fire alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter~~.

310:205-3-5. Monitoring license requirements

Licensing requirements for the alarm monitoring industry are as follows:

(1) **Company.** Each company shall employ an Oklahoma licensed alarm monitoring company manager. A monitoring license shall be issued to a monitoring facility, which offers and provides monitoring services to residential or commercial customers.

(2) **Manager.**

(A) Each manager shall be responsible for all activities of the company within the State of Oklahoma. In the event of the death of the monitoring company manager or his/her separation from the company for any other reason, a monitoring company shall notify the Department with fourteen (14) days and name another licensed burglar alarm manager within thirty (30) days from separation.

(B) Each manager shall have a security background verification.

310:205-3-7. Fire sprinkler license requirements

Licensing requirements for the fire sprinkler industry are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed fire sprinkler company manager who shall attend the operations of that office. Each company which maintains multiple offices within Oklahoma, except for offices established for single event activity such as job site construction offices, shall have a licensed manager at each individual office. The company licensed manager shall attend only one (1) of the company offices in Oklahoma. In the event of the death of the fire sprinkler company manager or his/her separation from the company for any other reason, a fire sprinkler company shall notify the Department within fourteen (14) days and name another licensed fire sprinkler manager within thirty (30) days from separation.

(B) A licensed fire sprinkler technician or manager must be on job site of any work being performed.

(C) A company whose manager only holds a ~~limited~~residential fire sprinkler manager license shall be issued a ~~limited~~residential fire sprinkler license.

(D) A company whose manager holds ~~an unlimited~~a commercial fire sprinkler manager license shall be issued ~~an unlimited~~commercial fire sprinkler license.

(E) A company with a ~~limited~~residential fire sprinkler company license shall only offer to, or engage in the planning, sales, installation, repair, alteration, service, and inspection of residential multipurpose fire sprinkler systems on residential building and manufactured housing.

(F) A company with ~~an unlimited~~a commercial fire sprinkler company license may offer to, or engage in the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire sprinkler systems for any residential or commercial use.

(2) **Manager.**

(A) ~~Each unlimited fire sprinkler manager shall submit proof of Level Three certification by NICET or certification by another organization which offers national certification to individuals in the fire sprinkler industry in accordance with subsection 310:205-3-2(f) of this Chapter in the technical sub-field of automatic sprinkler systems lay out, or possess a registration as a professional engineer in the State of Oklahoma in the field of fire protection.~~As of July 1, 2007, each applicant for licensure as a residential fire sprinkler manager shall as a

prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f) of this Chapter.

(B) Each licensed ~~limited~~residential or ~~unlimited~~commercial company manager ~~further~~ accepts full responsibility for all activities of his company within the State of Oklahoma.

(C) A fire sprinkler company manager is a specialty contractor whose principal contracting business is the execution of contracts requiring the art, ability, experience, knowledge, science, and skill to design, fabricate, install, inspect (other than electrical), alter or repair, fire sprinkler systems, piping or tubing and appurtenances and equipment pertaining thereto, including both overhead and underground non-potable water mains, fire hydrant mains, standpipes, and hose connections to fire sprinkler systems, air line systems used in connection with fire sprinkler systems, and tanks and pumps connected thereto, in compliance with nationally recognized standards including state and local codes and standards for layout, installation and maintenance of fire sprinkler systems.

~~(D) Each limited fire sprinkler manager shall submit proof of NICET II, technical sub-field of automatic sprinkler systems layout, or certification by another organization which offers national certification to individuals in the fire sprinkler industry in accordance with subsection 310:205-3-2(f) of this Chapter in the technical sub-field of automatic sprinkler systems layout, or possess a registration as a professional engineer in the state of Oklahoma in the field of fire protection.~~

(D) As of July 1, 2007, each applicant for licensure as a commercial fire sprinkler manager shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f) of this Chapter.

(E) A ~~limited~~residential fire sprinkler manager shall only offer to, engage in, or supervise the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of multipurpose fire sprinkler systems for use in Residential Building and manufactured housing.

(F) ~~An unlimited~~A commercial fire sprinkler manager may offer to, engage in, or supervise the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire sprinkler systems for any residential of commercial use.

(3) **Technician.**

(A) Each ~~limited~~residential or ~~unlimited~~commercial fire sprinkler technician must work for a licensed Oklahoma fire sprinkler company and work under the supervision of a fire sprinkler company manager.

~~(B) Each unlimited fire sprinkler technician must pass an examination administered by the Department which determines if the applicant is sufficiently knowledgeable to plan, install, repair, alter, maintain, service and sell (other than electrical), fire sprinkler systems that meet applicable code standards when installed in any residential or commercial building.~~

(B) As of July 1, 2007, each applicant for licensure as a residential fire sprinkler technician shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f) of this Chapter.

~~(C) Each limited technician shall submit proof of certification approved by the alarm industry committee which demonstrates successful completion of training and testing administered by the National Fire Sprinkler Association, the American Fire Sprinkler Association in the installation of residential multipurpose piping systems that serve both domestic water and fire protection needs for Residential Building and manufactured homes or certification by another organization which offers national certification to individuals in the fire sprinkler industry in accordance with subsection 310:205-3-2(f) of this Chapter. Certification programs shall consist of a minimum of 16 hours of residential training.~~

(C) As of July 1, 2007, each applicant for licensure as a commercial fire sprinkler technician shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f) of this Chapter.

(D) ~~An unlimited~~A commercial fire sprinkler technician working for a fire sprinkler company with a ~~limited~~residential license shall only perform fire sprinkler work for which the company is licensed.

(4) **Technician Trainee.**

(A) A technician trainee shall be employed by a licensed Oklahoma fire sprinkler company.

(B) A technician trainee shall work under the direct supervision of a licensed fire sprinkler company manager or fire sprinkler technician.

(C) There shall be no more than ten (10) technician trainees per fire sprinkler company manager or fire sprinkler technician per job site.

(D) A technician trainee must submit a trainee application to the Oklahoma State Department of Health within fifteen (15) days of being hired by a Oklahoma licensed fire sprinkler company.

(5) **Inspector.**

(A) An applicant for initial licensure as a Fire Sprinkler Inspector shall possess an alarm industry license with the unlimited fire sprinkler manager or

unlimited fire sprinkler technician category or possess a registration as a professional engineer in the state of Oklahoma in the field of fire protection. Beginning July 1, 2005, an applicant for initial or renewal fire sprinkler inspector license shall also submit proof of NICET Level II certification in the sub-field of Inspection and Testing of Water-Based Systems or submit proof of NICET Level III certification in the sub-field of automatic sprinkler systems layout, or by another organization which offers national certification to individuals in the fire sprinkler industry in accordance with subsection 310:205-3-2(f) of this Chapter in the technical sub-field of automatic sprinkler systems layout, or possess a registration as a professional engineer in the State of Oklahoma in the field of fire protection. Beginning July 1, 2007, an applicant for initial or renewal fire sprinkler inspector license shall also submit proof of NICET Level III certification in the sub-field of Inspection and Testing of Water-Based Systems or submit proof of NICET Level III certification in the sub-field of automatic sprinkler systems layout, or certification by another organization which offers national certification to individuals in the fire sprinkler industry in accordance with subsection 310:205-3-2(f) of this Chapter in the technical sub-field of automatic sprinkler systems layout, or possess a registration as a professional engineer in the State of Oklahoma in the field of fire protection.

(B) Each fire sprinkler inspector shall work for a licensed fire sprinkler company.

(C) Each fire sprinkler inspector shall inspect and test each fire sprinkler system to determine if the system has been installed and is operating according to the appropriate code and standard before certifying the system.

(D) Each fire sprinkler inspector shall work for a fire sprinkler company which possesses an unlimited fire sprinkler company license.

310:205-3-8. Locksmith license requirements

Licensing requirements for the locksmith industry are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed locksmith company manager who is responsible for the operations of the company's office. Any company maintaining multiple offices within Oklahoma shall have a licensed locksmith manager at each office. In the event of the death of the locksmith company manager or his/her separation from the company for any other reason, a locksmith company shall notify the Department within fourteen (14) days and name another licensed locksmith manager within thirty (30) days from separation.

(B) A licensed locksmith technician or manager shall be on site for any work being performed.

(C) A locksmith company may operate multiple offices provided each office has the same name and ownership of the parent company and shall operate in compliance with 310:205-3-8(1)(A). The company shall notify the Department of the physical address and telephone number for each office in accordance with 59 O.S. Section 1800.10.

(D) The initial sales and pinning of locks and lock system shall not require a locksmith license however, the repinning of locks subsequent to the initial sales shall require a locksmith license.

(E) Tow truck companies/operators licensed by the Department of Public Safety are exempted from the requirements of licensure and this Chapter when performing automotive locksmith services at their business location, and when performing automotive locksmith roadside services in a vehicle appropriate licensed and identified in accordance with the Department of Public Safety requirements for tow truck companies/operators.(Chapter 595:25)existing at the of the adoption of this rule or as may subsequently enumerated or adopted.

(F) An individual, company, corporation, institution, industry, business or religious organization, or employee thereof, is exempt from the requirements of this Chapter when performing locksmith category activities on the property of the same, provided the locksmith category services are not performed as a normal business practice on the property of another.

(2) **Manager.**

(A) Each application for licensure as a manager shall include verification of experience in the locksmith business. The experience shall include verified/or licensed experience as a locksmith technician.

(B) As of July 1, 2007, each applicant for licensure as a locksmith manager shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f).

(C) Each licensed locksmith company manager shall be responsible for all activities conducted within the State of Oklahoma by the office where they are listed as manager.

(D) Each licensed locksmith company manager shall have a security background verification.

(3) **Technician.**

(A) Each technician shall work for a licensed Oklahoma locksmith company and under the supervision of a locksmith company manager.

(B) As of July 1, 2007, each applicant for licensure as a locksmith technician shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f).

(C) Each technician shall have a security background verification.

(D) An individual that holds a technician license in this category can engage in any licensed category as a trainee pursuit to this Chapter.

(4) **Technician Trainee.**

(A) A technician trainee shall be employed by a licensed Oklahoma locksmith company.

(B) A technician trainee shall work under the direct supervision of a licensed locksmith company manager or a locksmith technician.

(C) There shall be no more than three (3) technician trainees per locksmith company manager or locksmith technician per job site.

(D) Each technician trainee shall have security background verification.

(E) An individual that holds a trainee license can engage in any licensed category pursuit to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.

(5) **Salesperson.**

(A) Each salesperson shall work for a licensed Oklahoma locksmith company and under the supervision of a locksmith company manager.

(B) As of July 1, 2007 each applicant for licensure as a locksmith salesperson shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f).

(C) Each salesperson shall have a security background verification.

310:205-3-9. Electronic Access Control license requirements

Licensing requirements for the electronic access control are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed electronic access control company manager who is responsible for the operations of the company's office. Any company maintaining multiple offices within Oklahoma shall have a licensed electronic access control manager at each office. In the event of the death of the electronic access control company manager or his/her separation from the company for any other reason, an electronic access control company shall notify the Department within fourteen (14) days and name another licensed electronic access control manager within thirty (30) days from separation.

(B) A licensed electronic access control technician or manager shall be on site for any work being performed.

(C) An electronic access control company may operate multiple offices provided each office has the same name and ownership of the parent company and shall operate in compliance with 310:205-3-9-(1)(A). The company shall notify the Department of the physical address and telephone number for each office in accordance with 59 O.S. Section 1800.10.

(2) **Manager.**

(A) Each application for licensure as a manager shall include verification of experience in the electronic access control business. The experience shall include verified and/or-licensed experience as an electronic access control technician.

(B) As of July 1, 2007, each applicant for licensure as a electronic access control manager shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f).

(C) Each licensed electronic access control company manager shall be responsible for all activities conducted within the State of Oklahoma by the office where they are listed as manager.

(D) Each licensed electronic access control company manager shall have a security background verification.

(3) **Technician.**

(A) Each technician shall work for a licensed Oklahoma electronic access control company and under the supervision of a electronic access control company manager.

(B) As of July 1, 2007, each applicant for licensure as a electronic access control technician shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f).

(C) Each technician shall have a security background verification.

(D) An individual that holds a technician license in this category can engage in any licensed category as a trainee pursuit to this Chapter.

(4) **Technician/ Salesperson Trainee.**

(A) A technician/salesperson trainee shall be employed by a licensed Oklahoma electronic access control company.

(B) A technician/salesperson trainee shall work under the direct supervision of a licensed electronic access control company manager, electronic access control technician or a electronic access control salesperson.

(C) There shall be no more than three (3) technician/salesperson trainees per electronic access control company manager, electronic access control technician or electronic access control salesperson per job site.

(D) Each technician/salesperson trainee shall have security background verification.

(E) An individual that holds a trainee license can engage in any licensed category pursuit to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.

(5) **Salesperson.**

(A) Each salesperson shall work for a licensed Oklahoma electronic access control company and under the supervision of a electronic access control company manager.

(B) As of July 1, 2007, each applicant for licensure as a electronic access control salesperson shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f).

(C) Each salesperson shall have a security background verification.

310:205-3-10. Closed Circuit Television license requirements(CCTV)

Licensing requirements for the CCTV industry are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed CCTV company manager who is responsible for the operations of the company's office. Any company maintaining multiple offices within Oklahoma, shall have a licensed CCTV manager at each office. In the event of the death of the CCTV company manager or his/her separation from the company for any other reason, a CCTV company shall notify the Department within fourteen (14) days and name another licensed CCTV manager within thirty (30) days from separation.

(B) A licensed CCTV technician or manager shall be on site for any work being performed.

(C) A CCTV company may operate multiple offices provided each office has the same name and ownership of the parent company and shall operate in compliance with 310:205-3-10(1)(A). The company will notify the Department of the physical address and telephone number for each office in accordance with 59 O.S. Section 1800.10.

(2) **Manager.**

(A) Each application for licensure as a CCTV manager shall include verification of experience in the CCTV business. The experience shall include verified and/or licensed experience as a CCTV technician.

(B) As of July 1, 2007, each applicant for licensure as a CCTV manager shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f).

(C) Each licensed CCTV company manager shall be responsible for all activities conducted within the State of Oklahoma by the office where they are listed as manager.

(D) Each licensed CCTV company manager shall have a security background verification.

(3) **Technician.**

(A) Each technician shall work for a licensed Oklahoma CCTV company and under the supervision of a CCTV company manager.

(B) As of July 1, 2007 each applicant for licensure as a CCTV technician shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f).

(C) Each technician shall have a security background verification.

(D) An individual that holds a technician license in this category can engage in any licensed category as a trainee pursuit to this Chapter.

(4) **Technician/Salesperson Trainee.**

(A) A technician/salesperson trainee shall be employed by a licensed Oklahoma CCTV company.

(B) A technician/salesperson trainee shall work under the direct supervision of a licensed CCTV company manager, CCTV technician or a CCTV salesperson.

(C) There shall be no more than three (3) technician/salesperson trainees per CCTV company manager, CCTV technician or CCTV salesperson per job site.

(D) Each technician/salesperson trainee shall have security background verification.

(E) An individual that holds a trainee license can engage in any licensed category pursuit to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.

(5) **Salesperson.**

(A) Each salesperson shall work for a licensed Oklahoma CCTV company and under the supervision of a CCTV company manager.

(B) As of July 1, 2007, each applicant for licensure as a CCTV salesperson shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f).

(C) Each salesperson shall have a security background verification.

310:205-3-11. Nurse Call System license requirements

Licensing requirements for the nurse call industry are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed nurse call company manager who is responsible for the operations of the company's office. Any company maintaining multiple activity offices within Oklahoma, shall have a licensed nurse call manager at each office. In the event of the death of the nurse call company manager or his/her separation from the company for any other reason, a nurse call company shall notify the Department within fourteen (14) days and name another licensed nurse call manager within thirty (30) days from separation.

(B) A licensed nurse call technician or manager shall be on site for any work being performed.

(C) A nurse call company may operate multiple offices provided each office has the same name and ownership of the parent company and shall operate in compliance with 310:205-3-11(1)(A). The company shall notify the Department of the physical address and telephone number for each office in accordance with 59 O.S. Section 1800.10.

(2) **Manager.**

(A) Each application for licensure as a manager shall include verification of experience in the nurse call business. The experience shall include verified and/or licensed experience as a nurse call technician.

(B) As of July 1, 2007, each applicant for licensure as a nurse call manager shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f).

(C) Each licensed nurse call company manager shall be responsible for all activities conducted within the State of Oklahoma by the office where they are listed as manager.

(D) Each licensed nurse call company manager shall have a security background verification.

(3) **Technician.**

(A) Each technician shall work for a licensed Oklahoma nurse call company and under the supervision of a nurse call company manager.

(B) As of July 1, 2007, each applicant for licensure as a nurse call technician shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f).

(C) Each technician shall have a security background verification.

(D) An individual that holds a technician license in this category can engage in any licensed category as a trainee pursuit to this Chapter.

(4) **Technician/Salesperson Trainee.**

(A) A technician/salesperson trainee shall be employed by a licensed Oklahoma nurse call company.

(B) A technician/salesperson trainee shall work under the direct supervision of a licensed nurse call company manager, nurse call technician or a nurse call salesperson.

(C) There shall be no more than three (3) technician/salesperson trainees per nurse call company manager, nurse call technician or nurse call salesperson per job site.

(D) Each technician/salesperson trainee shall have security background verification.

(E) An individual that holds a trainee license can engage in any licensed category pursuit to this Chapter while under the direct supervision of an individual holding the appropriate license in the category of activity being performed.

(5) **Salesperson.**

(A) Each salesperson shall work for a licensed Oklahoma nurse call company and under the supervision of a nurse call company manager.

(B) As of July 1, 2007, each applicant for licensure as a nurse call salesperson shall as a prerequisite for licensing successfully complete a pre-licensing course from a provider approved by the Committee and pass an examination prescribed by the Committee in accordance with subsection 310:205-3-2(f).

(C) Each salesperson shall have a security background verification.

SUBCHAPTER 5. SPECIAL PROVISIONS

310:205-5-1. ~~Unlimited~~Commercial fire alarm tagging requirements

(a) **White Tag (Installation sticker).** The White Tag shall be the permanent visual record of the original installation and certification. The following additional requirements shall apply to the use of the White Tag:

(1) The tag must be permanently affixed to the main control panels as long as the system is in service.

(2) The tag shall be five inches (5") in height by four inches (4") in width and shall be water durable and have a self-adhesive backing.

(3) The tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL";

(B) The certifying company's name, address, and telephone number (local office);

(C) The certifying company's ~~unlimited~~commercial fire alarm license number;

(D) The signature and license number of the ~~Unlimited~~commercial Fire Alarm Technician certifying the system;

(E) The Fire Alarm Permit number;

(F) The model of the control panel;

(G) The date of certification; and,

(H) The Code, Edition and year under which the system was installed.

(4) Only the Fire Code Official may remove an installation tag.

(b) **Traffic Light Bright Green Tag (Annual inspection tag/sticker).** The Green Tag shall be the visual record of the last annual inspection or initial certification testing where the system was found to be operable with no impairments. The following additional requirements shall apply to the use of the Green Tag:

(1) The annual inspection must be conducted in accordance with NFPA testing standards and manufacturer's specifications.

(2) The tag shall be five inches (5") in height by four inches (4") in width and shall have a self-adhesive backing or made of colored card stock placed in a plastic sleeve.

(3) The tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL;"

(B) The service company's name, address, and telephone number (local office);

(C) The service company's ~~unlimited~~commercial fire alarm license number;

(D) The signature and license number of the ~~Unlimited~~commercial Fire Alarm Technician certifying the system; and

(E) The date the inspection was performed.

(4) Only ~~an Unlimited~~a commercial Fire Alarm Technician, employed by ~~an Unlimited~~a Fire Alarm Company or the Fire Code Official may remove the tag.

(c) **Traffic Light Bright Yellow Tag (Annual inspection tag/sticker).** Operational Fire Alarm System but with minor impairments. The intent of the Yellow Tag is to provide notification to the Authority Having Jurisdiction of a system that is operable with impairments that do not severely compromise the system's functional operation. The Yellow Tag shall be the visual record of the last annual inspection where the system was found to be operable but with minor impairments. The following additional requirements shall apply to the use of the Yellow Tag:

(1) The annual inspection must be conducted in accordance with NFPA testing standards and manufacturer's specifications.

(2) The tag shall be five inches (5") in height by four inches (4") in width and shall have a self-adhesive backing or made of colored card stock placed in a plastic sleeve.

(3) The tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL";

(B) The service company's name, address, and telephone number (local office);

(C) The service company's ~~unlimited~~commercial fire alarm license number;

(D) The signature and license number of the ~~Unlimited~~commercial Fire Alarm Technician certifying the system;

(E) The date the inspection was performed; and,

(F) A list of the impairments.

(4) Only ~~an Unlimited~~a commercial Fire Alarm Technician, employed by ~~an Unlimited~~a commercial Fire Alarm Company or the Fire Code Official may remove the tag.

(5) If a Yellow Tag is placed on a fire alarm system the ~~Unlimited~~ commercial Fire Alarm Company shall notify the building owner or agent and the Fire Code Official in writing of all impairments immediately or as soon as practicable, but no later than seventy-two (72) hours.

(d) **Traffic Light Bright Red Tag (Annual inspection tag/sticker) Fire Alarm System Inoperable.** The intent of the Red Tag is to provide notification to the Authority Having Jurisdiction of a Fire Alarm System that is inoperable.

(1) The annual inspection must be conducted in accordance with NFPA testing standards and manufacturer's specifications.

(2) The tag shall be five inches (5") in height by four inches (4") in width and shall have a self-adhesive backing or made of colored card stock placed in a plastic sleeve.

(3) The tag shall bear the following information:

(A) "DO NOT REMOVE BY ORDER OF THE FIRE CODE OFFICIAL";

(B) The service company's name, address, and telephone number (local office);

(C) The service company's ~~unlimited~~commercial fire alarm license number;

(D) The signature and license number of ~~an Unlimited~~a commercial Fire Alarm Technician certifying the system;

(E) The date the inspection was performed;

(F) A list of the deficiencies that render the system inoperable; and,

(G) A list of any deficiencies present that do not render the system inoperable.

(4) Only ~~an Unlimited~~a commercial Fire Alarm Technician, employed by ~~an Unlimited~~a commercial Fire Alarm Company or the Fire Code Official may remove an annual inspection tag.

(5) If a Red Tag is placed on a fire alarm system the ~~Unlimited~~commercial Fire Alarm Company shall notify the building owner or agent and the Fire Code Official in writing of all impairments immediately or as soon as practicable, but no later than twenty-four (24) hours.

SUBCHAPTER 7. ENFORCEMENT

310:205-7-1. License revocation and suspension

(a) The employment or use of unlicensed individuals may be grounds to suspend, revoke, or deny renewal of the license of the person so employing or using unlicensed individuals.

(b) The repeated violation of any rule or provision of the Act, or the violation of multiple sections of this Chapter or provisions of the Act, may be grounds to suspend or revoke a licensee's license.

(c) Any person convicted in a court of competent jurisdiction of forgery, fraud, conspiracy to defraud, or any similar offense, or pleading guilty or nolo contendre to any such offense may be subject to license suspension or revocation.

(d) Any person failing to comply with a fine assessment or other administrative order of the Department within ninety (90) days of issuance of such assessment or order shall be subject to license suspension.
(e) Any person whose license is revoked pursuant to these rules may not perform alarm or locksmith industry work before attaining licensure pursuant to OAC 310:205.

310:205-7-2. Prohibited acts
(a) No person, entity, or firm may perform burglar alarm, fire alarm, ~~auto alarm,~~ sprinkler alarm, locksmithing, electronic access control, closed circuit television, nurse call or monitoring work without first obtaining a license pursuant to these Rules.
(b) No person shall offer to engage in burglar alarm, fire alarm, ~~auto alarm,~~ sprinkler alarm, locksmithing, electronic access control, closed circuit television, nurse call or monitoring work during the period his license is suspended or revoked.
(c) No employing ~~alarm~~ firm shall employ or use an unlicensed person to perform alarm and locksmith industry work.
(d) No person, entity, or firm may transfer a license or registration.
(e) No person, licensed pursuant to these Rules, shall enter into an agreement for the use of his license with any firm or person who is, or has been adjudicated to be, in violation of any provision of the Act, or whose license is currently suspended or has within the last year been revoked, unless or until otherwise approved by the Department.
(f) No person shall make a materially false or fraudulent statement in an application for license, engage in cheating, or otherwise commit an act in violation of title 59 O.S.1991, Section 1800.

[OAR Docket #07-1071; filed 5-18-07]

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

[OAR Docket #07-1072]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Oklahoma State Board of Health; Barber Regulations, 59 O.S., §§ 61.1 et seq.
DATES:
Comment Period:
February 1, 2007 through March 8, 2007
Public Hearing:
March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The proposed rule changes provide authorization for a "Kiosk Style Barber Shop" to operate within an enclosed building with an exemption from the requirement for toilet facilities if such facilities are available for use within 500 feet, and the shop has self contained facilities for adequate hand washing. The proposed rule changes authorize the issuance of a duplicate barber license to instructors for use in a shop upon written request. The proposed rule changes create a requirement that all licensees must have their license posted in a location visible to their client and have a photo ID in their possession while barbering. The proposed rule changes provide that all licensees are responsible for product knowledge and safe application required by product label; and contains a provision to authorize posting of a consumer advisory, or providing the client with an informational fact sheet or informed written release of liability for products requiring a patch test. Additionally the proposed rule changes provide that quarterly attendance reports submitted by the schools shall constitute a separate violation for each day that a report is delinquent.
CONTACT PERSON:
Vernon Bolz, Director, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299; telephone:(405) 271-5779, ext. 57901; facsimile: (405) 271-5286 electronic mail: Vbolz@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

310:210-1-2. Definitions
The following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:
"Barber" means any person who engages in the practice of barbering.
"Barbering" means any one or any combination of the following practices, when done upon the upper part of the human body for cosmetic purposes and when done for payment either directly or indirectly for the general public, constitutes the practice of barbering, to wit: Shaving or trimming the beard or cutting the hair; giving facials or scalp massages or treatment with oils, creams, lotions or other preparations, either by hand or mechanical appliances; singeing, shampooing or dyeing the

hair or applying hair tonics; applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to scalp, face, neck or upper part of the body; and removing superfluous hair from the face, neck, or upper part of the body."

"Barber apprentice" means any person sixteen (16) years of age or older whose principal occupation is the learning of the barber trade in the State of Oklahoma, under the direct supervision of an Oklahoma licensed barber who has at least two (2) years of practical experience as a licensed barber.

"Barber Board" means the State Barber Advisory Board.

"Barber school or college" means an establishment operated for the purpose of teaching barbering.

"Barber shop" means an establishment or place of business, including a mobile unit, where one (1) or more persons are engaged in the practice of barbering, but does not include barber schools or colleges.

"Board" means State Board of Health.

"Commissioner" means the State Commissioner of Health.

"Contagious communicable disease or condition" means those infectious diseases which are transmitted from person-to-person by contact with blood or body secretions and may pose an occupational risk to barbers, barber apprentices, graduate apprentices, or instructors.

"Department" means the State Department of Health.

"Direct supervision" means the supervision, by the actual presence in the shop, of a licensed barber while barber service is being performed by a barber apprentice or graduate apprentice.

"Graduate-apprentice" means any person sixteen (16) years of age or older who has completed the barber curriculum at an Oklahoma licensed barber college, whose application to take the Oklahoma barber examination has been accepted, and who is under the direct supervision of an Oklahoma licensed barber who has at least two (2) years of practical experience as a licensed barber. A graduate-apprentice license is only valid for four (4) months from the date of issuance or until the graduate-apprentice successfully completes the barber examination if less than four (4) months from the date of issuance.

"Instructor" means a person licensed to teach barbering.

"Instructor student" means a licensed barber enrolled in a barber college or barber school who is learning the teaching of barbering.

"Kiosk Style Barber Shop" means a small temporary or semi-permanent structure generally not larger than 150 square feet, which is located within an enclosed building, such as a mall or airport lounge, for the purpose of barbering.

"Mobile unit" means a self-contained, self-supporting, enclosed mobile unit not less than 24 feet in length, listed as a barber shop with the Department, used for the practice of "Barbering" and complying with OAC 310:210-7.

"Potentially infectious body fluids" means blood or blood products; any fluid visibly contaminated with blood; and all body fluids.

"Sanitizers" means a disinfectant which inhibits, neutralizes, or destroys all bacteria, viruses, parasites and other organisms. It shall be a germicide, fungicide and virucide to comply with the disinfecting requirements of the barber rules.

SUBCHAPTER 5. LICENSING

310:210-5-1. License required

A barber or instructor license shall only be issued to an individual who passes the required examination and pays the licensing fee established by the Board. No person shall practice any phase of barbering for fee or otherwise who does not have a current valid barber, barber apprentice, graduate-apprentice, or instructor license, ~~in good standing~~ and a photo ID in their possession. A duplicate license shall be issued if the licensee ~~files~~ submits a notarized statement as to its loss~~.~~, except that an instructor upon a written request shall be issued a duplicate license as a barber without fee for use in a barber shop. The barber license number shall be the same as the instructor license.

310:210-5-4. License posting

The license issued by the Commissioner shall be posted at the barber, barber apprentice, instructor or graduate-apprentice work station. The license shall not be valid unless it is posted in a conspicuous location visible to the client, and a photo ID is in the possession of the person performing barbering. The photo ID shall be presented to any authorized representative of the Oklahoma State Department of Health upon request.

SUBCHAPTER 7. GENERAL SANITATION

310:210-7-15. Kiosk Style Barber Shop

A kiosk style barber shop shall be approved to operate within an enclosed building such as a mall or airport lounge. The shop shall be exempted from the requirement of toilet facilities only if toilet facilities, which are available for use, are located within 500 feet. A hand washing lavatory with hot and cold water under pressure through a mixing faucet shall be located within the shop. If a public water supply is not available to the shop a minimum supply of five gallons shall be provided in a sanitary manner with an automatic pressure activated mechanical pump. Additionally a water heater shall be furnished capable of supplying water with a minimum temperature of 110 degrees Fahrenheit. If a common drain for wastewater disposal is not available at the shop a wastewater holding tank with a minimum capacity of five gallons shall be provided. The shop shall not be located within fifty feet of a food preparation or food service area.

310:210-7-16. Product safety and consumer advisory

All licensed barbers, barber instructors, and barber apprentices shall be individually responsible for product knowledge. Maximum precautionary, safe, sanitary and appropriate preparation prior to service and application, as required by product label, shall be practiced at all times upon the public. Licensees who use a product (s) that requires a patch test before the use or application of the product are required to post an advisory, clearly visible to the client in the area where the product requiring the patch test is used or applied, that advises

the client of the manufacturer's requirement to conduct a patch test before the produce may be used or applied. The posting of an advisory shall not be required if the licensee provides the individual with a printed, legible fact sheet containing the manufacturer's requirement to conduct a patch test before the product is used or applied, or secures an informed written release of liability from the client receiving the application of the product requiring the patch test.

SUBCHAPTER 11. BARBER SCHOOL OR COLLEGE MANAGEMENT REQUIREMENTS

310:210-11-13. Records available from daily time clock

(a) In addition to keeping the monthly report of student hours, a barber school or college shall keep a record of daily attendance. There shall be no handwritten time cards. Each student shall be responsible each class day for punching their own time card when entering or leaving class. Failure to clock in or out shall result in loss of credit for time attended that day. All records shall be available for inspection. No student shall be allowed to obtain more than eight (8) hours credit per day.

(b) Quarterly attendance report forms provided by the Department shall be completed and submitted by the school or college to the Department no later than the fifteenth (15th) of January, April, July, and October. This report shall include the student's name, the number of hours completed during the quarter, and enrollment status. Each day that a report required under this rule remains delinquent shall constitute a separate violation.

(c) A school or college shall submit a report to the Department for each student terminated from the school or college within twenty (20) working days of termination. The report shall include the date of the student's enrollment, the date of termination, the total number of hours obtained by the student, and the reason for termination.

(d) Upon completion of the course of study and full payment of the student's financial obligation to the school or college, the school or college shall provide each student with an affidavit showing the total number of hours completed, the date of enrollment in the course, and the date of completion of the course. This affidavit shall certify that the student meets the eligibility requirements for examination. The affidavit shall be certified by a licensed instructor or an employee responsible for daily attendance records.

[OAR Docket #07-1072; filed 5-18-07]

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

[OAR Docket #07-1073]

RULEMAKING ACTION:
PERMANENT final adoption

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]

AUTHORITY:
Oklahoma State Board of Health, Title 63 O.S. § 1-104 et seq.; Title 21 O.S. §§ 842.1 and 842.3

DATES:
Comment Period:
January 2, 2007 through March 8, 2007
Public Hearing:
February 1, 2007 and March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007

SUPERSEDED EMERGENCY ACTIONS:
Superseded 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:
November 1, 2006

Register publication:
24 Ok Reg 186

Docket number:
06-1405

INCORPORATION BY REFERENCE:
n/a

ANALYSIS:
The purpose of the proposed rulemaking action is to establish permanent detailed requirements for tattooing in Oklahoma. This permanent action will replace an emergency rule that is effective November 1, 2006 through July 14, 2007. Each subchapter is amended to include references to tattooing. The proposed action updates requirements relating to body piercing and establishes uniform health and safety standards for body piercing and tattooing. This proposal modifies definitions, amends permit and license requirements for artists and the establishments, sets requirements for surety bonds, and adds language relating to apprentice programs and sponsors. The proposed amended language will include investigation and hearing procedures. The proposed amendments implement Enrolled Senate Bill No. 806 of the 2nd Regular Session of the 50th Oklahoma Legislature, effective November 1, 2006. This proposal will establish the means to provide regulatory oversight for tattooing in Oklahoma.

CONTACT PERSON:
Tressa Madden, Director, Consumer Protection Division, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299, (405) 271-5243; tressam@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

310:233-1-1. Purpose

This Chapter is to be used by operators of body piercing and tattooing establishments, by artists~~,~~ and ~~by other interested persons~~apprentices. The rules are to implement the provisions of 21 O.S. ~~Supp. 1998,~~ Section 842.1 et seq. Nothing in OAC 310:233 shall be construed to require an artist to perform a body piercing or tattoo procedure upon a client.

310:233-1-2. Definitions

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

"Aftercare" means written instructions given to the client, specific to the body ~~art~~piercing or tattooing procedure(s) rendered, on caring for the body ~~art~~piercing or tattoo and surrounding area.

"Antiseptic" means an agent that destroys disease-causing microorganisms on human skin or mucosa.

*"**Apprentice**" means any person who is training under the supervision of a licensed tattoo artist. That person cannot independently perform the work of tattooing. Apprentice also means any person who is training under the supervision of a licensed body piercing artist. That person cannot independently perform the work of body piercing [21:842.1(C)(6)].*

"Apprentice program" means an approved body piercing or tattooing training program conducted by an approved apprentice sponsor.

"Apprentice sponsor" means an individual approved by the Department to conduct a body piercing or tattooing apprentice program.

"Artist" means *the person who actually performs the body piercing or tattooing procedure* [21:842.1.B].

"Aseptic technique" means a hygienic practice which prevents and hinders the direct transfer of microorganisms, regardless of pathogenicity, from one person or place to another person or place.

"Autoclave" means a piece of medical equipment that employs the steam under pressure method of sterilization.

"Bloodborne pathogen certification" means a training program that shall contain a general explanation of epidemiology and symptoms of bloodborne diseases.

"Body piercing" means *a procedure in which an opening is created in a human body solely for the purpose of inserting jewelry or other decoration; provided, however, the term does not include ear piercing* [21:842.1.B].

*"**Body piercing operator**" means any person who owns, controls, operates, conducts, or manages any permanent body piercing establishment, whether actually performing the work of body piercing or not* [21:842.1(C)(3)].

*"**Church**" means an establishment, other than a private dwelling, where religious services are usually conducted* [21:842.3(C)(3)(b).

"Client" means a person requesting the application of a body piercing or tattoo.

"Contaminated waste" means any liquid or semi-liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood and other potentially infectious materials, as defined in 29 Code of Federal Regulations Part 1910.1030, known as "Occupational Exposure to Bloodborne Pathogens".

"CPR Certification" means Cardiopulmonary Resuscitation and shall include instruction for the basic adult CPR training.

"Department" means the Oklahoma State Department of Health.

"Disinfection" means the destruction of disease-causing microorganisms on inanimate objects or surfaces, thereby rendering these objects safe for use or handling; a process of reducing the number of microorganisms on cleaned procedure surfaces and equipment to a safe level with germicidal solution as has been approved by the Department.

"Ear piercing" means puncturing ~~the outer perimeter or~~the lobe of the ear not to include cartilage.

"Ear piercing gun" means a device that pierces an individual's ear lobe using a single-use stud and clasp ear piercing system.

"Equipment" means all machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and all other apparatus and appurtenances used in connection with body piercing and tattooing procedures.

"First aid certification" means a training program that includes instruction in injury and acute illness.

"Germicidal solution" means a cleansing agent that kills disease-causing microorganisms on hard surfaces and is a disinfectant or sanitizer registered with the Environmental Protection Agency.

"Germicidal soap" means an agent designed for use on the skin that kills disease-causing microorganisms.

~~**"Handsink"** means a lavatory equipped with hot and cold running water under pressure used solely for washing hands, arms or other portions of the body.~~

"Handwashing facility" means a sink equipped with hot and cold or tempered running water under pressure, used for washing hands, arms or other portions of the body.

"HBV" means Hepatitis B virus and is a DNA virus that attacks the liver causing serious disease.

"HCV" means Hepatitis C virus and is a RNA virus found in the blood of persons who have the disease which attacks the liver causing serious disease.

"HIV" means human immunodeficiency virus.

"Hot water" means water that attains and maintains a temperature as specified in OAC ~~310:310~~ 158:30.

"Instruments used for body piercing" means ~~hand pieces, needles, needle bars and other instruments~~disposable or reusable instruments that may contact a client's body or body fluids during body piercing procedures.

"Instruments used for tattooing" means disposable or reusable instruments that may contact a client's body or body fluids during tattooing procedures.

"Integrator strips" means strips or devices used in pouches or autoclave chambers that prove the condition of sterilization has been met.

~~**"Invasive"** means entry into the body either by incision or insertion of an instrument into or through the skin or mucosa, or by any other means intended to puncture, break or compromise the skin or mucosa.~~

"Jewelry" means any personal ornament inserted into a newly pierced area~~,~~. ~~which must be made of surgical implant grade stainless steel, solid 14k or 18k white or gold, yellow niobium, titanium or platinum, a dense, low porosity plastic and or which is free of nicks, scratches or irregular surfaces and which has been properly sterilized prior to use.~~

"License" means written approval by the Department for ~~a person~~ an artist to perform body piercing or tattooing~~.~~ or written approval by the Department to operate a body piercing or tattoo establishment.

~~**"Liquid chemical germicide"** means a disinfectant or sanitizer registered with the Environmental Protection Agency or an approximate 1:100 dilution of household chlorine bleach (500ppm, 1/4 cup/gal, or 2 tablespoons/quart of tap water) made fresh daily and dispensed from a spray bottle.~~

~~**"Operator"** means *any person who owns, controls, operates, conducts, or manages any permanent body piercing establishment, whether actually performing the work of body piercing or not* [21:842.1.B]~~

~~**"Permit"** means written approval by the Department to operate a body piercing establishment.~~

*"**Playground**" means a place, other than grounds at a private dwelling, that is provided by the public or members of a community for recreation* [21:842.3(C)(3)(C)].

"Procedure surface" means any part of ~~equipment~~furniture or fixtures designed to contact the client's ~~unclothed~~ body during a body piercing or tattooing procedure or any surface where instruments and equipment have come into contact with the client during the procedure.

"Release form" means a release of liability that shall be completed by the client previous to receiving a body piercing or tattoo procedure.

~~**"Sanitize/sanitization procedure"** means a process of reducing the number of microorganisms on cleaned surfaces and equipment to a safe level as has been approved by the Department.~~

*"**School**" means an establishment, other than a private dwelling, where the usual processes of education are usually conducted* [21:842.3(C)(3)(a)].

"Sharps" means any object (sterile or contaminated) that may purposefully or accidentally cut or penetrate the skin or mucosa including, but not limited to, ~~per sterilized~~pre-sterilized~~,~~ single use piercing or tattooing needles~~, scalpel blades~~ and razor blades.

"Sharps container" means a puncture-resistant, leak-proof container that is labeled or color coded that can be closed for ~~handling, storage, transportation and~~ disposal ~~and is labeled with the International Biohazard Symbol~~.

"Single use" means products or items that are intended for one-time, one-person use and are disposed of after use on each client including, but not limited to, cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing and tattooing needles~~, scalpel blades,~~ and protective gloves.

"Skills challenge" means a testing mechanism that enables persons who have received training in tattooing and have experience in performing tattooing procedures to challenge the training requirements by satisfactorily completing the written examination.

"Spore test" means a biological monitoring process in which a third party laboratory culturing service is engaged to monitor spore growth on media processed in an autoclave.

"Statim autoclave" means a brand of autoclave utilizing the steam flush pressure pulse method of sterilization.

"Sterilization" means a process resulting in the destruction of all forms of microbial life, including highly resistant bacterial spores.

*"**Tattooing**" means the practice of producing an indelible mark or figure on the human body by scarring or inserting a pigment under the skin using needles, scalpels, or other related equipment; provided that medical micropigmentation, performed pursuant to the provisions of the Oklahoma Medical Micropigmentation Regulation Act, shall not be construed to be tattooing* [21:842.1(C)(2)].

*"**Tattoo operator**" means any person who owns, controls, operates, conducts or manages any permanent tattooing establishment whether performing the work of tattooing or not* [21:842.1(C)(4)].

"Temporary artist license" means a person that is not licensed through the State of Oklahoma that is a body piercing artist or tattoo artist doing temporary work at a licensed body piercing or tattoo establishment not to exceed 30 days.

"Ultrasonic cleaning unit" means a piece of medical equipment utilizing ultrasound energy to thoroughly clean instruments for body piercing or tattooing.

"Universal precautions" means ~~a set of guidelines and controls, published by the Centers for Disease Control (CDC) as "Guidelines for prevention of transmission of human immunodeficiency virus and hepatitis B to health care and public safety workers" in Morbidity and Mortality Weekly Report (MMWR), June 23, 1989, Vol. 38, No. S-6, and as "Recommendations for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure prone invasive procedures" in MMWR, July 12, 1991, Vol. 40, No. RR-8. This method of infection control requires the employer and the employee to assume that all human blood and specified human body fluids are infectious for HIV, HBV and other blood pathogens. Precautions include hand washing, gloving, personal protective equipment, injury prevention, proper handling and disposal of needles, sharps disposal, and disposal of products contaminated with blood and body fluids.~~ an approach to infection control that treats all human blood and certain human body fluids as if known to be infectious for Human Immunodeficiency Virus (HIV), Hepatitis B Virus (HBV), Hepatitis C Virus (HCV), and other bloodborne pathogens.

SUBCHAPTER 3. BODY PIERCING ARTIST AND TATTOO ARTIST REQUIREMENTS AND PROFESSIONAL STANDARDS

310:233-3-1. Records

The following information shall be kept on file on the premises of a body-piercing or tattooing establishment and shall be available for inspection by the Department.

(1) Artist information shall include:

(A) Full name and exact duties of each artist;

(B) Date of birth of each artist; and

(C) Identification photo of each artist.

(2) Body piercing or tattoo ~~Establishment~~establishment information shall include:

(A) Body piercing or tattoo ~~Establishment~~establishment name;

(B) Hours of operation;

(C) Owner's name and address;

(D) Operator's name and address (if different from the owner);

(E) A complete ~~description~~definition of all body ~~procedures~~ piercing procedures performed;

(F) An inventory of all instruments and supplies, including body jewelry, ~~all~~ sharps~~,~~ used for any and all body piercing or tattooing procedures, including names of ~~manufactures~~ manufacturers and serial or lot numbers, if applicable, which may be satisfied by retaining invoices or orders; and

(G) Proof that all artists have either started or completed or were offered and declined, in writing, using the form provided by the Department, the ~~hepatitis~~Hepatitis B vaccination series.

310:233-3-2. Prohibited acts

(a) It shall be unlawful for any artist to perform body piercing or tattoo procedures outside of a licensed body piercing or tattooing establishment~~ with a current permit~~.

(b) ~~Smoking, eating~~Eating~~,~~ or drinking by anyone is prohibited in the area where body piercing or tattooing is performed by the licensed artist in a licensed body piercing or tattoo establishment. Smoking is prohibited in any licensed establishment.

(c) ~~No person shall perform any body piercing procedure upon a person under the age of eighteen (18) years.~~No person under eighteen (18) years of age shall be allowed to receive a tattoo. No person under eighteen (18) years of age shall be allowed to receive a body piercing procedure unless the legal parent or legal guardian of such a child gives written consent for the procedure and the legal parent or legal guardian of the child is present during the procedure [21:842.1(A)].

(d) No person ~~affected~~ with an ~~infection~~exposed infectious sore shall work in any area of a body piercing or tattoo establishment where there is a likelihood that they could contaminate body piercing or tattoo ~~equipment~~instruments, supplies or ~~working~~ procedure surfaces with body substances or pathogenic organisms.

(e) No animals of any kind shall be allowed in a body piercing or tattoo establishment except service animals used by persons with disabilities or as allowed in 310:233-7-1.

(f) A person shall not perform body piercing or tattoo upon another person if the other person is under the influence of alcohol or a controlled substance.

(g) An ear piercing gun shall not be used on any body part other than the ear lobe, which does not contain cartilage. This device must be autoclave sterilized between clients after each use or be single use and disposable.

(h) No person shall be allowed to purchase or possess tattoo equipment or supplies without being licensed either as an Oklahoma Medical Micropigmentologist or as an Oklahoma tattoo artist [21:842.1(A)].

(i) All body piercing operators, tattoo operators and artists shall be prohibited from performing body piercing or tattooing unless licensed in the appropriate category by the Department [21:842.3(A)].

(j) The State Department of Health shall not grant or issue a license to a body piercing or tattoo operator if the place of business of the body piercing or tattoo operator is within one thousand (1,000) feet of a church, school, or playground [21:842.3(C)] except as provided in [21:842.3(C)(2)].

310:233-3-3. Standards

(a) The artist shall maintain a high degree of personal cleanliness, conform to hygienic practices and wear clean clothes, including closed-toed shoes, when performing body piercing or tattoo procedures. Before performing body piercing or tattoo procedures, the artist must thoroughly wash their hands in hot running water (with a minimum temperature of 100° F) with ~~liquid~~ germicidal soap, then rinse hands and dry with disposable paper towels. This shall be done as often as necessary to remove contaminants. At a minimum this includes:

(1) Immediately prior to donning gloves to perform a body piercing or tattoo procedure;

(2) Immediately after removing gloves at the conclusion of a body piercing procedure or tattoo procedure;

(3) When leaving the work area;

(4) As soon as feasibly possible after potential contact with contaminated surface(s) has occurred; and

(5) Before and after eating, drinking or smoking.

(b) In performing body piercing or tattoo procedures, the artist shall wear disposable ~~medical~~exam gloves and surgical mask to minimize the possibility of transmitting infection to the ~~person~~ client being pierced or tattooed. Exam~~Gloves~~ gloves must be changed ~~if they become contaminated by contact with any non-clean surfaces or objects or by contact with a third person. The gloves shall be discarded after the completion of each procedure on an individual client and hands shall be washed before donning the next set of gloves.~~in accordance with aseptic technique. Under no circumstances shall a single pair of exam gloves be used ~~on more than one person~~during the entire piercing or tattoo procedure. The use of disposable ~~medical~~exam gloves does not preclude or substitute for hand washing procedures as part of a good personal hygiene program. A minimum of one pair of exam gloves should be used for each stage of piercing or tattooing to include:

(1) Hard surface disinfection;

(2) Setup of instruments used for body piercing or tattooing;

(3) Preparation of the body art area; and

(4) The body piercing or tattoo procedure.

(c) If, while performing a body piercing or tattoo procedure, the artist's glove is pierced~~,~~ or torn, ~~or otherwise contaminated,~~ the contaminated gloves shall be discarded immediately and the hands washed thoroughly before a fresh pair of exam gloves are applied. Any item or instrument that ~~is contaminated~~has come into contact with a surface other than the procedure surface or the client during the procedure shall be discarded and replaced immediately with a new disposable item or a new sterilized instrument ~~or item~~ before the procedure resumes.

(d) All procedure surfaces must be disinfected with a germicidal solution immediately after completing a body piercing or tattoo procedure.

(~~d~~e) Contaminated waste which may release liquid blood or body fluids when compressed or may release dried blood or body fluids when handled ~~must~~shall be placed in a biohazard bag or container which is ~~marked with the International Biohazard Symbol~~properly labeled. Sharps ready for disposal shall be placed in an approved sharps container ~~with the International Biohazard Symbol~~. Contaminated waste which may release blood, body fluids, dried blood or dried body fluids and sharps must be disposed of consistent with OAC 252:515. Contaminated waste which does not release liquid blood or body fluids when compressed or does not release dried blood or body fluids when handled may be placed in a covered receptacle and disposed of through normal disposal methods.

~~(e)Any skin or mucosa surface being prepared to receive a body piercing procedure shall be free of rash or any visible infection.~~

310:233-3-4. Exemptions

Individuals who pierce only the ~~outer perimeter and~~ lobe of the ear as defined herein are exempt from OAC 310:233.

310:233-3-5. Public notification requirements

(a) ~~The~~Before starting the procedure, the operator or artist, ~~upon completion of the procedure,~~ shall provide verbal and written aftercare instructions for ~~the aftercare of~~ the body piercing or tattoo procedure ~~site~~ to each client. These instructions shall include information about when to seek medical treatment, if necessary. The written aftercare instructions shall advise the client to consult a physician at the first sign of infection ~~or swelling~~ and contain the name, address and telephone number of the body piercing or tattoo establishment. ~~These documents shall be signed and dated by both parties, with a copy given to the client and the operator retaining the original with all other required records.~~ In addition, all body piercing or tattoo establishments shall prominently display a Disclosure Statement, provided by the Department, which advises the ~~public~~clients of the risks and possible consequences of body piercing ~~services~~or tattoo procedures. The Disclosure Statement and the Notice for Filing a Complaint shall be included in the body piercing or tattoo establishment Application Packet.

(b) The disclosure statement requires the following:

(1) Clients should be aware that the establishment complies with the all rules of sanitation and sterilization;

(2) The client can still have possible transmission of a bloodborne disease or infection contracted as a result of a body piercing or tattoo;

(3) A signature of the client is required with understanding of the Disclosure Statement and acknowledges the possible effects or consequences; and

(4) Filing a complaint gives the Department knowledge that a body piercing or tattoo establishment or artist may be in violation of 310:233.

310:233-3-6. Client records

(a) In order for the artist to properly evaluate the client's medical condition ~~for~~previous to receiving a body piercing or tattoo procedure and not violate the client's rights or confidential medical information, the following information shall be ~~given to the operator or artist~~ included in the release form:

(1) ~~In order for~~To ensure proper healing of your body ~~art~~ piercing or tattoo procedure, we ask that you disclose if you have or have had any of the following conditions:

(A) Diabetes;

(B) History of hemophilia ~~(~~or excessive bleeding~~)~~;

(C) History of skin disease, skin lesions or skin sensitivities to soaps or disinfectants;

(D) History of allergies, adverse reactions or other skin sensitivities as they pertain to body piercing or tattooing procedures;

(E) History of epilepsy, seizures, fainting or narcolepsy;

(F) Taking medications such as anticoagulants, which interfere with blood clotting~~.~~;

(G) Last time you ate;

(H) Pertinent medical history or medical condition that might affect the healing process; and

(I) Pregnant and/or nursing.

(b) The operator or artist shall ask the client to sign a ~~Release Form~~release form confirming that the above information was obtained or attempted to be obtained.

(c) Each operator shall keep records consisting of:

(1) Release forms of all body piercing or tattoo procedures administered~~,~~;

(2) ~~including~~Photocopy of client's identification;

(3) ~~name~~Name, date of birth, address of the client~~,~~;

(4) ~~signature~~Signature of the client or consent form (if the client is less than 18 years of age for a body piercing procedure)~~,~~;

(5) ~~date~~Date of the procedure~~,~~;

(6) ~~identification~~Identification and location of the body piercing or tattoo procedure(s) performed~~,~~; and

(7) ~~the~~The artist's name and license number.

(d) All client records shall be confidential, ~~they shall be retained for a minimum of three (3) years,~~ and they shall be made available to the Department upon request. After being retained for three (3) years, records shall be destroyed by shredding or appropriate destruction methods.

(e) Acceptable forms of photo identification shall include: driver's license, passport, and state or government issued identification that includes the client's name, picture and date of birth. If a date of birth is not included on the form of identification an original birth certificate must be presented to and copied by the artist or operator.

(f) To pierce a minor, the above identification in 310:233-3-6(d) shall be required from the legal parent or legal guardian and the minor. Identification shall include an original birth certificate of the minor. Court documentation verifying legal guardianship shall be provided by the guardian to the artist.

310:233-3-7. Preparation and care of the body art area

(a) Before a body piercing or tattoo procedure is performed, the immediate and surrounding area of the skin where the body piercing or tattoo procedure is to be ~~placed~~performed shall be ~~washed~~ prepared with ~~soap and water or~~ an approved ~~surgical~~ antiseptic skin preparation, depending on the type of body art to be performed. Oral piercing shall be prepared with an oral antiseptic mouth rinse. If shaving is necessary, single use disposable razors ~~or safety razors with single service blades~~ shall be used and discarded into a sharps container after each use ~~and the reusable holder shall be autoclaved after use. Following shaving, the skin and surrounding area shall be washed with soap and water. The washing pad shall be discarded after a single use~~.

(b) ~~In case of blood flow, all products used to check the flow of blood or to absorb blood shall be single use and disposed of immediately after use.~~Any utensil used for marking the skin where the body piercing or tattoo procedure is to be performed shall be single use and disposable.

(c) Any skin or mucosa surface being prepared for a body piercing or tattoo procedure shall be free of rashes or any visible signs of infection.

(d) Any jewelry inserted into a fresh body piercing shall be autoclave sterilized while fully disassembled to allow for sterilization of the entire piece of jewelry. The jewelry must be checked by the artist and free of nicks, scratches or irregular surfaces before insertion into a fresh body piercing. All removable parts shall be removed from threaded jewelry for sterilization.

(e) Jewelry shall be made of 316L or 316LVM stainless steel, solid 14k or 18k yellow or white nickel-free gold, niobium, titanium or platinum, Poly Tetra Flouro Ethylene (PTFE) or Tygon.

SUBCHAPTER 5. SANITATION AND STERILIZATION PROCEDURES

310:233-5-1. Reusable equipment

(a) After each use, ~~all non-single use,~~ non-disposable instruments or reusable equipment used for body piercing ~~procedure~~or tattooing procedures shall be ~~cleaned thoroughly by scrubbing with an appropriate soap or disinfectant solution and hot water or by following the manufacturer's instructions to remove blood and tissue residue, and placed in an ultrasonic unit which shall be operated in accordance with the manufacturer's instructions.~~ processed through all of the following steps of the sterilization process:

(1) Manually or mechanically preclean the instruments with care taken to ensure removal of residue. Manual scrubbing shall be done per Centers for Disease Control and Prevention (CDC) guidelines, fully submerged under water, to reduce the likelihood of making bloodborne pathogens airborne. This must be done while wearing appropriate personal protective equipment including but not limited to full length sleeves, elbow-high gloves, apron, and face mask with eye protection;

(2) Thoroughly rinse the instruments after precleaning and soak them in a protein-dissolving enzyme cleaner or detergent per manufacturer's instructions; and

(3) Rinse the instruments after soaking and clean the instruments further in an ultrasonic cleaning unit fully submerged in an enzymatic cleaner, per manufacturer's instructions.

(b) After cleaning, all non-disposable instruments used for body piercing or tattooing procedures shall be rinsed thoroughly, dried and packed individually in ~~peel packs~~sterilization pouches and subsequently sterilized. All ~~peel packs~~sterilization pouches containing non-disposable instruments shall contain either ~~a sterilizer~~ an indicator ~~or internal temperature indicator~~or an integrator strip. ~~Peel packs must~~Sterilization pouches shall be dated with an expiration date not to exceed six (6) months.

(c) All ~~cleaned~~packaged, non-disposable instruments used for body piercing or tattooing shall be sterilized in a steam autoclave. The autoclave shall be used, cleaned, and maintained according to manufacturer's instruction. A copy of the manufacturer's recommended procedures for the operation of their autoclave sterilization unit shall be available for inspection by the Department. Sterile equipment shall only be handled with clean gloves and shall not be used if the package has been breached or after the expiration date without first repackaging and resterilizing. ~~Sterilizer shall be located away from areas used for body piercing and away from areas used for cleaning of non-disposable instruments. If the body piercing body piercing establishment uses all single-use, disposable instruments and products, and uses sterile supplies, an autoclave shall not be required.~~

(d) Each ~~holder of a permit to operate~~operator of a body piercing or tattooing establishment shall demonstrate that the ~~sterilizer~~ autoclave(s) used is capable of attaining sterilization by monthly spore ~~destruction~~ tests. These tests shall be verified through an independent laboratory. These spore test records shall be retained by the operator for a ~~period~~minimum of three (3) years and made available to the Department upon request.

(e) After sterilization, the instruments used for body piercing or tattooing shall be immediately transported with clean exam gloves and stored in a dry, clean cabinet or ~~other~~ tightly covered container reserved for the storage of such instruments.

(f) All instruments used for body piercing or tattooing shall remain properly stored in their sterile ~~packages~~pouches until just before performing a body ~~art~~piercing or tattooing procedure. When assembling instruments used for performing body ~~art~~piercing or tattooing procedures, the ~~operator~~artist shall wear disposable ~~medical~~exam gloves and use ~~medically recognized~~aseptic techniques to ensure that the instruments and gloves are not contaminated.

(g) All needles, instruments and equipment shall be specifically manufactured for performing body piercing and tattooing procedures ~~and shall be used according to manufacturer's instructions~~.

(h) For body piercing and tattooing establishments primarily utilizing a Statim autoclave, reusable items shall be sterilized in an autoclave in a bulk load without sterilization pouches, previous to sterilization in the Statim autoclave, for the body piercing or tattoo procedure. Reusable instruments and single use items sterilized in a Statim autoclave cassette must be used immediately after opening the Statim autoclave cassette. The items contained in the Statim autoclave cassette shall be used for one client only and shall include use of an integrater strip.

310:233-5-2. Single use items

Single use items shall not be used on more than one client for any reason. Each needle shall be used for one body piercing or tattoo procedure only. After use, all ~~single-use~~ needles, razors and other sharps shall be immediately disposed of in an approved sharps ~~containers~~container.

SUBCHAPTER 7. REQUIREMENTS FOR PREMISES

310:233-7-1. Physical construction and maintenance

(a) All walls, floors, ~~ceilings~~ and ~~all~~ procedure surfaces of a body piercing or tattoo establishment shall be smooth, free of open holes or cracks, washable, in good repair, and clean. All procedure surfaces, including client chairs/benches shall be of such construction as to be easily cleaned and ~~sanitized~~ disinfected after each client. All body piercing or tattoo establishments shall be completely separated by solid ~~partitions or by~~ walls extending from floor to ceiling, from any room used for human habitation, ~~a food establishment or room where food is prepared, a hair salon,~~ retail sales not associated with body piercing or tattooing, or other such activity which may cause potential contamination of ~~work~~procedure surfaces. The solid wall may not contain doors or operable windows. Body piercing or tattooing shall not be performed in an establishment where food is prepared or served, or where services other than body piercing or tattooing is provided including but not limited to places such as hair, nails and tanning services.

(b) Effective measures shall be taken by the body piercing or tattoo operator to protect against the entrance of insects, vermin, and rodents. Insects, vermin, and rodents shall not be present in any part of the body piercing or tattoo establishment.

(c) There shall be a minimum of forty-five (45) square feet of floor space for each artist in the body piercing or tattoo establishment for each artist working station. Each body piercing or tattoo establishment shall have an area which may be screened from public view for clients requesting privacy. The material used for the partition/screen must be non-porous and can be easily cleaned and disinfected. Multiple body art stations shall be separated at a minimum by ~~dividers, curtains or partitions at a minimum;~~a seven (7') foot wall that is smooth, nonporous and easily disinfected.

(d) The establishment shall have a separate fully enclosed room for the decontamination and packaging of contaminated instruments. This decontamination room shall contain all equipment and supplies used for decontaminating instruments and will be where all steps of the sterilization process shall take place until the transfer of the packaged contaminated instruments to the autoclave. The establishment shall have a separate area or room where the autoclave is housed and

utilized and shall only be exposed to contaminated packaged instruments that are loaded directly into the autoclave from the decontamination room. The area or room that contains the autoclave shall not be part of the procedure room or area where clients have access.

(~~d~~e) The body piercing or tattoo establishment shall comply with ~~OAC 310):290 and OAC 310:245~~OAC 158:40 and OAC 158:50. In addition, an artificial light source equivalent to at least twenty (20) foot candles three (3) feet off the floor shall be provided in all areas, except that at least 100 foot candles of intensity shall be provided at the level where the body piercing or tattoo procedure is being performed, and where instruments and sharps are assembled.

(~~e~~f) ~~No animals of any kind shall be allowed in a body piercing establishment except service animals used by persons with disabilities.~~ Fish aquariums shall be allowed in waiting rooms and non-procedural areas where body piercing and tattooing procedures are not performed.

(~~f~~g) The body piercing or tattoo establishment shall comply with ~~OAC 310:310~~OAC 158:30**.** In addition, ~~a separate, readily accessible, handsink~~each body piercing or tattoo procedure area shall be equipped with a handwashing facility with hot and cold running water, under pressure, equipped with wrist or foot operated controls and supplied with liquid germicidal soap, and disposable paper towels shall be ~~readily accessible to each artist within the body piercing establishment. One handsink shall serve no more than three artists~~ located at each station.

(~~g~~h) At least one covered waste receptacle shall be provided in each piercing or tattoo area and each toilet room. Receptacles in the piercing or tattooing area shall be emptied daily and solid waste shall be removed from the premises at least weekly. All refuse containers shall be lidded, ~~cleanable~~capable of being disinfected and kept clean.

~~(h) All instruments and supplies shall be stored in clean, dry and covered containers.~~

(i) ~~Reusable cloth items shall be mechanically washed with detergent and dried after each use. The cloth items shall be stored in a dry, clean environment until used.~~No reusable cloth item shall be used in a licensed body piercing or tattoo establishment.

310:233-7-2. Location requirements and limitations

(a) The Department shall not approve an initial license to perform body piercing, tattooing, or both to be issued to a facility or place of business that is located *within one thousand (1,000) feet from a church, school or playground* [21:842.3(C)(1)].

(b) The distance required to be met by subsection (a) of this section shall begin at any entry or exit into or from the facility, or any place on the property of the facility where body piercing or tattooing may be observed, which ever is closer, and be measured to the nearest property line of the church, school or playground.

(c) A mobile unit, including, but not limited to, a mobile home, recreational vehicle, or any other non-permanent facility, shall not be used as a permanent body piercing or tattoo establishment.

SUBCHAPTER 9. ~~PERMIT~~LICENSE REQUIREMENTS

310:233-9-1. ~~Establishment permit~~Body piercing or tattoo license

(a) No person, firm, partnership, joint venture, association, business trust, corporation, legal entity or any organized group of persons shall operate a body piercing or tattoo establishment unless it has received a body piercing or tattoo establishment ~~permit~~license from the Department.

(b) A ~~permit~~license for a body piercing or tattoo establishment shall be issued for the physical location of the body piercing or tattoo establishment and shall not be transferable. A ~~permit~~ license for a body piercing or tattoo establishment shall be valid from the date of issuance and shall expire one (1) year from the date of issuance.

(c) A current body piercing or tattoo establishment ~~permit~~ license shall be posted in a prominent and conspicuous area where clients may readily observe it.

(d) Temporary body piercing or tattoo establishment ~~permits~~ licenses may be issued for body piercing ~~services~~or tattoo procedures provided outside of the physical site of a ~~permitted~~ licensed facility for the purposes of product demonstration, industry trade shows or for educational reasons. ~~Temporary permits shall~~A temporary body piercing or tattoo establishment license may be issued for body piercing or tattooing services provided outside of the physical site of a licensed facility for the purpose of body piercing or tattooing in a fixed location at which an individual body piercing or tattoo operator performs body piercing or tattooing for a specified period of not more than seven (7) days in conjunction with a single event or celebration, where the primary function of the event or celebration is body piercing or tattooing and the location does not otherwise violate the provisions of 310:233-7-2. A temporary license may be issued if the applicant satisfies the following:

(1) The applicant shall be affiliated with a body piercing or tattoo establishment that has a current ~~permit~~license;

(2) The temporary body piercing or tattoo establishment meets the requirements outlined in OAC ~~310:233-7~~ 310:233-7-1 and 2;

(3) The ~~applicant~~applicant's establishment is inspected and approved by the Department prior to issuance of the temporary ~~permit~~license;

(4) The applicant submits to the Department a request for a temporary demonstration ~~permit~~license in writing at least thirty (30) days before the event. The request shall specify:

(A) The purpose for which the ~~permit~~license is requested;

(B) The period of time for which the ~~permit~~license is requested;

(C) The location where the temporary demonstration ~~permit~~ license shall be used; and

(D) Names and license numbers if applicable of the artists participating.

(e) The applicant's ~~demonstration project~~temporary establishment shall be contained in a completely enclosed, non-mobile facility.

(f) The applicant shall provide facilities to properly sterilize instruments or shall use only single use, prepackaged, sterilized equipment obtained from reputable suppliers or manufacturers.

~~(g) Temporary permits expire after seventeen (17) days or the conclusion of the special event, whichever is less.~~

(~~h~~g) Temporary ~~permits~~licenses are not transferable from one special event to another.

(~~i~~h) ~~Permit~~License fees shall be as follows:

(1) $1,000.00 for an initial ~~permit~~license for tattoo establishments;

(2) $500.00 for a renewal ~~permit~~tattoo license; and

(3) $750.00 for late renewal when the ~~permit~~tattoo license is not renewed within thirty (30) days after expiration.

(4) $500.00 for an initial license for body piercing establishments;

(5) $250.00 for a renewal body piercing license;

(6) $350.00 for late renewal when the body piercing license is not renewed within thirty (30) days after expiration;

(7) $250.00 for a temporary license for body piercing establishments; and

(8) $250.00 for a temporary license for tattooing establishments.

(i) The certification fee required by 21 O.S. 842.3(D) shall be paid before an application for license is processed.

(j) Proof of publication evidence compliant with 21 O.S. 842.3(E) shall be filed before an application for license is processed.

310:233-9-2. Artist license

(a) The artist must be a minimum of eighteen (18) years of age to be eligible for a license.

(b) No person shall practice body piercing or tattooing procedures without first obtaining an artist license from the Department.

(c) The artist license shall be valid from the date of issuance and shall automatically expire ~~in~~ one (1) year from the date of issuance unless revoked or suspended by the Department. The artist shall have a current bloodborne pathogen certificate, CPR certificate and current first aid certification for license or renewal of license.

(d) The application for an artist license shall include:

(1) Name;

(2) Date of birth;

(3) Sex;

(4) Residence address;

(5) Mailing address;

(6) Telephone number;

(7) Place(s) and licensed license number of employment as an artist;

(8) ~~Training~~Proof of training and ~~or~~ experience which shall include one of the following; ~~and~~

(A) Two (2) years license from another state; or

(B) Proof of a completed approved apprentice program;

(9) ~~Proof of attendance at a Bloodborne pathogen training program that is approved by the Department.~~Current bloodborne pathogen certification recognized from a nationally accredited program; and

(10) Current first aid certification; and

(11) Current CPR certification.

(e) Each artist license shall be conditioned upon continued compliance with the provisions of this section as well as all applicable provisions of OAC 310:233.

(f) Each artist license shall be posted in a prominent and conspicuous area where it may be readily observed by clients.

(g) License fees shall be as follows:

(1) ~~$1,000.00~~ $250.00 for an initial license;

(2) ~~$500.00~~$250.00 for a renewal license; ~~and~~

(3) ~~$750.00~~$350.00 for late renewal when the license is not renewed within thirty (30) days after expiration~~.~~; and

(4) $250.00 temporary artist license, not to exceed 30 days.

(h) A person who has acceptable experience in performing tattooing may be deemed to have met the Department approved preparedness requirements status as per 310:233-9-2(8)(A and B). A candidate shall have a minimum passing score of 70% on the written examination that will include:

(1) Knowledge of Anatomy, Physiology, and Disease;

(2) Theory and application of ink;

(3) Safety and Aseptic Technique;

(4) Professionalism; and

(5) Client Consultation Services.

(i) A candidate who does not meet this score can retest up to two (2) times. A candidate who does not pass the written examination must wait at least seven (7) days before retesting. Any candidate who is unable to attain competency after three attempts shall be required to enroll or re-enroll in an apprentice program. To apply, the candidate shall submit an application that requires the following:

(1) Notarized copy of the applicant's certificate of birth;

(2) Notarized copy of the applicant's driver's license or other similar photo identification;

(3) Notarized copy of his/her credentials and professional resume of satisfactory completion of any programs they have completed for proof of experience; and

(4) Proof of experience as required in 310:233-9-2(d)(8)(A and B).

(j) The Department shall accept the test administered by the Oklahoma Department of Career Technology with results to be evidenced by a completed testing verification provided to the Department by the Oklahoma Department of Career Technology.

(k) The Department shall notify the applicant in writing of its decision to approve or disapprove within 30 days after receipt of a completed application. An applicant who is eligible for the testing process must present a letter of notification from the Department to administer the test given by Oklahoma Department of Career and Technology Education.

(l) Upon completion of the testing process, the applicant is eligible to apply for a Tattoo Artist license. In order to apply for a license, the candidate must submit the following to the Department:

(1) Completed application as specified in 310:233-9-2(i)(1-4); and

(2) Completed Testing Verification Form provided by the Department which includes:

(A) Skills evaluation information; and

(B) Written certification examination records.

(m) Bloodborne training certification shall contain at a minimum the following elements:

(1) A general explanation of the epidemiology and symptoms of bloodborne diseases;

(2) An explanation of the modes of transmission of bloodborne pathogens;

(3) An explanation of the employer's exposure control plan and the means by which the employee can obtain a copy of the written plan;

(4) An explanation of the appropriate methods for recognizing tasks and other activities that may involve exposure to blood and other potentially infectious materials;

(5) An explanation of the use and limitations of methods that will prevent or reduce exposure including appropriate engineering controls, work practices, and personal protective equipment;

(6) Information on the types, proper use, location, removal, handling, decontamination and disposal of personal protective equipment;

(7) An explanation of the basis for selection of personal protective equipment;

(8) Information on the Hepatitis B vaccine, including information on its efficacy, safety, method of administration, the benefits of being vaccinated;

(9) Information on the appropriate actions to take and persons to contact in an emergency involving blood or other potentially infectious materials;

(10) An explanation of the procedure to follow if an exposure incident occurs, including the method of reporting the incident and the medical follow-up that will be made available;

(11) Information on the post-exposure evaluation and follow-up that the employer is required to provide for the employee following an exposure incident; and

(12) An explanation of the signs and labels and/or color coding required.

(n) First aid certification shall include instruction in:

(1) Injury and acute illness as a health problem;

(2) Interactions with the local emergency medical services system;

(3) Responsibility for maintaining a current list of emergency telephone numbers (police, fire, ambulance, poison control) easily accessible to all employees;

(4) Instruction in the principles and performance of bandaging of the head, chest, shoulder, arm, leg, wrist, elbow, foot, ankle, fingers, toes, and knee; and

(5) Apprentices shall be provided with adequate instruction on the need for and use of universal precautions that should include:

(A) The meaning of universal precautions;

(B) Which body fluids are considered potentially infectious, and which are regarded as hazardous;

(C) The value of universal precautions for infectious diseases;

(D) The necessity for keeping gloves and other protective equipment readily available and the appropriate use of them; and

(E) The appropriate tagging and disposal of any sharp item or instrument requiring special disposal measures such as blood soaked material, and the appropriate management of blood spills.

(o) CPR training certification shall include instruction in:

(1) Performing a primary survey of each victim including airway, breathing, and circulation assessments;

(2) The presence of any bleeding, establishing and maintaining adult airway patency;

(3) Performing adult breathing resuscitation; and

(4) Performing choking assessments and appropriate first aid intervention.

310:233-9-3. Prohibitions

The following acts shall be prohibited:

(1) Owning, operating or soliciting business as a body piercing or tattoo establishment or operator without first obtaining all necessary ~~permits~~licenses and approvals from the Department, unless specifically exempted by OAC 310:233.

(2) Obtaining or attempting to obtain a body piercing or tattoo establishment ~~permit~~license or an artist license by means of fraud, misrepresentation or concealment.

310:233-9-4. Body piercing or tattoo operators surety bond

All body piercing and tattoo operators shall have a *surety bond in the principal sum of One Hundred Thousand Dollars ($100,000.00) to be in a form approved by the Attorney General and filed in the Office of the Secretary of State for all body piercing or tattoo operators* [63:842,3(A)(14)].

310:233-9-5. Apprentice sponsor

(a) Upon filing an application with the Department any person meeting the qualifications set forth in this section shall be able to sponsor a body piercing or tattoo apprentice if the person:

(1) Holds an Oklahoma body piercing or tattoo artist license; and

(2) Provides documentation of legally practicing body piercing or tattooing for at least five years; and

(3) Provides a curriculum to the Department for approval.

(b) The sponsor shall develop a curriculum as listed in 310:233-9-6 for body piercing or tattooing in the apprentice program.

(c) The sponsor shall not have more than one apprentice working on their curriculum at one time. The sponsor shall have no more than one apprentice working under supervision with an apprentice license.

310:233-9-6. Apprentice program

(a) Curriculum requirements shall be taught over a minimum of 1500 hours to include the following:

(1) Microbiology;
(2) Sanitation and disinfection;
(3) Safety;
(4) Bloodborne pathogen standards;
(5) Professional standards; and
(6) Body piercing or tattooing.

(b) The apprentice program shall be a minimum of one (1) year and no more than two (2) years in length.

(c) After completion of the curriculum program the apprentice shall be given challenge status. The apprentice shall take the test administered by the Oklahoma Department of Career and Technology Education with a passing minimum score of 70%. The apprentice license to practice body piercing or tattooing shall be under the direct face to face supervision of their apprentice sponsor.

310:233-9-7. Apprentice

(a) Any person desiring to enroll in the body piercing or tattoo apprentice program shall be required to provide their documentation as specified in 310:233-9-2(i)(1-4) to the Department before beginning their apprentice program. The apprentice shall identify their sponsor and the apprentice program in their application.

(b) The applicant for an apprentice license must have completed a bloodborne pathogens certification, first aid certification and CPR certification.

(c) The license shall be $250.00 for an apprentice for one (1) year after completion of the curriculum program. The apprentice shall renew the license through the Department as an apprentice license or be eligible for an artist license after one year from the date of the initial apprentice license that was issued.

(d) The sponsor of the apprentice shall sign off on the successful completion of the curriculum program with the completion of 1500 hours. The sponsor shall sign off on the completion of one year of supervision practicing as a licensed apprentice.

310:233-9-8. License application and review process

An individual applying for license shall provide the application in completion with the information identified in 310:233-9-2 for review by the Department for eligibility of testing and licensure.

SUBCHAPTER 11. ENFORCEMENT

310:233-11-1. General requirements

(a) ~~Establishments operating on the effective date of OAC 310:233 shall have up to six (6) months to make application to the Department and comply with OAC 310:233.~~Body piercing or tattooing establishments that continue to operate without proper ~~Establishments~~establishment ~~permits~~licenses and artist licenses from the Department or operate in violation of OAC 310:233 shall be subject to legal remedial actions and sanctions as provided by law~~.~~, the APA, 75 0.S.1991, Section 250 et seq. as amended and the Oklahoma Public Health Code, 63 O.S. Section 1-101 et seq.

(b) A representative of the Department shall ~~properly identify himself or herself~~present official credentials and provide notice of the purpose and intent upon entering a body art piercing or tattooing establishment to make an inspection. Such an inspection shall be conducted a minimum of two times a year or as often as necessary to ensure compliance with OAC 310:233.

(c) If, after investigation, the Department finds that an artist or operator is in violation of OAC 310:233 or 21:841.1 et seq., the Department shall advise the artist or operator, in writing, of its findings ~~and instruct the operator to take specific steps to correct such violations~~and give a date of correction within a reasonable period of time, not to exceed thirty (30) days.

(d) If the Department has reasonable cause to suspect that a communicable disease is being~~,~~ or may be transmitted by an artist, unapproved or malfunctioning equipment is being used, or unsanitary or unsafe conditions which may adversely impact the health of the public are present in the ~~facility~~establishment, upon written notice to the owner or operator, the Department shall take such action as necessary and appropriate, including but not limited to the following:

(1) Issue an emergency order summarily excluding the performance of body piercing or tattoo procedures by the body ~~art~~piercing or tattooing establishment and any or all artists who are responsible, or reasonably appear responsible, for the transmission of a communicable disease until the Department determines there is no further risk to public health; ~~and~~or

(2) Issue an order to summarily suspend the ~~permit~~license of the licensed body piercing or tattoo establishment and the licenses of any and all artists who are responsible, or reasonably appear responsible, until the Department determines there is no further risk to the public health.

(e) In taking any action to deny, revoke, suspend, or refuse renewal of a ~~permit or~~ license, the Department shall comply with the provisions of ~~the Oklahoma Administrative Procedures Act and the Oklahoma Public Health Code.~~the APA, 75 0.S.1991, Section 250 et seq. as amended and the Oklahoma Public Health Code, 63 O.S. Section 1-101 et seq.

(f) Administrative fines may be ~~leveled~~levied for violations of OAC 310:233. Fines for violations shall include, but not be limited to:

(1) ~~Failure to obtain appropriate permits ,$500.00 per violation~~ Failure of an apprentice sponsor to supervise and comply with 310:233, up to $5,000.00 per day or withdrawal or suspension of approval;

(2) Failure to obtain appropriate licenses, ~~$500.00~~up to $5,000.00 per day or denial of license per violation;

(3) Failure to observe procedures to prevent the transmission of a bloodborne pathogen, ~~$500.00~~up to $5,000.00 per day per violation;

(4) Failure to maintain instruments used in body piercing or tattooing in a sterile condition, ~~$500.00~~up to $5,000.00 per day per violation;

(5) Failure to install and maintain appropriate ~~facilities for~~ handwashing facilities, ~~$500.00~~up to $5,000.00 per day or revocation per violation;

(6) Failure to maintain client records, artist information, operator information, or monthly spore ~~destruction~~ test records, ~~$500.00~~up to $5,000.00 per day per violation; and

(7) Failure of an artist to change exam gloves between clients, ~~$500.00~~up to $5,000.00 per day per violation.

(g) In addition to administrative fines the Department may deny, revoke, suspend, withdraw or refuse to renew licensure for violations of this Chapter or 21 O.S. Section 842.1 et seq.

310:233-11-2. ~~Suspension or revocation of permits~~Investigation, filing of actions and hearing procedures

(a) ~~A permit issued under the provisions of OAC 310:233 may be summarily suspended by the Department for failure of the holder to comply with the requirements OAC 310:233.~~If the Department determines that a possible violation of the Body Piercing or Tattoo statutes or Rules has occurred, the Department may commence an investigation of the complaint.

(b) ~~Whenever a permit holder or operator has failed to comply with any notice issued under the provisions of OAC 310:233, the owner or operator shall be notified in writing that the permit is, upon service of this notice, summarily suspended. A hearing shall be provided if a written request for a hearing is filed with the Department.~~A body piercing or tattooing establishment and body piercing or tattoo artist, or applicant for licensure, in connection with a license application or an investigation conducted by the Department pursuant to OAC 310:233-11-2(a), shall not:

(1) Knowingly make a false statement of material fact; or

(2) Fail to disclose a fact necessary to correct a misapprehension known by the establishment, artist or applicants for licensure to have arisen in the application or the matter under investigation; or

(3) Fail to comply with a demand for information made by the Department or any designated representative thereof, unless a request for a protective order has been first made pursuant to the provisions of OAC 310:2, in which case the establishment, artist or applicant may await the decision concerning the issuance or denial of a protective order before making any response.

(c) ~~Any permit may be permanently revoked after a hearing if the permit holder or operation is found to have repeated or serious violations of any of the requirements of OAC 310:233 or for interference with Department personnel in the performance of their duties.~~The Department may begin a disciplinary action against an establishment or artist who is not exempt from licensure by following the procedures in OAC 310:2. The Department shall specifically state the violation(s) and shall request the appropriate remedy. Remedies include revocation of a license, suspension of a license, and administrative penalty.

(d) If in the course of an investigation the Department determines that a licensee or applicant 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, the Commissioner may order a summary suspension of the establishment or artist's license or authorization for sponsoring an apprentice.

(e) Hearings shall be conducted by the Commissioner of Health or his designee as specified in OAC 310:2. The Department shall recommend the most appropriate penalty at the conclusion of the evidence.

(f) The Department, either by order of the Commissioner or an Administrative Law Judge, shall issue a final order on all disciplinary matters. Final orders are appealable under the Administrative Procedures Act to the district courts.

(g) Any person found to be practicing body piercing or tattooing without being either properly licensed, approved for supervisor status, exempt or under the approved supervision of an apprentice sponsor as part of the licensure process shall be ordered to cease practicing or supervising and may be subject to an administrative penalty. The Department may seek the assistance of the courts if the actions continue.

(h) The Department may assess an administrative penalty against an individual or licensee if the order includes a finding that the individual or licensee:

(1) Violated any provision of the Body Piercing and Tattooing statutes, including practicing body piercing or tattooing without licensure, exemption or under the approved supervision of an approved sponsor; or

(2) Violated any rule within this Chapter; or

(3) Violated any order issued pursuant to this Chapter.

(i) The total amount of the administrative penalty assessed shall not exceed ten-thousand dollars ($10,000.00) for any related series of violations.

310:233-11-3. Suspension or revocation of licenses

(a) A license issued under the provisions of OAC 310:233 may be suspended temporarily by the Department for failure of the holder to comply with the requirements of OAC 310:233 or 21 O.S. Section 84l.1 et seq.

(b) Whenever an artist has failed to comply with any notice issued under the provisions of OAC 310:233 or 21 O.S. Section 841.1 et seq., the Department shall send notice to the artist that the license is immediately suspended. A hearing shall be provided if a written request for a hearing is filed with the ~~Department~~ Department's Office of Administrative Hearings.

(c) For repeated or serious violations that threaten the health of the client or artist, for violations of the requirements of OAC 310:233 or 21 O. S. Section 841.1 et seq. or for refusal to allow Department personnel to inspect the ~~permitted~~licensed facility, including documents and records, a ~~permit~~license may be ~~permanently~~ revoked after a hearing.

310:233-11-4. Suspension or withdrawal of apprentice sponsor

(a) An approval from the Department for an apprentice sponsor issued under the provisions of OAC 310:233 may be withdrawn or suspended temporarily by the Department for failure of the apprentice sponsor to provide adequate training to the apprentice under the requirements of OAC 310:233.

(b) Whenever an apprentice sponsor has failed to comply with the provisions of OAC 310:233 the Department shall send notice to the apprentice sponsor that the approval is immediately withdrawn or suspended. A hearing shall be provided if a written request for a hearing is filed with the Department's Office of Administrative Hearings.

[OAR Docket #07-1073; filed 5-18-07]

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

[OAR Docket #07-1074]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Oklahoma State Board of Health; Title 63 O.S. Section 1-104 et seq.; Title 63 O.S. Sections 1-104 and 1-1450 et seq.
DATES:
Comment Period:
January 2, 2007 through March 8, 2007
Public Hearing:
February 1, 2007 and March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded 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:
April 2, 2007
Register publication:
24 Ok Reg 1177
Docket number:
07-749
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The purpose of the proposed rulemaking action is to update requirements for Medical Micropigmentation in Oklahoma. The subchapters are amended to update references to mechanical codes and require the medical micropigmentation person to provide an update to the Department of their attending physician. This proposal modifies definitions, amends requirements for medical micropigmentation instructor education and provides for joint investigation with the appropriate licensing board. Also, the proposed amendments will implement Enrolled Senate Bill No. 806 of the 2nd Regular Session of the 50th Oklahoma Legislature, effective November 1, 2006 that will decrease the certification fees.
CONTACT PERSON:
Tressa Madden, Director, Consumer Protection Division, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299,(405)271-5243,:tressam@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

310:234-1-2. Definitions

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

"Aftercare" means written instructions given to the client, specific to the micropigmentation procedure(s) rendered, on caring for the micropigmentation area and surrounding area.

"Antiseptic" means an agent that destroys disease-causing microorganisms on human skin or mucosa.

"Autoclave bag" means a bag for holding instruments or other items, which are to be put into an autoclave for sterilization.

"Certification" means written approval by the Department for a person to perform medical micropigmentation.

"Clinical certification examination" means the examination is a clinical scenario that tests the candidate's ability to perform micropigmentation procedures. The candidate demonstrates technical competency by scoring 100% on the clinical certification examination. The clinical certification

examination consists of one scenario with three skills components, one of which may be retaken two (2) times before retraining is required.

"Committee" MMAC means the Medical Micropigmentation Advisory Committee.

"Contaminated waste" means any liquid or semi-liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood and other potentially infectious materials, as defined in the "Occupational Exposure to Bloodborne Pathogens."[29 CFR § 1910.1030]

"Department" OSDH means the Oklahoma State Department of Health.

"Disinfection" means the destruction of disease-causing microorganisms on inanimate objects or surface.

"Equipment" means all machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and all other apparatus and appurtenances used in connection with medical micropigmentation procedures.

"Handsink" means a lavatory equipped with hot and cold running water under pressure used solely for washing hands, arms or other portions of the body.

"Hot water" means water that attains and maintains a temperature as specified in OAC ~~310:310~~158:30.

"Instruments used for medical micropigmentation" means handpieces, needles, needle bars and other instruments that may contact a client's body or body fluids during medical micropigmentation.

"Licensing board" means *the Oklahoma State Board of Medical Licensure and Supervision, the State Board of Osteopathic Examiners and/or the Board of Dentistry.* [21:841.5]

"Liquid chemical germicide" means a disinfectant or sanitizer registered with the Environmental Protection Agency or an approximate 1:100 dilution of household chlorine bleach (500ppm, $\frac{1}{4}$ cup/gal. or 2 tablespoons/quart of tap water) made fresh daily and dispensed from a spray bottle.

"Medical micropigmentation" means *a medical procedure in which any color or pigment is applied with a needle or electronic machine:*

(A) *To produce a permanent mark visible through the skin;*

(B) *Above the jawline and anterior to the ear and frontal hairline including but not limited to application of eyeliner, eye shadow, lips, eyebrows, cheeks, and scars; and/or*

(C) *For regimentation of areas involving reconstructive surgery or trauma*. [21:841.5]

"Physician" *means a person licensed to practice:*

(A) *Allopathic medicine and surgery by the Oklahoma State Board of Medical Licensure and Supervision pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act*. [Title 59 O.S. Section 481 et seq.]

(B) *Osteopathic medicine by the State Board of Osteopathic Examiners pursuant to the Oklahoma Osteopathic Medicine Act,* [Title 59 O.S.620 et seq.] *or*

(C) *Dentistry by the Board of Dentistry pursuant to the State Dental Act.* [Title 59 O.S. Section 328.1 et seq.].

"Procedure surface" means any part of equipment designed to contact the client's unclothed body during a medical micropigmentation procedure.

"Sanitize/sanitization procedure" means a process of reducing the number of microorganisms on cleaned surfaces and equipment to a safe level as has been approved by the Department.

"Sharps" means any object (sterile or contaminated) that may purposefully or accidentally cut or penetrate the skin or mucosa including, but not limited to, pre-sterilized, single use needles, scalpel blades and razor blades.

"Sharps container" means a puncture-resistant, leak-proof container that can be closed for handling, storage, transportation and disposal and is labeled with the International Biohazard Symbol.

"Single use" means products or items that are intended for one-time, one-person use and are disposed of after use on each client including, but not limited to, cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing needles, scalpel blades, and protective gloves.

"Skills area evaluation" means an evaluation given at the end of instruction for a particular skills area that consists of two parts: technique and theory. Mastery of technique shall be demonstrated by performing the skills on the job sheet(s) for that skills area in the presence of an approved evaluator (supervising physician or instructor) with 100% accuracy. A candidate shall demonstrate mastery of micropigmentation theory by scoring 85% or greater on a written test over the material in that skills area.

"Skills Challenge" means a mechanism that enables persons who are currently performing supervised micropigmentation to challenge the training requirement through previous training and experience. Candidates who satisfactorily challenge the training requirement by satisfactorily completing all skills area evaluations can take the written and clinical certification examinations. Candidates who do not satisfactorily challenge the training requirement must enroll in a medical micropigmentation training program.

"Sterilization" means a process resulting in the destruction of all forms of microbial life, including highly resistant bacterial spores.

"**Ultrasonic"** means ultrasonic sound, which is pertaining to acoustic frequencies above the range audible to the human ear, or, above approximately 20,000 cycles per second. There are several types of ultrasonic devices.

"Universal precautions" means a set of guidelines and controls, published by the Centers for Disease Control (CDC) as "Guidelines for prevention of transmission of human immunodeficiency virus and hepatitis B to health-care and public-safety workers" in Morbidity and Mortality Weekly Report (MMWR), June 23, 1989, Vol. 38, No. S-6, and as "Recommendations for preventing transmission of human

immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures" in MMWR, July 12, 1991, Vol. 40, No. RR-8. This method of infection control requires the employer and the employee to assume that all human blood and specified human body fluids are infectious for HIV, HBV and other blood pathogens. Precautions include hand washing, gloving, personal protective equipment, injury prevention, proper handling and disposal of needles, sharps disposal, and disposal of products contaminated with blood and body fluids.

"Written certification examination" means an examination taken upon satisfactory completion of all skills area evaluations. An applicant demonstrates written competency by scoring 70% or greater on the written certification examination. The written certification examination may be retaken up to two (2) times before retraining is required.

SUBCHAPTER 3. MEDICAL MICROPIGMENTATION CERTIFICATION

310:234-3-2. Certification requirements

(a) An individual shall be eligible to apply for a certificate to practice medical micropigmentation by satisfying all of the following criteria:

(1) Applicant shall have received a high-school diploma or its equivalent;

(2)Applicant shall be at least twenty-one years of age;

(3) Applicant shall provide a notarized copy of his/her certificate of birth;

(4) Applicant shall provide a notarized copy of his/her driver's license or other similar photo identification;

(5) Applicant shall provide a notarized copy of his/her credentials and professional resume that documents years of practice and number of procedures performed (if applicable);

(6) Applicant shall provide proof of satisfactory completion of an OSDH-approved medical micropigmentation training and testing program.

(b) The State Commissioner of Health shall not issue a certificate or renew a certificate to perform medical micropigmentation procedures to certain persons as specified in Title 63, Section 1-1454(b).

(c) Certification fees. Fees to obtain a certificate to practice medical micropigmentation in Oklahoma shall be as follows:

(1) ~~$1,000.00~~$500.00 for a new application for certification, which does not ~~includes~~include subsequent cost of exams and re-exams;

(2) ~~$500.00~~$100.00 for a renewal of certification;

(3) ~~$750.00~~$375.00 for reinstatement of certification if the renewal of the certification is 30 days or more after the expiration date; and/or

(4) ~~$250.00~~$125.00 for the replacement of a certificate.

(5) Applicant shall be responsible for the cost of the examination or re-examination and background checks relating to licensing or certification.

(d) **Period of validity for certificate.** Certification is valid for one (1) year after date of issuance.

310:234-3-3. Training and testing

An individual shall satisfy the training and testing requirement for certification by meeting one (1) of the following criteria:

(1) Satisfactory completion of an OSDH-approved medical micropigmentation training program and the certification testing process shall include ~~(~~skills area evaluations~~,~~ and written certification test~~,~~. ~~and~~ A clinical skills test~~); or~~ may be required if deemed necessary by the Oklahoma Department of Career and Technology Education.

(2) Granted challenge status after being deemed by OSDH to have met requirements for preparedness through training and experience and satisfactory completion of all components of the certification testing process shall include ~~(Skills~~ skills area evaluations~~,~~ and written certification test~~,~~. ~~and~~ A clinical skills test~~)~~ may be required if deemed necessary by the Oklahoma Department of Career and Technology Education.

310:234-3-3.1. Reciprocity

The State Department of Health upon recommendation of the Medical Micropigmentation Advisory Committee may approve applicants for certification by reciprocity. An applicant shall qualify for certification by reciprocity if the applicant:

(1) *Has qualifications and training comparable to those required under the Oklahoma Medical Micropigmentation Regulation Act;*

(2) *Provides documentation verifying two (2) years of experience and a minimum of two hundred (200) procedures; and*

(3) *Has successfully completed the Oklahoma certification examination.*[63:1-1455(E)]

(4) Provides documentation verifying possession of licensing or certification from another state in good standing.

310:234-3-4. Certificate by completion of medical micropigmentation training program and certification testing process

(a) Training in medical micropigmentation obtained through the Oklahoma Department of Career and Technology Education or other training course shall consist of at least 300 hours or equivalent of competency based instruction [63:1-1455] encompassing both theory and clinical training and is approved by the Department as meeting the training and curriculum requirements of this section.

(b) Medical Micropigmentation training shall be in the following skills area including theory and lab training:

(1) Safety and Aseptic Technique;

(2) Knowledge of Facial Anatomy, Physiology, and Disease;

(3) Theory and Application of Micropigmentation;

(4) Color Theory;

(5) Client Consultation Services;

(6) Professionalism; and

(7) Micropigmentation procedures (eyeliner, lips, eyebrows, eye shadow, cheeks, scars, and/or reconstructive surgery, or trauma, or repigmentation of the areola):

(A) Basic procedures on clients (eyeliner, lips, and eyebrows),

(B) Advanced procedures (eye shadow, cheeks, scars, and/or reconstructive surgery, or trauma or repigmentation of the areola).

(c) The instructor for micropigmentation procedures and techniques shall be: ~~an Oklahoma Certified Micropigmentologist who has performed procedures for one (1) year or a physician as defined by OAC 310:234-1-2. Subject matter experts may be utilized to teach technique and theory in other skill areas.~~

(1) An Oklahoma Certified Micropigmentologist who has performed procedures for three (3) years that shall include eye procedures, full lip procedures, and eyebrow procedures; or

(2) A physician as defined by OAC 310:234-1-2. Subject matter experts may be utilized to teach technique and theory in other skill areas.

(d) **Skills area evaluations.**

(1) During the training program, a candidate must satisfactorily complete an evaluation for each skills area. The evaluation verifies that micropigmentation concepts and/or techniques presented in that skills area have been mastered.

(2) Mastery of medical micropigmentation technique in a skills area shall be demonstrated when the candidate performs all skills presented on all job sheets contained within that skills area to the instructor with 100% accuracy.

(3) Mastery of medical micropigmentation theory in a skills area shall be demonstrated when the candidate scores 85% on the written test over material covered in that skills area (if applicable).

(e) **Written certification examination.**

(1) ~~Candidate~~Candidates shall be eligible to sit for the written certification examination upon satisfactory completion of training and skills area evaluations. The written certification examination for medical micropigmentation shall be offered at Health Certification Project testing sites located in Technology Centers. Documentation of satisfactory completion of the written certification exam shall be required before a candidate is permitted to take the clinical certification examination.

(2) A passing score of 70% shall be required to show competency. A candidate who does not meet this score can retest up to two (2) times. Candidates who do not pass the written certification examination must wait at least seven (7) days before retesting. Candidates who are unable to attain competency after three attempts shall be required to re-enroll in the medical micropigmentation training program.

(f) **Clinical certification examination.**

(1) Candidates shall be eligible to take the clinical certification examination upon satisfactory completion of the written certification examination. The clinical certification examination for medical micropigmentation shall be offered at selected Technology Center test sites and shall be offered two (2) times per year or as deemed necessary by the ~~Medical Micropigmentation Advisory Committee~~Department. The clinical certification examination shall consist of three (3) components.

(2) Candidates shall provide all equipment and supplies for the clinical certification examination. Competency shall be verified by documentation of the clinical certification examination. A candidate must attain a score of 100% to pass the clinical certification examination. A candidate shall be permitted to retest one (1) clinical component up to two (2) times. Candidates who are unable to pass all three components within these guidelines shall be required to re-enroll in a medical micropigmentation program.

(g) **Application for certification.** Upon satisfactory completion of the medical micropigmentation training and certification testing process, the applicant is eligible to apply for a Medical Micropigmentation Certificate. In order to apply for a Certification, the candidate must submit the following to OSDH:

(1) Completed application;

(2) Notarized copy of the candidate's certificate of birth;

(3) Notarized copy of the candidate's driver's license or other similar form of photo ID;

(4) Notarized copy of the candidate's professional credentials; and

(5) Completed Training and Testing Verification Form.

(h) **Issuance of certificates.** The State Commissioner of Health shall award a certificate to eligible applicants as set forth in Section 5 of the Act within thirty days of receipt of the completed application and required documents.

310:234-3-5. Certificate by skills challenge and certification testing

(a) A person who has received training in micropigmentation and has experience in performing micropigmentation procedures may be deemed to have met the Department-approved preparedness requirements. Attaining challenge status enables the applicant to bypass micropigmentation training if he/she is able to score 100% on the Skills area evaluations for each of the areas:

(1) Safety and Aseptic Technique;

(2) Knowledge of Facial Anatomy, Physiology, and Disease;

(3) Theory and Application of Micropigmentation;

(4) Color Theory;

(5) Client Consultation Services;

(6) Professionalism; and

(7) Micropigmentation Procedures on Clients.

(A) Basic procedures (eyeliner, lips, and eyebrows),

(B) Advanced procedures (eye shadow, cheeks, scars, and/or reconstructive surgery, trauma, or repigmentation of the areola)

(b) **Application for certification by skills challenge and certification testing.**

(1) To apply for challenge status, the applicant must submit all of the following to OSDH:

(A) Completed application for challenge status;

(B) Notarized copy of the applicant's certificate of birth;

(C) Notarized copy of the applicant's driver's license or other similar photo identification;

(D) Notarized copy of his/her credentials and professional resume of satisfactory completion of Medical Micropigmentation procedures for a minimum of six months experience and 60 procedures performed;

(E) Letter from supervising physician detailing the types of micropigmentation procedures that shall be performed under his/her supervision or letter of recommendation;

~~(F) $1000 Application for Certification fee;~~

~~(2) Challenge status shall only be granted between January 1, 2002, and December 31, 2002, to those seeking to practice medical micropigmentation in Oklahoma.~~

(~~3~~2) OSDH shall notify the applicant in writing of its decision to approve/disapprove the applicant's challenge status within 60 days of receipt of a completed application. Applicants who are not eligible to challenge must enroll in a micropigmentation training program before entering the certification testing process. Applicants who are eligible to challenge must present the letter of notification from OSDH upon enrolling in the skills challenge and certification testing process.

(c) **Skills area evaluations.**

(1) A skills challenge candidate must score 100% on each skills area evaluation. The evaluation verifies those micropigmentation concepts and/or techniques presented in the training program have been mastered through previous training and experience.

(2) Mastery of medical micropigmentation technique in a skills area shall be demonstrated when the candidate performs all skills presented on all job sheets contained within that competency area to the instructor with 100% accuracy. A skills challenge candidate shall perform all skills presented on a job sheet in the presence of his/her supervising physician. Each job sheet must document the procedure performed and include the signature of the supervising physician who witnessed and evaluated the procedure. In order to take the written portion of the skills area evaluation, the candidate must present signed and completed job sheets for each skill presented in that competency area.

(3) Mastery of medical micropigmentation theory in a skills area shall be demonstrated when the candidate scores 85% on the written test (if applicable). Candidates who fail to score 85% on the written portion of each skills area evaluation can re-test in no more than two (2) competency areas. Candidates who fail to score 85% after three (3) attempts shall be required to enroll in a micropigmentation program. Unsuccessful challenge candidates must remediate in all areas where they scored less than 85% through an approved micropigmentation program. Competency will be determined by successful completion of the associated written skill evaluation(s). Candidates who satisfactorily complete all skills area evaluations shall be eligible to register for the written certification examination.

(d) **Written certification examination.**

(1) Candidate shall be eligible to sit for the written certification examination upon satisfactory completion of training and skills area evaluations. The written certification examination for medical micropigmentation shall be offered at Health Certification Project testing sites located in Technology Centers. Documentation of satisfactory completion of the written certification exam shall be required before a candidate is permitted to take the clinical certification examination.

(2) A passing score of 70% shall be required to show competency. A candidate who does not meet this score can retest up to two (2) times. Candidates who do not pass the written certification examination must wait at least seven (7) days before retesting. Candidates who are unable to attain competency after three attempts shall be required to re-enroll in the medical micropigmentation training program.

(e) **Clinical certification examination.**

(1) Candidates shall be eligible to take the clinical certification examination upon satisfactory completion of the written competency examination. The clinical competency for medical micropigmentation shall be offered at selected Technology Center test sites and shall be offered two (2) times per year or as deemed necessary by the ~~Medical Micropigmentation Advisory Committee~~ Department. The clinical certification examination shall consist of three (3) components.

(2) Candidates shall provide all equipment and supplies for the clinical competency examination. Competency shall be verified by documentation of the clinical competency examination. A candidate must attain a score of 100% to pass the clinical certification examination. A candidate shall be permitted to retest one (1) clinical component up to two (2) times. Retesting a clinical component shall be available at the next clinical certification examination test date. Candidates who are unable to pass all three components within these guidelines shall be required to re-enroll in a medical micropigmentation program.

(f) **Application for certification.**

(1) Upon satisfactory completion of the medical micropigmentation training and certification testing process, the applicant is eligible to apply for a Medical Micropigmentation Certificate. In order to apply for a Certification, the candidate must submit the following to OSDH:

(A) Completed application for certification, and

(B) Completed Training and Testing Verification Form.

(2) The State Commissioner of Health shall award a certificate to eligible applicants as set forth in Section 5

of the Act within thirty days of receipt of the completed application and required documents.

SUBCHAPTER 7. REQUIREMENTS FOR PREMISES

310:234-7-1. Physical facilities

Medical micropigmentation shall only be performed in a physician's office. The applicant or licensed medical micropigmentation person shall provide information to the Department in their application or renewal form stating who the supervising physician is with the dentist or physician('s) signature, address of the dentist or physician's office where the dentist or physician is supervising, and who the Certified Medical Micropigmentologist being supervised is performing medical micropigmentation.

310:234-7-2. Physical construction and maintenance

(a) All walls, floors, ceilings and all procedure surfaces where medical micropigmentation is performed shall be smooth, free of open holes or cracks, washable, in good repair, and clean. All procedure surfaces, including client chairs/benches shall be of such construction as to be easily cleaned and sanitized after each client.

(b) No animals of any kind shall be allowed in the area where medical micropigmentation is performed except service animals used by persons with disabilities.

(c) The facility shall comply with OAC ~~310:310~~ 158:40 (Plumbing Industry Regulations). In addition, a separate, readily accessible, handsink with hot and cold running water, under pressure, equipped with wrist or foot operated controls and supplied with liquid soap, and disposable paper towels shall be readily accessible to each individual performing medical micropigmentation.

(d) At least one covered waste receptacle shall be provided in each medical micropigmentation area and each toilet room. All refuse containers shall be lidded, cleanable and kept clean.

(e) All instruments and supplies shall be stored in clean, dry and covered containers.

(f) Reusable cloth items shall be mechanically washed with detergent and dried after each use. The cloth items shall be stored in a dry, clean environment until used.

(g) The facility shall comply with OAC ~~310:245~~158:40 (Electrical Industry Regulations). In addition, the medical micropigmentation room shall have 10-foot candles of light at 30 inches above the floor and 30-foot candles on surfaces where micropigmentation is performed.

(h) The facility shall comply with OAC ~~310:290~~158:50 (Mechanical Industry Regulations).

SUBCHAPTER 11. ENFORCEMENT

310:234-11-4. Inspection of Complaints

Upon receipt of a complaint by the Department or upon receipt of notice relating to an alleged violation of the Oklahoma Medical Micropigmentation Regulation Act or rules promulgated there under, that involves the practice of micropigmentation in the office of a dentist or physician, the Department shall notify the appropriate licensing board of the complaint and request a joint inspection.

[OAR Docket #07-1074; filed 5-18-07]

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

[OAR Docket #07-1074A]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Oklahoma State Board of Health; Hearing Aid Dealers and Fitters, 63 O.S., Sections 1-1750 et seq.
DATES:
Comment Period:
February 1, 2007 through March 8, 2007
Public Hearing:
March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
These proposed changes amend Subchapters 1, 3, and 5. The proposed rule changes are necessary to remove substantive language from the rule definitions and to place that language in the appropriate locations in the rule pursuant to OAC 655:10-5-10(b), to clarify the requirement for the trouble shooting

portion of the hearing aid examination, and to provide grammatical corrections to rule text.

CONTACT PERSON:

Kay Stanton, Occupational Licensing Division, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299; telephone:(405) 271-9444, ext. 57902; facsimile: (405) 271-5286 electronic mail: kays@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

310:265-1-2. Definitions

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

"Act" means those statutes relating to Hearing Aid Dealers and Fitters codified at 63 O.S., Sections 1-1750 to 1-1754, as amended.

"Board" means the State Board of Health.

"Commissioner" means the State Commissioner of Health or his/her authorized representative.

"Department" means the Oklahoma State Department of Health.

"Direct supervision" means a licensed hearing aid dealer and fitter shall accompany a temporary permit holder anytime the permit holder is performing the practice of fitting and dealing in hearing aids.

"Established procedures and instrumentation in fitting of hearing aids" means a minimum requirement all hearing tests shall include both air-conduction and bone conduction threshold measurements except in the case of a re-test when there is less than a fifteen (15) dB loss between the current air-conduction threshold and the previous air-conduction threshold and the previous tests showed the loss to be sensorineural. ~~Further, all instruments used to measure thresholds shall be annually certified to meet American National Standard Specifications for Audiometer, S3.6-1969 or a standard which supersedes it. In addition, some form of live-voice or recorded voice testing must be made to obtain at least a subjective evaluation of the individual's ability to discriminate. In the case of live voice testing, the tests should be run without visual cue. A hearing aid of similar characteristics can be re-fit to an individual without a hearing test if this is done within six (6) months of the original fitting and original hearing test. Hearing testing for the purpose of fitting hearing aids shall not be conducted where ambient noise levels exceed 45 dB measured on a slow weighted dB (a) scale. If the testing environment exceeds 45 dB, the testing shall be considered a "Hearing Screening" and shall not be utilized to determine the auditory thresholds in the selection of a hearing aid unless a qualified waiver is executed by the person supplied with a hearing aid.~~

"Hearing aid" means any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments or accessories, but excluding earmolds, batteries, and cords; provided that this definition shall not include lenses or spectacle frame fronts for eyeglass-type hearing aids; except in the case of spectacle frame fronts which include electrical wiring as part of the hearing aid.

"Hearing Screening" means a binary pure tone screening at a preset intensity level for the purpose of determining if an individual screened needs further testing prior to the selection or sale of a hearing aid. ~~A licensee may conduct a hearing screening at a health fair, state fair, public location or similar facility, but due to excessive background noise commonly found in these environments, measurement of auditory thresholds are not acceptable. A licensee should present to the person receiving the "Hearing Screening" a written statement at the time of the screening containing the following provisions: Results of a "Hearing Screening" are not a medical or audiological evaluation of your ear nor a diagnosis of a hearing disorder. You passed failed (circle one) the hearing screening. Failing a screening is an indication you need further testing prior to the selection of a hearing aid.~~

"License" means a license issued by the Commissioner to hearing aid dealers and fitters.

"Practice of fitting and dealing in hearing aids" means those practices used for the purpose of selection, adaptation and sale of hearing aids including direct observation of the ear ~~and~~ together with the counseling and instruction pertaining thereto~~.~~, ~~The practice also includes~~ the testing of human hearing for these purposes and the making of impressions for earmolds.

"Qualified waiver" means a written acknowledgment endorsed by the person supplied with a hearing aid, or his lawfully appointed guardian, that indicates that the person supplied with a hearing aid was advised that the ambient noise level of the testing environment used to fit a hearing aid exceeded 45 dB on a slow weighted dB (a) scale and that the hearing test conducted could result in an inappropriately fitted hearing aid. ~~The waiver must be accompanied by written documentation from a competent medical authority that the person supplied with a hearing aid is not ambulatory and any transport of that person would create a serious risk of harm or cause an imminent threat to their health and well being.~~

"Sell" or "sale" means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with distributors or dealers.

"Seller" means any person who dispenses a hearing aid to any member of the consuming public.

"Temporary permit" means a permit issued while the applicant is training to become a licensed hearing aid dealer or fitter.

~~**"30-day Refund Policy"** means the Hearing Aid Dealer and Fitter may retain a cancellation fee of 10% or $150 per aid, whichever is less, of the purchase price of the hearing aid(s). The guarantee must entitle the purchaser, upon cancellation for any reason within the 30-day period after taking possession of~~

~~the hearing aid(s), to receive the full refund less the cancellation fee. Said refund shall be provided to the purchaser within 30 days after the return of the hearing aid(s). If the hearing aid must be repaired, remade or adjusted during the 30-day refund period, the running of the 30-day period is tolled for any period during which the hearing aid provider takes possession or control of a hearing aid after its original delivery.~~

SUBCHAPTER 3. EXAMINATIONS

310:265-3-2. Contents of examination

The hearing aid dealer or fitter examination shall consist of an examination as compiled at the discretion of the Commissioner. It shall follow the guidelines of the National Hearing Aid Society examination and shall follow guidelines of similar examinations given by surrounding states. The tests under this section shall not require a higher education in the fields of medicine, audiology or communication disorders. The examination shall consist of tests of knowledge as it pertains to the sale and fitting of hearing aids as follows:

(1) Function of a hearing aid;

(2) Pure tone audiometry, including air conduction testing and bone conduction testing (continuous-pulsing audiomiter setting not accepted);

(3) Recorded voice speech audiometry;

(4) Masking when indicated;

(5) Recording and evaluation of audiograms and speech audiometry to determine proper selection and adaptation of a hearing aid;

(6) Taking earmold impressions; ~~and~~

(7) Rules and regulations pertaining to the sale and fitting of hearing aids~~.~~; and

(8) Trouble Shooting pertaining to the identification of visable physical defects or damage to hearing aids.

310:265-3-3. Fees for licenses and examinations

Fees for licenses, permits and examinations shall be as follows:

(1) Initial License Fee - $50.00;

(2) Examination Fee - $95.00;

(3) Temporary Permit Fee - $15.00;

(4) Renewal of License - $50.00;

(5) Reexamination Fee - $95.00;

(6) Renewal of Temporary Permit Fee - $15.00;

(7) Renewal of License within thirty-day grace period - $75.00; and

(8) Renewal of License after thirty-day grace period - $100.00.

(9) Licensure by equivalency fees, grounds for renewal and procedures for the suspension and revocation shall be the same as for initial licensing, renewal, suspension and revocation of a license.

SUBCHAPTER 5. LICENSE REQUIREMENTS

310:265-5-1. License required

(a) No person shall engage in the sale of or practice of fitting hearing aids or display a sign or in any other way advertise or represent himself as a person who practices the fitting and sale of hearing aids ~~unless he/she holds an unsuspended, unrevoked license issued by the Commissioner as provided in these regulations.~~without first obtaining a license or permit in accordance with these rules from the commissioner or his designated representative. The license shall be conspicuously posted in his/her office or place of business. Duplicate licenses shall be issued by the Commissioner to valid license holders operating more than one office, without additional payment. ~~A license under this act shall confer upon the holder the right to select, fit and sell hearing aids.~~

(b) Nothing in these regulations shall prohibit a corporation, partnership, trust, association or other like organization maintaining an established business address from engaging in the business of selling or offering for sale hearing aids at retail without a license, provided that it employs only properly licensed persons in the direct sale and fitting of such products. Such corporations, partnerships, trust, associations or other like organizations shall file annually with the Commissioner a list of all licensed hearing aid dealers and fitters directly or indirectly employed by them.

(c) Nothing in these regulations shall permit a licensed hearing aid dealer or fitter to take facial measurements for eyeglasses or to fit, adjust, duplicate or adapt lenses or spectacle frames, except that a licensed hearing aid dealer or fitter may adapt or replace the temple or temples incorporating hearing aid components in eyeglass-type hearing aids.

310:265-5-2. Applicant requirements

Whenever the Commissioner determines that another state or jurisdiction has requirements equivalent to or higher than those in effect pursuant to these regulations, and that such state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants pursuant to these regulations are qualified to dispense and fit hearing aids, the Commissioner may issue a license to applicants who hold current, unsuspended and unrevoked certificates or licenses to fit and sell hearing aids in such other state or jurisdiction. No such applicants shall be required to submit to or under–go a qualifying examination other than the payment of fees, pursuant to these regulations, and shall be registered in the same manner as licensees. The fee shall be the same as the fee for an initial license. ~~Fees, grounds for renewal and procedures for the suspension and revocation shall be the same as for renewal, suspension and revocation of a license.~~

310:265-5-3. Address of place of business

(a) A person who holds a license shall notify the Commissioner in writing of each address of the business(es) where he/she engages or intends to engage in the fitting or the sale of hearing aids. A post office box number by itself does not fulfill this requirement.

(b) The Commissioner shall keep a record of the place of business of licensees.

(c) Any notice required to be given by the Commissioner to a person who holds a license shall be mailed to him/her by certified mail at the address of the last place of business of which he/she has notified the Commissioner.

(d) Where more than one (1) office is operated by the licensee, duplicate licenses shall be issued by the Commissioner for posting in each location. The licensee must send a written request for a duplicate license indicating the address of the place of business where the duplicate license will be posted.

310:265-5-4. Receipts

(a) Any person who practices the fitting and sale of hearing aids shall deliver to each person supplied with a hearing aid a receipt which shall contain the licensee's signature and show his business address, (a post office box number by itself does not meet the requirement of a business address), and number of his State license, together with specifications as to the make and model of the hearing aid furnished, with full terms of the sale clearly stated. If an aid which is not new is sold, the receipt shall be clearly marked as "used" or "reconditioned", whichever is applicable, with terms of guarantee, if any.

(b) Such receipt shall bear in no smaller type than the largest used in the body copy portion the following: "Any examination or representation made by a licensed hearing aid dealer and fitter in connection with the fitting and selling of this hearing aid is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and therefore must not be regarded as medical opinion or advice. Further, it is recommended that medical advice from a licensed physician should be obtained."

(c) No receipt for a hearing aid shall be valid without the original signature of a licensed hearing aid dealer and fitter. Said receipt shall constitute a contract of sale between the hearing aid dealer and fitter and the purchaser. The holder of a temporary license may not issue a receipt unless the original signature of the direct supervisor also appears on the receipt. Said receipt shall have the state license number of both the licensed hearing aid dealer and fitter and the temporary licensed person.

(d) The hearing aid dealer and fitter may retain a cancellation fee of 10% or $150 per aid, whichever is less, of the purchase price of the hearing aid(s). The guarantee must entitle the purchaser, upon cancellation for any reason within the 30-day period after taking possession of the hearing aid(s), to receive the full refund less the cancellation fee. Said refund shall be provided to the purchaser within 30 days after the return of the hearing aid(s). If the hearing aid must be repaired, remade or adjusted during the 30-day refund period, the running of the 30-day period is tolled for any period during which the hearing aid provider takes possession or control of a hearing aid after its original delivery.

(e) *The hearing aid provider shall provide a written receipt or contract to the purchaser that includes, in immediate proximity to the space reserved for the signature of the purchaser, the following specific statement in all bold-faced type capital letters no smaller than the largest print used in the written receipt or contract:*

OKLAHOMA STATE LAW GIVES THE PURCHASER THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON BY RETURNING THE HEARING AID TO THE HEARING AID PROVIDER AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRTIETH CALENDAR DAY AFTER RECEIPT OF THE HEARING AID.

BY LAW, THE HEARING AID PROVIDER MAY BE ENTITLED TO A CANCELLATION FEE NOT TO EXCEED TEN PER CENT (10%) OF THE TOTAL PURCHASE PRICE FOR THE HEARING AID OR ONE HUNDRED FIFTY DOLLARS ($150.00) PER HEARING AID, WHICHEVER IS LESS, TO COVER THE COSTS INCURRED BY THE HEARING AID PROVIDER.

IF THE PURCHASER RETURNS THE HEARING AID WITHIN THE THIRTY-DAY PERIOD, THE PURCHASER WILL RECEIVE A REFUND OF $ .00. (HEARING AID PROVIDER MUST INSERT THE DOLLAR AMOUNT OF THE REFUND). IF THE HEARING AID PROVIDER FAILS TO COMPLY WITH THIS PROVISION, COMPLAINTS SHOULD BE FORWARDED TO:

OKLAHOMA STATE DEPARTMENT OF HEALTH
OCCUPATIONAL LICENSING DIVISION
1000 N.E. 10TH STREET
OKLAHOMA CITY, OKLAHOMA 73117
[15:764.1(A)(3)]

(~~e~~f) ~~In each~~The following information and measurements shall be included in each customer/patient file or permanent record, ~~the following questions or measurements will~~and be documented for the client:

(1) ~~Does the client have a~~A description, including location of any visible, congenital or deformity of the ear~~?~~.

(2) ~~Does the client have~~Whether the client has active, or a history of, drainage from the ear within the last 90 days~~?~~.

(3) ~~Does the client have~~Whether the client has acute or chronic dizziness~~?~~.

(4) ~~Does the client have~~Whether the client has unilateral hearing loss of a sudden or recent onset within the previous 90 days~~?~~.

(5) ~~Does the client have a~~Whether the client has a history of sudden or rapidly progressive hearing loss within the previous 90 days~~?~~.

(6) ~~Does the client have~~Whether the client has an Audiometric Air Bone Gap equal to or greater than 15 decibels at 500 Hertz, 1000 Hertz and 2000 Hertz~~?~~.

(7) ~~Does the client have~~Whether the client has visible evidence of significant cerumen accumulation or a foreign body in the ear canal~~?~~.

(8) ~~Does the client have~~Whether the client has pain or discomfort in the ear~~?~~.

310:265-5-5. Renewal of license

Each person who engages in the fitting and sale of hearing aids shall annually, on or before January 30, pay to the Commissioner a fee of Fifty Dollars ($50.00) for renewal of his/her license, submit evidence of fulfilling the continuing education requirements, and shall keep such certificate conspicuously posted in his/her office or place of business at all times. A thirty (30) day grace period shall be allowed after January 30, during which time licenses may be renewed on a payment of a fee not to exceed Seventy-five Dollars ($75.00) to the Commissioner. After expiration of the grace period, the Commissioner may renew such licenses upon payment of ~~not to exceed~~ One Hundred Dollars ($100.00) to the Commissioner. No person who applies for renewal, whose license has expired, shall be required to submit to any examination as a condition to renewal unless the license has lapsed for five (5) years or more and/or the person has not been in the business for five (5) or more years.

310:265-5-6. Continuing education requirements

(a) ~~These requirements for continuing education will become effective on January 30, 2005.~~

~~(b)~~ Each applicant for renewal of a hearing aid dealer or fitter license must submit written evidence showing he/she has completed ten (10) clock hours of continuing education, completed during the previous year and pertaining to the hearing sciences, as approved by the National Institute of Hearing Instruments Studies or an equivalent; or have had the curriculum approved by the Department.

(~~c~~b) **Continuing education course approval by the Department.** An entity which desires to sponsor education to licensees in compliance with the continuing education requirements of subsection ~~(b)~~(a) of this Section shall file an application for approval on the form prescribed by the Department. An application shall include a list of the course instructors and their qualifications, an agenda detailing the material to be presented, the location of the training, the program objectives, and the number of clock hours of classroom and supervised instruction. After completion of the course, the entity shall submit sign-in sheets for all sessions which require a signature and social security number or state license number of each person in attendance. The program shall verify the total number of continuing education hours completed by each attendee. All programs shall be presented as submitted unless changes have been approved prior to presentation. Changes which occur during the presentation shall be submitted to the Department within ten (10) days of the training session for review by the Department. Failure to obtain approval of changes may result in loss of certification.

(~~d~~c) **Approval requirements for continuing education**

(1) All material and information presented shall pertain to the hearing aid dealers and fitters profession.

(2) The training location must be outside the regular work place or after regular work hours.

(3) All training ~~shall~~should utilize materials that are to be generic and non-proprietary in nature.

310:265-5-8. Procedures and instrumentation in fitting of hearing aids.

(a) **Testing**

(1) All instruments used to measure thresholds shall be annually certified to meet American National Standard Specifications for Audiometer, S3.6-1969 or a standard which supersedes it. In addition, some form of live voice or recorded voice testing must be made to obtain at least a subjective evaluation of the individual's ability to discriminate. In the case of live voice testing, the tests should be run without visual cue. A hearing aid of similar characteristics can be refitted to an individual without a hearing test if this is done within six (6) months of the original fitting and original hearing test.

(2) Hearing testing for the purpose of fitting hearing aids shall not be conducted where ambient noise levels exceed 45 dB measured on a slow weighted dB (a) scale. If the testing environment exceeds 45 dB, the testing shall be considered a "Hearing Screening" and shall not be utilized to determine the auditory thresholds in the selection of a hearing aid unless a qualified waiver is executed by the person supplied with a hearing aid.

(b) **Screening.** A licensee may conduct a hearing screening at a health fair, state fair, public location or similar facility, but due to excessive background noise commonly found in these environments, measurement of auditory thresholds are not acceptable. A licensee should present to the person receiving the "Hearing Screening" a written statement at the time of the screening containing the following provisions: Results of a "Hearing Screening" are not a medical or audiological evaluation of your ear nor a diagnosis of a hearing disorder. You passed/failed (circle one) the hearing screening. Failing a screening is an indication you need further testing prior to the selection of a hearing aid.

(c) **Qualified waiver.** The waiver must be accompanied by written documentation from a competent medical authority that the person supplied with a hearing aid is not ambulatory and any transport of that person would create a serious risk of harm or cause an imminent threat to their health and well being.

[OAR Docket #07-1074A; filed 5-18-07]

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

[OAR Docket #07-1075]

RULEMAKING ACTION:

PERMANENT final adoption

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]

AUTHORITY:
Oklahoma State Board of Health; Home Inspection Industry Act, 59 O.S., Sections 858-621 et seq.

DATES:
Comment Period:
February 1, 2007 through March 8, 2007
Public Hearing:
March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATION BY REFERENCE:
n/a

ANALYSIS:
The proposed rule changes clarify the requirements for the course content presented for qualifying and continuing education courses. The proposed rule changes outline the reasons for revocation of a previously approved provider, instructor, or course. Additionally the proposed rule changes authorize suspension or revocation of a license for failure to cooperate with an investigation or to provide a certificate of insurance coverage as required. The proposed changes prohibit a home inspector from performing work or repair services upon a home for a period of thirty days prior to, and one year after an inspection he or she conducts. The proposed rule changes provide for a written disclosure from the home inspector to the client under certain circumstances and, conditions, which would possibly affect the home inspector's ability to produce an unbiased report. Additionally the proposed changes provide grammatical corrections.

CONTACT PERSON:
Vernon Bolz, Director, Occupational Licensing Division, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299; telephone:(405) 271-5779, ext. 57901; facsimile: (405) 271-5286 electronic mail: vernonb@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

310:276-1-3. Standards of workmanship and practice

(a) **General requirements and limitations.**

(1) The inspector shall be governed by the following general requirements:

(A) Only readily accessible systems and components of homes listed in these Standards shall be required to be inspected.

(B) Only installed systems and components of homes listed in these Standards shall be required to be inspected.

(C) The inspector shall report on those systems and components inspected which, in the professional opinion of the inspector, are not in normal working order.

(D) The inspector shall report a reason why, if not self-evident, the system or component is not in normal working order.

(E) The inspector shall report the inspector's recommendations to correct or monitor the reported deficiency.

(F) The inspector shall report on any systems and components designated for inspection in these Standards which were present at the time of the Home Inspection but were not inspected and a reason they were not inspected.

(G) These Standards are not intended to limit inspectors from including other inspection services, systems or components in addition to those required by these Standards.

(H) These Standards are not intended to limit inspectors
from specifying repairs and providing an opinion of the costs to cure, provided the inspector is appropriately qualified and willing to do so.

(I) These Standards are not intended to limit inspectors
from excluding systems and components from the inspection if requested by the client.

(J) Beginning July 1, 2006, all home inspectors shall maintain a log or record of all home inspections performed for a minimum period of five years from the date of inspection. The log shall include the name of the client, the address of the property, and the date of the inspection~~, and~~. The home inspector shall maintain a copy of all home inspections completed within the past 36 months. The log may be a hard file or an electronic file and shall be maintained at the home inspector's principal business address. The files shall be available for review upon the request of an authorized representative of the Oklahoma State Department of Health.

(2) Inspections performed in accordance with these Standards are not technically exhaustive, will not identify concealed conditions or latent defects, and are applicable to buildings with four or fewer dwelling units and their garages or carports.

(3) The inspector is not required to perform any action or make any determination unless specifically stated in these Standards, except as may be required by lawful authority.

(4) Inspectors are not required to determine the condition of systems or components which are not readily accessible, the remaining life of any system or component, the strength, adequacy, effectiveness, or efficiency of any system or component, the causes of any condition or deficiency, the methods, materials, or costs of corrections, future conditions including, but not limited to, failure of systems and components, the suitability of the property for any specialized use, compliance with any regulatory requirements other than this Chapter (codes, regulations, laws, ordinances, etc.), the market value of the property or its marketability, the advisability of the purchase of the property, the presence of potentially hazardous plants or animals including, but not limited to wood destroying organisms or diseases harmful to humans, the presence of any environmental hazards including, but not limited to toxins, carcinogens, noise, and contaminants in soil, water, and air, the effectiveness of any system installed or methods utilized to control or remove suspected hazardous substances, the operating costs of systems or components, or the acoustical properties of any system or component.

(5) Inspectors are not required to offer or perform any act or service contrary to law, perform engineering services, perform work in any trade or any professional service other than home inspection, or warranties or guarantees of any kind.

(6) Inspectors are not required to operate any system or component which is shut down or otherwise inoperable, any system or component which does not respond to normal operating controls, or shut-off valves.

(7) Inspectors are not required to enter any area which will, in the opinion of the inspector, likely be dangerous to the inspector or other persons or damage the property or its systems or components, or the under-floor crawl spaces or attics which are not readily accessible.

(8) Inspectors are not required to inspect underground items including, but not limited to underground storage tanks or other underground indications of their presence, whether abandoned or active, systems or components which are not installed, decorative items, systems or components located in areas that are not entered in accordance with these Standards, detached structures other than garages and carports, or common elements or common areas in multi-unit housing, such as condominium properties or cooperative housing.

(9) Inspectors are not required to perform any procedure or operation which will, in the opinion of the inspector, likely be dangerous to the inspector or other persons or damage the property or its systems or components, move suspended ceiling tiles, personal property, furniture, equipment, plants, soil, snow, ice, or debris, or dismantle any system or component, except as explicitly required by these Standards.

(b) **Structural system inspection requirements.**

(1) The inspector shall inspect the structural components including foundation and framing, by probing a representative number of structural components where deterioration is suspected or where clear indications of possible deterioration exist. Probing is not required when probing would damage any finished surface or where no deterioration is visible.

(2) The inspector shall describe the foundation and report the methods used to inspect the under-floor crawl space, the floor structure, the wall structure, the ceiling structure, and the roof structure and report the methods used to inspect the attic.

(3) The inspector is not required to provide any engineering service or architectural service, or offer an opinion as to the adequacy of any structural system or component.

(c) **Exterior inspection requirements.**

(1) The inspector shall inspect the exterior wall covering, flashing and trim, all exterior doors, attached decks, balconies, stoops, steps, porches, and their associated railings, the eaves, soffits, and fascias where readily accessible from the ground level, the vegetation, grading, surface drainage, and retaining walls on the property when any of these are likely to adversely affect the building, and the walkways, patios, and driveways leading to dwelling entrances.

(2) The inspector shall describe the exterior wall covering.

(3) The inspector is not required to inspect screening, shutters, awnings, and similar seasonal accessories, fences, geological, geotechnical or hydrological conditions, recreational facilities, outbuildings, seawalls, break-walls, and docks, and erosion control and earth stabilization measures.

(d) **Roof system inspection requirements.**

(1) The inspector shall inspect the roof covering, the roof drainage systems, the flashings, the skylights, chimneys, and roof penetrations.

(2) The inspector shall describe the roof covering and report the methods used to inspect the roof.

(3) The inspector is not required to inspect antennae, interiors of flues or chimneys which are not readily accessible, or other installed accessories.

(e) **Plumbing system inspection requirements.**

(1) The inspector shall inspect the interior water supply and distribution systems including all fixtures and faucets, the drain, waste and vent systems including all fixtures, the water heating equipment, the vent systems, flues, and chimneys, the fuel storage and fuel distribution systems, and the drainage sumps, sump pumps, and related piping.

(2) The Inspector shall describe the water supply, drain, waste, and vent piping materials, the water heating equipment including the energy source, and the location of main water and main fuel shut-off valves.

(3) The inspector is not required to inspect, the clothes washing machine connections, the interiors of flues or chimneys which are not readily accessible, wells, well pumps, or water storage related equipment, water conditioning systems, solar water heating systems, fire and lawn sprinkler systems, or private waste disposal systems.

(4) The inspector is not required to determine whether water supply and waste disposal systems are public or private, the quantity or quality of the water supply, or operate safety valves or shut-off valves.

(f) **Electrical system inspection requirements.**

(1) The Inspector shall inspect the service drop, the service entrance conductors, cables, and raceways, the service equipment and main disconnects, the service grounding, the interior components of service panels and sub panels, the conductors, the overcurrent protection devices, all readily accessible installed lighting fixtures, switches, ceiling fans, and receptacles, the ground fault circuit interrupters, and accessible wiring and splicing including the basement and attic.

(2) The Inspector shall describe the amperage and voltage rating of the service, the location of main disconnect(s) and sub panels, and the wiring methods.

(3) The Inspector shall report the presence of solid conductor aluminum branch circuit wiring, and the absence of smoke detectors.

(4) The inspector is not required to inspect the remote control devices unless the device is the only control device, the alarm systems and components, the low voltage wiring, systems and components, the ancillary wiring, systems and components not a part of the primary electrical power distribution system, or measure amperage, voltage, or impedance.

(g) **Heating system inspection requirements.**

(1) The inspector shall inspect the installed heating equipment, the vent systems, flues, and chimneys.

(2) The inspector shall describe the energy source, and the heating method by its distinguishing characteristics.

(3) The inspector is not required to inspect the interiors of flues or chimneys, which are not readily accessible, the humidifier or dehumidifier, the electronic air filter, the solar space heating system, or determine heat supply adequacy or distribution balance.

(h) **Air conditioning systems inspection requirements.**

(1) The inspector shall inspect the installed central and through-wall cooling equipment.

(2) The inspector shall describe the energy source, and the cooling method by its distinguishing characteristics.

(3) The inspector is not required to inspect electronic air filters, or determine cooling supply adequacy or distribution balance.

(i) **Interior inspection requirements.**

(1) The inspector shall inspect the readily accessible walls, ceilings, and floors, the steps, stairways, and railings, the countertops and a representative number of installed cabinets, and the readily accessible doors and windows, garage doors and garage door openers, and the following installed household appliances: garbage disposal, stove, cook top, dishwasher, vent hood, and free-standing stove.

(2) The inspector is not required to inspect the paint, wallpaper, and other finish treatments, the carpeting, the window treatments, the central vacuum systems, the household appliances not listed in OAC 310:276-1-3(i)(1), or recreational facilities.

(j) **Insulation and ventilation inspection requirements.**

(1) The inspector shall inspect the insulation and vapor retarders in unfinished spaces, the ventilation of attics and foundation areas, and the mechanical ventilation systems.

(2) The inspector shall describe the insulation and vapor retarders in unfinished spaces, and the absence of insulation in unfinished spaces at conditioned surfaces.

(3) The inspector is not required to disturb insulation or vapor retarders, or determine indoor air quality.

(k) **Fireplaces and solid fuel burning appliances inspection requirements.**

(1) The inspector shall inspect the vent systems, flues, and chimneys and the readily accessible portion of the firebox.

(2) The inspector shall describe the fireplaces and solid fuel burning appliances, and the chimneys.

(3) The inspector is not required to inspect the interiors of flues or chimneys, the firescreens and doors, the seals and gaskets, the automatic fuel feed devices, the mantels and fireplace surrounds, the combustion make-up air devices, or the heat distribution assists whether gravity controlled or fan assisted.

(4) The inspector is not required to ignite or extinguish fires, determine draft characteristics, or move fireplace inserts or stoves or firebox contents.

SUBCHAPTER 3. PROCEDURES OF THE COMMITTEE

310:276-3-1. Procedures of the Committee

(a) Committee meetings are generally, and unless otherwise stated by the Committee, held in the State Department of Health Building at 1000 N.E. 10th Street, Oklahoma City, Oklahoma 73117-1299. The committee shall meet as often as is necessary, but at least once each quarter. Meetings of the committee will comply with the Oklahoma Open Meetings Act.

(b) The Committee shall provide oversight to the overall licensure examination process; shall set minimum standards for certifying qualified applicants; may write examinations; may recommend regulations to the Commissioner and to the Board of Health; and, shall act as advisor to the Commissioner on home inspection matters.

(c) The only formal procedure available to the public is to apply for a home inspection license. ~~This~~Application for a home inspection license shall be ~~done~~accomplished by filling out an application for examination on a form provided by the Committee.

(d) The public may communicate with the Committee in person or by mail through the Department. The Department will make available all forms and instructions used by the Committee, rules, and all other written statements of policy or interpretations, all final orders, decisions and opinions. Copies of same may be provided in accordance with OAC 310:2-3-5.

SUBCHAPTER 9. EXAMINATION 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. Course approval requirements

(a) Any person or entity seeking to conduct an approved course for qualifying or continuing education credits shall make application and submit documents, statements and forms as may reasonably be required by the Committee in accordance with Section 310:276-5-2. ~~All providers shall provide to the Committee:~~

(b) Applications shall include the following information:

(1) Name and address of the provider;

(2) Contact person and his or her address, telephone number and fax number;

(3) The location of the courses or programs;

(4) The number and type of education credit hours requested for each course;

(5) Topic outlines, which list the summarized topics, covered in each course and upon request a copy of any course materials;

(6) If a prior approved course has substantially changed, a summarization of these records; ~~and,~~

(7) The names and qualifications of each instructor who is qualified in accordance with Section 310:276-9-4~~.~~ and,

(8) Information as to how the proposed course meets the standard provided in Section 310:276-9-5(b).

~~(b) In addition to accepting courses approved as described in this section, qualifying and continuing education credits may be granted to an individual in such case that said individual supplies acceptable documentation showing that the offering meets applicable Committee requirements for the category of credit applied for, including proof that said individual attended and successfully completed the offering.~~

(c) The Department may automatically accept without further review, courses pre-approved by the Committee.

(d) The Committee may withhold or withdraw approval of any provider for violation of or non-compliance with any provision of this section.

(e) No person or entity sponsoring or conducting a course shall advertise that it is endorsed, recommended, or accredited by the Committee. Such person or entity may indicate that the Committee has approved a course of study if that course of study has been pre-approved by the committee before it is advertised or held.

(f) ~~At the completion of each course the provider shall provide to the committee a list of all attendees who completed the course on the course completion form approved by the Committee.~~

~~(g) Providers shall maintain course records for at least five (5) years. The Committee may order an examination of the records for good cause shown.~~The Committee may decline to renew, or revoke the approval of any qualifying course or any instructor or entity previously approved to conduct a pre-licensing course upon a showing or demonstration that the course, instructor or entity has substantially failed to adequately prepare its attendees or participants to pass the national Home Inspection Examination or similar qualifying examination.

310:276-9-5. Continuing education

(a) **Continuing education hours.** No home inspection license shall be renewed unless the licensee has completed at least five (5) clock hours of continuing education prior to the date of renewal.

(b) **Special Approval requirements for continuing education.** All continuing education providers shall abide by the following requirements:

(1) Course content should be designed to update knowledge and improve inspection skills directly related to the components and systems described in Subchapter 1 of this Chapter.

(~~1~~2) All courses shall be at least two (2) hours in length.

(~~2~~3) Unless provided after regular working hours, the training location shall be outside the regular work place.

(~~3~~4) Each attendee shall complete a course evaluation on a form provided by the Department. The CEU provider shall return the completed evaluation forms to the home inspection license unit with the sign-in sheets.

310:276-9-7 Submission of records

(a) An entity conducting an offering shall, within five (5) working days of the completion thereof, submit to the Committee on a form approved by the Committee, a list of the names and license numbers or social security numbers of the licensees who successfully completed the said offering. Each licensee successfully completing an offering shall be furnished a certificate certifying completion.

(b) Providers shall maintain course records for at least five (5) years. The Committee may order an examination of the records for good cause shown.

310:276-9-8 ~~Continuing education~~Substantial compliance and reciprocity

(a) In addition to accepting courses approved as described in this Subchapter, qualifying and continuing education credits may be granted to an individual in such case that said individual supplies acceptable documentation showing that the offering meets applicable Committee requirements for the category of credit applied for, including proof that said individual attended and successfully completed the offering.

(b) If a non-resident licensee satisfies a continuing education requirement in another state for license renewal, the Committee will exempt the non-resident licensee from the continuing education requirement in the state. In order to qualify for the exemption, the non-resident licensee must file with the license renewal of this state a certificate from the state in which the continuing education was satisfied stating that the non-resident licensee had completed the continuing education requirement for license renewal in that state. The certificate from the state verifying the non-resident's compliance with continuing education in the other state must be received by the Committee

within sixty (60) days of issuance by the other state and must be received in conjunction with license renewal.

SUBCHAPTER 11. LICENSE REVOCATION AND SUSPENSION AND ADDITIONAL PROHIBITED ACTS

310:276-11-1. License revocation and suspension

(a) The employment or use of unlicensed individuals may be grounds to suspend, revoke, or deny renewal of the license of the person so employing or using unlicensed individuals.

(b) The repeated violation of any rule or provision of the Act, or the violation of multiple sections of this Chapter or provisions of the Act, may be grounds to suspend or revoke a licensee's license.

(c) Any person convicted in a court of competent jurisdiction of forgery, fraud, conspiracy to defraud, or any similar offense, or pleading guilty or nolo contendre to any such offense may be subject to license suspension or revocation.

(d) Any person failing to comply with a fine assessment or other administrative order of the Department within ninety (90) days of issuance of such assessment or order shall be subject to license suspension.

(e) Any person whose license is suspended pursuant to these Rules may not perform a home inspection and, prior to reinstatement, must make application therefor, which must be accompanied by evidence of successful completion of the continuing education requirements set forth in OAC 310:276-9-3.

(f) Any person whose license is revoked pursuant to these rules may not perform a home inspection before attaining licensure pursuant to OAC 310:276-9-1.

(g) Failure to cooperate or provide information regarding an investigation may be grounds to suspend or revoke a licensee's home inspection license.

(h) Failure to maintain and furnish a certificate of insurance coverage as provided in OAC 310:276-5-2(f) may be grounds to suspend or revoke a licensee's home inspection license.

310:276-11-2. ~~Prohibited~~Additional prohibited acts

(a) No person, entity, or firm may perform home inspection work without first obtaining a license or registration pursuant to these Rules.

(b) No person shall offer to engage in work as a home inspector during the period his or her license is suspended or revoked.

(c) No employing home inspection firm shall employ or use an unlicensed home inspector to perform home inspection work.

(d) No person, entity, or firm may transfer a license or registration.

(e) No home inspector, licensed pursuant to ~~these Rules~~this Chapter, shall enter into an agreement for the use of his or her license with any firm or person who is, or has been adjudicated to be, in violation of any provision of the Act, or whose license is currently suspended or has within the last year been revoked, unless or until otherwise approved by the Department.

(f) No person shall make a materially false or fraudulent statement in an application for license or for approval of continuing education, engage in cheating, or otherwise commit an act in violation of 310:276-9-2(g).

(g) No person shall falsify or fail to disclose in a home inspection report a material defect.

(h) No person shall accept inspection assignments when the employment itself is contingent upon reporting a predetermined estimate, analysis or opinion.

(i) No person shall accept inspection assignments when the fee to be paid is contingent upon the opinion, the conclusion, analysis, or report reached, or upon the consequences resulting from such assignments.

(j) No person shall perform a home inspection upon a home, or any part thereof, where the home inspector has solicited or performed any work or repair service therein upon a system or component described in Subchapter 1 of this Chapter, within the previous thirty days. If the person performing the home inspection has performed such work within the previous one-hundred eighty days, such prior work must be disclosed to the client.

(k) No person shall solicit or perform work or repair ~~or maintenance work~~services upon, ~~or receive compensation either directly or indirectly from a company regularly engaged in home repair work, on~~ a ~~property having four or fewer dwelling units~~home, or any part thereof, that the home inspector has inspected ~~within~~for one (1) year ~~from~~after the date of the inspection.

(~~k~~l) No person shall knowingly accept compensation from more than one client for a single home inspection, unless the home inspector has informed all clients who are paying a fee for that home inspection that such compensation is sought or anticipated.

(~~l~~m) Unless upon demand in writing by the Department, a law enforcement agency, or by order of a court of competent jurisdiction, no person shall disclose the results of a home inspection to any person other than the client without the written consent of the client.

(~~m~~n) No person shall fail to disclose to the client any conflict of interest of which the inspector knows or should have known that may adversely affect the client. Based upon the potentially adverse affect to the home inspector's ability to produce an unbiased report, some circumstances or conditions are presumed to adversely affect the client and must be disclosed to the client in writing prior to the inspection. These include, but are not limited to, the following:

(1) Situations where the payment of remuneration or other consideration is made by the home inspector to a third party and representing a reward or compensation to the third party for the home inspector receiving inspection employment.

(2) Situations where the payment of remuneration or other consideration is received by the home inspector from a third party and representing a reward or compensation for the home inspector recommending services or products to the client or other persons having an interest in the inspected real property.

(3) In those cases where the client is the buyer of real property, situations where the home inspector has had some prior connection, relationship or association with the seller, his or her assigns or family members related to the seller within the second degree.

(4) Situations where prior reports or inspections have been made or conducted upon any system or component of the real property that the home inspector has agreed to inspect.

(~~n~~o) No person shall fail to submit a written home inspection report within a reasonable time as determined by the Board to the client after compensation has been paid to the home inspector.

[OAR Docket #07-1075; filed 5-18-07]

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

[OAR Docket #07-1076]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Oklahoma State Board of Health; Oklahoma Sanitarian and Environmental Specialist Registration Act, 59 O.S., Section 1150.1 et seq.
DATES:
Comment Period:
February 1, 2007 through March 8, 2007
Public Hearing:
March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The proposed rule changes create a requirement of completion of twelve hours of continuing education every two years for renewal of registration for Registered Professional Sanitarians and Registered Professional Environmental Specialists. The proposed rule changes provide for exemptions for persons holding a "Life Registration", persons who are registered "in-training", and non-resident registrants who provide evidence of registration in another state with a continuing education requirement. Additionally the proposed rule changes provide a process to apply for a hardship waiver of the continuing education requirement.
CONTACT PERSON:
Matt Schue, Investigator, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299; telephone:(405) 271-5779, ext. 57905; facsimile: (405) 271-5286 electronic mail: Matts@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

310:345-1-1.1. Definitions

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

"Board" means the State Board of Health of the State of Oklahoma.

"Certificate of course completion" means a document acceptable to the Council which signifies satisfactory completion of course work and reflects the hours of credit earned.

"Classroom hour" is equal to fifty (50) minutes out of each sixty (60) minute segment.

"Commissioner" means the State Commissioner of Health of the State of Oklahoma.

"Continuing education" means education that is approved by the Council to satisfy education requirements in order to renew a certificate of registration.

"Continuing education verification form" means a form or document acceptable to the Council and completed by the course provider that documents compliance with the continuing education requirements.

"Council" means the Sanitarian Registration Advisory Council.

"Department" means the State Department of Health.

"Executive Director" means the Executive Director of the Department of Environmental Quality.

"Life Registration" means a registration available to those individuals who are 62 years of age or older before January 1, of the year renewing and have been registered as an Oklahoma Sanitarian or Environmental Specialist for at least 25 years.

"Person" means individuals, firms, partnerships, associations, corporations, the State of Oklahoma, counties, districts, municipalities, and all subdivisions, districts, officers, agencies, departments, institutions, or instrumentalities of any thereof, whether governmental or proprietary, except person shall only mean an individual for the purposes of the issuance of a certificate of registration.

"Provider" means a person, corporation, professional association, governmental agency, tribal agency, or any other entity, which provides or verifies completion of approved continuing education to Registered Professional Sanitarians and Registered Professional Environmental Specialists.

"Registration" means a certificate issued pursuant to the Oklahoma Sanitarian Registration Act.

"Sanitarian" or "Environmental Specialist" means a person uniquely qualified by education in the sciences, specialized training, and creditable field experience to effectively plan, organize, manage, execute and evaluate one or more of the many diverse elements compromising the fields of public health and environment. The term sanitarian may be interpreted to include environmental sanitarian or environmental specialist.

"Sanitarian/Environmental Specialist Duty/Task List" means the document adopted by the Council that includes the various environmental and public health program areas that a Registered Professional Sanitarian or Registered Professional Environmental Specialist may be involved with, in the performance of their professional duties.

SUBCHAPTER 9. CONTINUED EDUCATION

310:345-9-1. Course approval requirements

(a) The Council shall only approve continuing education that is directly related to program areas outlined in the "Sanitarian/Environmental Specialist Duty/Task List" approved by the Council. Any applicant whose continuing education course is denied shall have the right to file an appeal with the Council. Upon hearing the appeal, the Council shall have the authority to approve the course, to approve a modified version of the course, or deny the course. Topic areas such as communication skills and report writing will be considered for approval if they are relevant to a program area listed in the "Sanitarian/Environmental Specialist Duty/Task List".

(b) Any provider seeking course approval for continuing education credit shall make application and submit documents, statements and forms as may reasonably be required by the Council. All providers shall submit to the Department:

(1) Name and address of the provider;

(2) The method of presentation (on-line course, classroom instruction, seminar, instructional video, college course, etc.);

(3) A contact person with contact information;

(4) The location of the courses or programs;

(5) The number of education credit hours requested for each course and/or topic;

(6) Topic outlines, which summarize the topics covered in each course and upon request a copy of any course materials; and,

(7) Course objectives.

(c) If a prior approved course has substantially changed, a summarization of the changes shall be provided to the Department.

(d) At the completion of each course, the provider shall furnish the Department a list of the names and registration numbers for all participants who completed the course, on a certificate of course completion.

(e) In addition to accepting courses approved as described in this section, continuing education credits may be granted to an individual if said individual supplies acceptable documentation to the Council showing the course meets applicable requirements, including proof the individual successfully completed the course. This provision will apply when considering education courses completed, for which the provider did not receive approval from the Council.

310:345-9-2. Continuing education requirement.

(a) **Continuing education requirement.** Beginning January 1, 2008, verification of twelve (12) "classroom hours" of continuing education will be required every two years to renew a Registered Professional Sanitarian and/or Registered Professional Environmental Specialist registration. An applicant for reinstatement of registration shall not be reinstated without submitting evidence of completing twelve (12) "classroom hours" of continuing education within the twenty-four months preceding reinstatement. A person shall not apply for a new registration in an attempt to circumvent the requirement for continuing education. All registrants shall be exempt from a requirement for continuing education their first year of registration.

(b) **Continuing education reciprocity.** The Council will exempt a non-resident registrant from the continuing education requirement, if the individual lives in and is registered in another state with a continuing education requirement and provides the Department with evidence of current registration in that state when renewing an Oklahoma registration.

(c) **Exemptions from the continuing education requirement.** An individual who holds a "Life Registration" is not required to complete continuing education. Any individual who is registered as a "Sanitarian-In Training" and/or "Environmental Specialist-In-Training" is encouraged but is not required to complete continuing education. Continuing education shall not be required for the first year of registration as a Registered Professional Sanitarian and/or Registered Professional Environmental Specialist.

(d) **Hardship waiver of continuing education.** An individual may submit a hardship waiver application to the Council for the continuing education requirement. The Council shall have the authority to deny or approve the waiver for medical hardships, military reasons, or other reasons deemed appropriate by the Council.

[OAR Docket #07-1076; filed 5-18-07]

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

[OAR Docket #07-1077]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Oklahoma State Board of Health; 59 O.S. 2001, Section 1925.5(A); 63 O.S. 2001, Section 1-106.1
DATES:
Comment Period:
February 1, 2007 through March 8, 2007
Public Hearing:
March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
This proposal establishes definitions. The proposal establishes applicability of the regulations. The proposal establishes standards for requirement and confidentiality of records. The proposal establishes a prohibition for reference for licensure candidates. The proposal establishes standards to request an administrative hearing following a denial of licensure application. The proposal clarifies examination eligibility requirements and procedures for submitting examination registration. The proposal clarifies on-site supervision for candidates and requires the submission of a supervisor evaluation. The proposal establishes the current examination fee, and clarifies fee language. The proposal establishes criteria, approval, and limitations for continuing education.

CONTACT PERSON:
Nena West, Director, Professional Counselor Licensing, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-6030; facsimile: (405) 271-1918; electronic mail: nenaw@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

310:400-1-1. Purpose

The rules in this Chapter implement the ~~Oklahoma Licensed~~ Marital and Family Therapist Licensure Act, 59 O.S. Section 1925.1 et seq.

310:400-1-3. Definitions

When used in this Chapter, the following words or terms shall have the following meaning unless the context of the sentence requires another meaning:

"Approved LMFT supervisor" means an individual who meets the qualifications to become an approved supervisor and is approved by the Department as set forth in Section 310:400-11-3 of this Chapter.

"Extra therapeutic relationship" means a familial, social, financial, business, professional, close personal, sexual or other non-counseling relationship with a client, or engaging in any activity with another person that interferes or conflicts with the LMFT's professional obligation to a client.

"On-site supervisor" means a person who is not an approved LMFT supervisor but is licensed in the State of Oklahoma as a Licensed Marital and Family Therapist, Licensed Professional Counselor, Licensed Behavioral Practitioner, Psychologist, Clinical Social Worker, Psychiatrist, or Licensed Alcohol and Drug Counselor employed by the agency employing the LMFT Candidate whose assigned job duties include acting as the immediate supervisor to the LMFT Candidate.

310:400-1-4. Applicability

Every duty, obligation or requirement described in this Chapter and imposed upon a LMFT shall be applicable to every licensed marital and family therapist candidate, unless specifically provided otherwise.

SUBCHAPTER 5. RULES OF PROFESSIONAL CONDUCT

310:400-5-2. Confidentiality

(a) LMFTs have unique confidentiality problems because the "client" in a therapeutic relationship may be more than one

person. The overriding principle is that LMFTs respect the confidences of their client(s).

(b) LMFTs shall not disclose client records and confidences to anyone, except:

(1) as mandated by law;

(2) to prevent a clear and immediate danger to a person or persons;

(3) where the LMFT is a defendant in a civil, criminal, or disciplinary action rising from the therapy (in which case client confidences may be disclosed only in the course of that action);

(4) if there is a waiver previously obtained in writing, and then such information may be revealed only in accordance with the terms of the waiver.

(c) In circumstances where more than one person in a family is receiving therapy, each such family member who is legally competent to execute a waiver must agree to the waiver required by paragraph (b)(4) of this section. Absent such a waiver from each family member legally competent to execute a waiver, an LMFT shall not disclose information received from any family member.

(d) LMFTs shall use client and/or clinical materials in teaching, writing, and public presentations only if a written waiver has been received in accordance with subsection (c) of this section, or when appropriate steps have been taken to protect client identity.

(e) LMFTs shall store or dispose of client records in ways that maintain confidentiality.

(f) LMFTs shall maintain verifiable records necessary for rendering professional services to their clients for at least seven (7) years beyond termination of services. LMFTs employed at an institution or facility that has a published records retention policy that is equal to the retention required by this subsection will be deemed to be in compliance with this subsection.

(g) LMFTs shall maintain the confidentiality of any information received from any person or source about a client, unless authorized in writing by the client or otherwise authorized or required by law or court order.

(h) LMFTs shall be responsible for complying with the applicable state and federal regulations in regard to the security, safety and confidentiality of any therapeutic record they create, maintain, transfer, or destroy whether the record is written, taped, computerized, or stored in any other medium.

310:400-5-8.1. Candidate for LMFT licensure

Candidates for licensure as a Licensed Marital and Family Therapist shall not refer to themselves as a Licensed Marital and Family Therapist or LMFT.

SUBCHAPTER 7. APPLICATION FOR LICENSURE

310:400-7-2.2. Hearing upon denial of licensure application

Following the denial of a licensure application by the Department, as prescribed in Section 1925.15 of the Act, the applicant may request an administrative hearing to contest the denial of his/her application within 15 days of receiving notification from the Department. If a hearing is not requested within 15 days, the denial will be final.

SUBCHAPTER 9. LICENSURE EXAMINATIONS

310:400-9-1. Eligibility

An LMFT applicant is eligible to ~~take~~sit for the licensing examination following the submission and approval of:

(1) Application Form and fee

(2) Practicum/Internship Documentation Form

(3) Official transcript(s) showing completion of all academic requirements listed in Subchapter 7 of this Chapter

(4) Three (3) Document of Recommendation Forms; and

(5) Two (2) classifiable sets of fingerprints~~; and~~

~~(6) examination fee~~.

310:400-9-4. Application

(a) The Department shall mail notification of approval to take the examination(s) to the applicant's last known address 60 days prior to the date of the next scheduled examination.

(b) An applicant who wishes to take a scheduled examination must complete an examination registration form, ~~and~~ return it to the ~~Department~~ Department's designee and ~~submitting~~ submit the required fee ~~at least 30 days~~ prior to the date of the examination.

SUBCHAPTER 11. SUPERVISED EXPERIENCE REQUIREMENTS

310:400-11-2. Acceptable supervised experience

Supervised experience is acceptable when:

(1) it begins after all applicable academic requirements as stated in Subchapter 7 have been completed, and supervision agreement has been approved by the Department.

(2) official application for licensure has been made. This includes Application, application fee, Internship/Practicum Documentation Form, official graduate transcript, three (3) Document of Recommendation Forms, completed criminal background check, On-Site Supervisor Verification Form, and Supervision Agreement. Applicants who have met part or all of supervision experience requirements for clinical membership in AAMFT will be considered to have met part or all of the supervision requirements for licensure in Oklahoma.

(3) it consists of the performance of therapy activities as described in Section 1925.2, subsection 7 and 9 of the LMFT Act and contains the following characteristics:

(A) supervision focuses on the raw data from a supervisee's continuing clinical practice, which may be available to the supervisor through a combination of direct observation, co-therapy, written clinical notes, and audio and video recordings and the LMFT Act and Regulations.

(B) supervision is a process clearly distinguishable from personal psychotherapy, and is contracted in order to serve professional/vocational goals.

(C) individual supervision shall be face-to-face with one supervisor and one or two supervisees.

(D) group supervision may be done with up to six supervisees and a supervisor.

(4) supervised experience hours may be accrued in academic, governmental, or private practice settings.

(5) the supervised experience ~~may be~~is accrued in a private for-profit or private not-for-profit therapy setting without having an approved LMFT supervisor providing on-site supervision, ~~only~~ if~~:(A) The~~the agency employing the LMFT Candidate ~~works at the same location as a person licensed in the State of Oklahoma as a Licensed Marital and Family Therapist, Licensed Professional Counselor, Licensed Behavioral Practitioner, Psychologist, Clinical Social Worker or Psychiatrist who directs and is responsible for the professional duties of the LMFT Candidate;~~ provides an on-site supervisor who is available to the LMFT Candidate any time services are being rendered by the LMFT Candidate, and~~(B) The~~the LMFT Candidate is receiving supervision for licensure from an approved LMFT supervisor ~~who is not required to work at the same location as the LMFT Candidate~~.

310:400-11-5. Documentation of supervised experience

(a) An LMFT Supervision Agreement between supervisor and supervisee as well as the On-Site Supervisor Verification form must be received and approved by the Department prior to the accrual of supervision hours.

(b) Semi-annual documentation of supervision hours, evaluation of competence, date of observations (live or tape), and date of consultation between approved supervisor and on-site supervisor must be submitted by the supervisor and co-signed by the supervisee on official Supervision Evaluation Forms.

(c) Upon completing the supervision requirement, the supervisee must complete and submit the Final Evaluation of Supervision Experience by Supervisee form for each supervisor.

SUBCHAPTER 13. FEES

310:400-13-2. Schedule of fees

The following fees apply to the administration of the Act:

(1) Application fee - $200.00 - ~~As long as the license is renewed, this is a one-time fee to~~Shall be submitted with the application form.

(2) License examination - ~~$195.00~~ $295.00 - ~~As long as the license is renewed, this is a one-time fee to~~Shall be submitted when the applicant is notified of eligibility to sit for the examination.

(3) Examination processing fee - $50.00 - If the examination has previously been taken ~~and as long as the license is renewed~~, this ~~is a one-time fee to~~fee shall be submitted when the applicant is notified following the review of his/her application form.

(4) License fee - $100.00 - ~~As long as the license is renewed, this is a one-time fee to~~Shall be submitted upon notification that all application materials and fees have been received and are in order. This fee validates the license for the initial two-year period.

(5) License renewal fee - $100.00. - After the initial two-year period of licensure, this is a yearly fee to be submitted on or before December 31 of each year.

(6) Late renewal fee - $25.00 - This fee is assessed in addition to the renewal fee for failure to renew license on or before December 31.

(7) Replacement fee - $25.00 - This fee is for the issuance of a license certificate to replace a license certificate which has been lost, damaged, or is in need of revision to be submitted with documentation of the necessary replacement.

(8) Inactive license fee - $25.00 - Payment of this fee renders the license inactive and suspends all rights and privileges granted by the license until the license is reinstated.

SUBCHAPTER 15. ISSUANCE AND MAINTENANCE OF LICENSE

310:400-15-4. Continuing education requirements

(a) **Purpose.** The purpose of the requirements in this Section is to establish the continuing education requirements necessary for license renewal.

(b) **Number of hours required.**

(1) Licensees shall complete and furnish documentation to the Department of twenty (20) clock hours of acceptable continuing education per year. One college credit hour is equal to fifteen (15) clock hours.

(2) A minimum of three (3) clock hours of continuing education hours must be in mental health ethics from programs pre-approved by the Department or its designee. Continuing education in mental health ethics is acceptable as meeting the pre-approval requirements by the Department when the continuing education program:

(A) Addresses ethics issues specifically pertaining to the practice of therapy, as defined in Section 1925.2(7) of this Act;

(B) Addresses regulations as promulgated in Subchapter 5 of this Chapter; and

(C) Meets all requirements of subsections (b) through (e) of Section 310:400-15-4 of this Chapter.

(D) Beginning renewal year 2009, the three clock hours of mental health ethics continuing education must be accrued in a face-to-face setting.

(3) Approved LMFT Supervisors are required to complete a minimum of three (3) clock hours, every three (3) years, of continuing education in therapy supervision specific to Oklahoma law provided by the LMFT Advisory Board, or its designee. Continuing education in Therapy Supervision is acceptable as meeting the pre-approval requirements by the Department when the continuing education program:

(A) Addresses issues specifically related to the practice of therapy supervision pursuant to regulations promulgated in Subchapter 11 of this Chapter; and

(B) Contains content in one or more of the following knowledge areas:

(i) Overview of a supervision model;

(ii) Supervisors' areas of focus and roles in supervision;

(iii) Supervisors' process and practical application;

(iv) Ethical dilemmas involved in therapy supervision;

(v) Methods of effectively addressing and preventing ethical dilemmas in therapy supervision;

(vi) Overview of AAMFT standards of supervision; or

(vii) Overview of Oklahoma LMFT Rules and Regulations regarding therapy supervision; and

(C) Meets all requirements of subsections (b) through (e) of Section 310:400-15-4 of this Chapter.

(c) **Acceptable continuing education.** Continuing education is acceptable to the Department when it:

(1) approximates the content of any of the academic areas listed under Subchapter 7 of this Chapter.

(2) is presented by a person licensed or certified by therapy related professions.

(3) is presented by a licensed or certified member of a non-therapy field (i.e. medicine, law) if the content of the presentation is therapy related and falls within the presenter's area of training.

(4) takes place in the context of a college course, in-service training, institute, seminar, workshop, conference or a Department pre-approved home study course.

(d) **Continuing education accrual from teaching.** Continuing education may also be accrued when the LMFT teaches in programs such as institutes, seminars, workshops, and conferences, when the content conforms to section 310:400-15-4(c) of this subchapter, provided that such teaching is not required as part of the LMFT's regular employment. Two hours of C.E. is credited for each hour taught.

(e) **Continuing education accrual from home study courses.** Continuing education may be accrued when the LMFT completes home study programs that are approved by the Department. No more than ten (10) hours of continuing education may be accrued per renewal period through home study courses.

(~~e~~f) **Professional audience.** Continuing education, whether received or presented by the LMFT must be targeted toward a professional audience.

(~~f~~)(g) **Documentation of attendance.** LMFT's shall retain verification of attendance documents for all C.E. hours claimed for a period of two (2) years. Acceptable C.E. verification of attendance documents are:

(1) an official continuing education validation form furnished by the presenter, or,

(2) a letter on the sponsoring presenter's letterhead giving the name of the program, location, dates, subjects taught, total number of hours attended, participant's name and presenter's name and credentials, or,

(3) an official college transcript showing courses or audit credit.

(4) (For teaching) a letter on sponsoring agency's letterhead giving the name of the program, location, dates, subject taught and total number of hours taught.

(~~g~~h) **Submission of continuing education roster.** LMFT's shall submit a Continuing Education Roster (not individual verification of attendance documents) with the license renewal fee. Rosters may be obtained from the LMFT office. Only C.E. accrued in the preceding license renewal period is acceptable.

(~~h~~)(i) **Audit of continuing education submissions.** In November of each year, the Department will randomly select from two (2) to twenty-five (25) percent of the number of LMFT's on active status the previous year for an audit of their claimed Continuing Education credits. These selected LMFT's must then provide the Department with verification of all credits claimed on their Continuing Education Roster on or before the renewal deadline. The Department may, at its discretion, audit and require verification of any credits claimed which it may consider questionable or fraudulent.

(~~i~~j) **Penalty for failure to submit continuing education.** Failure to fulfill the C.E. requirement by the renewal date renders the license in suspension. All rights granted by the license are null and void until the requirement is fulfilled and a late renewal fee is paid. The LMFT has 12 months from the date of suspension to become reinstated. If not reinstated, the license shall be revoked.

(~~j~~k) **Submission of fraudulent continuing education.** The submission of fraudulent C.E. hours will be reviewed by the Department for disciplinary action and may result in suspension or revocation of license.

(~~k~~l) **Responsibility.** The licensee is ultimately responsible for providing or arranging for sponsors to provide the information necessary for the Department to make a determination of the suitability of the program for continuing education requirements.

310:400-15-8. Licensure by endorsement

(a) **Exam.** The Commissioner may grant a license by endorsement, in accordance with Section 1925.9-A of the LMFT Act.

(b) **Submission of license or verification card.** An applicant for licensure by endorsement must submit a copy of the current active license, certificate or verification card, and may be required to submit a copy of the statute and rules of the agency issuing the license and the name and address of the licensing agency.

(c) **Licensing procedures.** An applicant must submit the application form and documents as requested, license fees, three current documents of recommendation and official transcript(s).

(d) The Department shall issue a license by endorsement to an applicant who is licensed or certified as a marital and family therapist in another jurisdiction and who meets the following:

(1) The applicant's marital and family therapy license in the other jurisdiction is active and in good standing;

(2) The applicant fulfills the requirements of Section 1925.6 A. and B. of the LMFT Act;

(3) The applicant must have at least a masters degree in marital and family therapy or a content equivalent degree as stated in Section ~~1925.6 B.1.~~1925.6 (C)(1) of the LMFT Act from a regionally accredited college or university;

(4) The applicant takes and passes the examination as provided under Section 1925.7 of the LMFT Act, unless:

(A) The applicant has passed a written, marital and family examination that, in the judgement of the Department, is substantially equivalent to the examination established by the Department; or

(B) Has practiced marital and family therapy for seven (7) of the last ten (10) years immediately preceding application for licensure in Oklahoma; and

(5) The applicant takes and passes the Oklahoma LMFT Oral Examination.

[OAR Docket #07-1077; filed 5-18-07]

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

[OAR Docket #07-1078]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Oklahoma State Board of Health; 59 O.S. 2001, Section 1934(A)
DATES:
Comment Period:
February 1, 2007 through March 8, 2007
Public Hearing:
March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
This proposal defines more specifically dual relationship. The proposal establishes applicability of the regulations. The proposal establishes competency standards regarding impairment. The proposal establishes requirements for conducting forensic evaluations and also defines fact witness testimony. The proposal establishes requirements for requirement and confidentiality of records. The proposal clarifies referral of services for current clients. The proposal establishes new requirements for providing services to persons of prior association and interaction with former clients. The proposal establishes professional standards regarding candor to the Department. The proposal establishes a prohibition for reference for licensure candidates. The proposal establishes standards to request an administrative hearing following a denial of licensure application. The proposal eliminates language regarding academic requirements, which will allow the regulations to be consistent with the law.
CONTACT PERSON:
Nena West, Director, Professional Counselor Licensing, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-6030; facsimile: (405) 271-1918; electronic mail: nenaw@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

310:403-1-2. Definitions

When used in this Chapter, the following words or terms shall have the following meaning unless the context of the sentence requires another meaning:

"Act" means Title 59, Sections 1930 et seq. of the Oklahoma Statutes.

"Dual relationship" means a familial, social, financial, business, professional, close personal, sexual or other non-therapeutic relationship with a client, or engaging in any activity with another person that interferes or conflicts with the LBP's professional obligation to a client.

"Full time practice" means working at least 20 hours per week.

"Group supervision" means two (2) to six (6) LBP Candidates.

310:403-1-4. Applicability

Every duty, obligation or requirement described in this Chapter and imposed upon a LBP shall be applicable to every licensed behavioral practitioner candidate, unless specifically provided otherwise.

SUBCHAPTER 7. RULES OF PROFESSIONAL CONDUCT

310:403-7-2. Competence

(a) **Behavioral health services.** LBPs shall practice only within the boundaries of their competence, based on their education, training, supervised experience, state and national professional credentials, and appropriate professional experience.

(b) **Testing.** LBPs shall know the limits of their competence and shall therefore perform only those testing and assessment services for which they have been trained. LBPs shall be familiar with related standardization and proper application and security of any technique utilized. LBPs using computer-based test interpretations shall be trained in the construct being measured and the specific instrument being used prior to using this type of computer application. LBPs shall ensure the proper use of assessment techniques by persons under their supervision.

(c) **Specialty.** LBPs shall not represent themselves as specialists in any aspect of behavioral health services, unless so designated by the Board.

(d) **Research.**

(1) LBPs shall plan, design, conduct, and report research only in a manner consistent with current, pertinent ethical principles put forth in the "Ethical Standards and Code of Conduct" governing Northamerican Association of Masters in Psychology (NAMP), federal and state laws, rules, and scientific standards governing research with human subjects.

(2) The research principles of the NAMP "Ethical Standards and Code of Conduct" are as follows:

(A) Principle 8: Research with Human and Animal Participants

(i) 8.1 Relevant research. The Masters in Psychology shall only undertake research pertaining to human subjects when such research contributes to psychology as a science and humankind in general. On the premise of this forethought, one conducts the research with the utmost concern for the dignity and welfare of their research participants.

(ii) 8.2 Informed consent in research. The Masters in Psychology shall make certain that research participants fully understand the conditions and comprehend the general nature of the research when requesting informed consent. Research that involves deception on the part of the researcher should in general be avoided, unless the perceived outcomes far exceed any perceived minimal adverse reactions and in either case a debriefing session suitable to the research will always be conducted.

(B) Principle 10: Teaching, Training & Research Publication

(i) 10.1 Candidness in research techniques. The Masters in Psychology shall make every effort to make available any and all appropriate materials supporting research materials and to readily disseminate results for replication.

(ii) 10.2 Proper supervision. The Masters in Psychology shall maintain proper supervision of their employees, subordinates, supervisees, and research assistants in the delegation of duties and shall make every ethically appropriate effort to ensure that only those individuals competent to perform such services do so.

(e) **Impairment.** LBPs shall not offer or render professional services when ~~their physical, mental or emotional problems are likely to harm clients or other associates. LBPs shall seek assistance for such problems, and, if necessary, limit, suspend, or terminate their professional responsibilities.~~such services may be impaired by a personal physical, mental or emotional condition(s). LBPs shall seek assistance for any such personal problem(s) with their physical, mental or emotional condition, and, if necessary, limit, suspend, or terminate their professional activities. If an LBP possesses a bias, disposition, attitude, moral persuasion or other similar condition that limits his or her ability to recommend a course of treatment or decision-making that is indicated, and under such circumstances where all other treatment and decision options are contra-indicated, then in that event the LBP shall not undertake to provide counseling and shall terminate the counseling relationship in accordance with this Chapter.

(f) **Evaluations.** LBP candidates and licensees may not perform forensic services, which include, but are not limited to, assessments, interviews, consultations, custody evaluations, reports, or expert testimony, or other such activity that is undertaken or conducted by the candidate or licensee in contemplation that the results may, or are intended to be, later furnished to a trier of fact or other decision maker, except under the following conditions:

(1) LBP candidates and licensees must demonstrate competence by certification, education or experience in the subject matter relevant to the issues in question and must certify in writing that they have complied with all applicable provisions of the Rules and Regulations (described in Sections 310:403-7-1, 310:403-7-2(a)(f), and 310:403-7-7(f)(1)(2)(3) of this Chapter.

(2) LBP candidates and licensees shall prepare a written report and include a separate section therein containing the author's findings and conclusions relative to their analysis. Additionally, the candidate or licensee must provide to the person who is the subject of their forensic analysis, and such other person or persons who has/have a legally recognizable right in the subject matter of the proceeding, which may be directly adversely affected by the findings and conclusions made by the candidate or licensee, a copy of the written report at no cost to the person or persons

entitled to receive a copy of the written report pursuant to this section. The copy(ies) must be provided at least ten (10) days prior to the report's publication unless otherwise required by law or court order.

(3) LBP candidates and licensees shall maintain written records, in a form or format that is legible or readable to third persons, of all contacts and information received and used in the preparation of their report.

(4) LBP candidates and licensees must conduct a thorough examination of the person who is the subject of their forensic analysis, and such other person or persons who has/have a legally recognizable right in the subject matter of the proceeding, which may be directly adversely affected by the findings and conclusions made by the candidate or licensee, and must utilize a "face-to-face" interview of the person who is the subject of the forensic analysis, or any other such person who may be directly adversely affected by the findings and conclusions made by the candidate or licensee.

(5) LBP candidates and licensees must base their findings and conclusions only upon information gained by appropriate and lawful means. Interviews of minor children must be preceded by written consent from the joint-custodial parents or from the custodial parent or from the legal guardian or from the legal custodian appointed by the Court.

(6) LBP candidates and licensees who provide counseling services for a client ~~shall limit their role to~~may only provide fact witness testimony in forensic matters involving that client, unless otherwise required by law or court order. LBP candidates and licensees who provide mediation, parent coordinating assistance or any other neutral participation, may not undertake to provide counseling to any person(s) involved or directly affected by the LBP candidate's or licensee's role as a neutral participant. Fact witness testimony means evidentiary statements that are limited to direct observations made by the LBP candidate or licensee and shall not include conclusions, opinions or recommendations.

(7) Assessments, interviews, consultations, custody evaluations, reports or other activity not performed in contemplation that the results would be furnished to a trier of fact or decision maker, must be kept confidential and cannot be utilized in the formation or publication of an opinion by the candidate or licensee.

310:403-7-3. Client welfare

(a) **Discrimination.** LBPs shall not, in the rendering of their professional services, participate in, condone, or promote discrimination on the basis of race, color, age, gender, religion or national origin.

(b) **Records.**

(1) **Requirement of records.** LBPs shall maintain verifiable records necessary for rendering professional services to their clients for at least five (5) years beyond termination of services. LBPs employed at an institution or facility that has a published records retention policy that is equal to the retention required by this subsection will be deemed to be in compliance with this subsection.

(2) **Confidentiality.** LBPs shall maintain the confidentiality of any information received from any person or source about a client, unless authorized in writing by the client or otherwise authorized or required by law or court order.

(~~2~~3) **Confidentiality of records.** LBPs shall be responsible for ~~securing the~~complying with the applicable state and federal regulations in regard to the security, safety and confidentiality of any behavioral health services record they create, maintain, transfer, or destroy whether the record is written, taped, computerized, or stored in any other medium.

(~~3~~4) **Client access.** LBPs shall provide the client a copy of the client's record in accordance with state and federal laws. In situations involving multiple clients, access to records is limited to those parts of records that do not include confidential information related to another client.

(c) **Invasion of privacy.** LBPs shall not make inquiry into persons or situations not directly associated with the client's situation.

(d) **Referral.**

(1) If LBPs determine they are unable to be of professional assistance to a client, the LBP shall not enter a behavioral health services relationship. LBPs shall refer clients to appropriate sources when indicated. If the client declines the suggested referral, the LBP shall terminate the relationship.

(2) LBPs shall not abandon or neglect current clients in treatment without making reasonable arrangements for the continuation of such treatment.

(3) When an LBP becomes cognizant of a disability or other condition that my impede, undermine or otherwise interfere with the LBPs duty of responsibility to the current client, including a suspension of the LBPs license or any other situation or condition described in subchapter 3 of these rules, the LBP shall promptly notify the client in writing of the presence or existence of the disability or condition and take reasonable steps to timely terminate the therapeutic relationship.

310:403-7-4. Non-professional relations with clients

(a) **Dual relationships.** ~~Because of their influential positions with respect to clients, LBPs shall not engage in dual relationships with clients as defined in 310:403-1-2. When the possibility of a dual relationship exists, LBPs shall take appropriate professional precautions such as informed consent, consultation, supervision and documentation to ensure that judgement is not impaired and no exploitation occurs.~~LBPs shall not knowingly enter into a dual relationship(s) and shall take any necessary precautions to prevent a dual relationship from occurring. When the LBP reasonably suspects that he or she has inadvertently entered into a dual relationship the LBP shall record that fact in the records of the affected client(s) and take reasonable steps to eliminate the source or agent creating or causing the dual relationship. If the dual relationship cannot be prevented or eliminated and the LBP cannot readily

refer the client to another counselor or other professional, the LBP shall complete one or more of the following measures as necessary to prevent the exploitation of the client and/or the impairment of the LBP's professional judgment:

(1) Fully disclose the circumstances of the dual relationship to the client and secure the client's written consent to continue providing counseling;

(2) Consult with other professional(s) to understand the potential impairment to the LBP's professional judgment and the risk of harm to the client of continuing the dual relationship;

(b) **Sexual contact.** The following restrictions apply to sexual contacts between LBPs and clients, students or supervisees.

(1) **Current clients.** LBPs shall not engage in sexual contact with clients and shall not counsel persons with whom they have had a sexual relationship.

~~(2) **Former clients.** LBPs shall not engage in sexual contact with former clients for at least two (2) years after terminating the behavioral health services relationship.~~

(~~3~~2) **Students and supervisees.** LBPs shall not engage in sexual contact with students or supervisees and shall not teach or supervise persons with whom they have had a sexual relationship.

(c) **Providing counseling to persons of prior association.** LBPs shall not undertake to provide counseling to any person with whom the LBP has had any close personal relationship within the previous five (5) years.

(d) **Interaction with former clients.** LBPs shall not knowingly enter into a close personal relationship, or engage in any business or financial dealings with a former client for two (2) years after the termination of the counseling relationship. LBPs shall not engage in any activity that is or may be sexual in nature with a former client for at least five (5) years after the termination of the counseling relationship. LBPs shall not exploit or obtain an advantage over a former client by the use of information or trust gained during the counseling relationship.

310:403-7-6. Professional standards

(a) **Violations of other laws.** It shall be unprofessional conduct for an LBP to violate a state or federal law if the law directly relates to the duties and responsibilities of the LBP or if the violation involves moral turpitude.

(b) **Drug and alcohol use.** LBPs shall not render professional services while under the influence of alcohol or other mind or mood altering drugs.

(c) **Updating.** LBPs shall notify the Department of any change in address, telephone number, and employment and shall make necessary adjustments on the Statement of Professional Disclosure, supplying an updated copy to the Department.

(d) **Candor to the Department.** An LBP, LBP candidate, or applicant for LBP licensure, in connection with a license application or an investigation conducted by the Department pursuant to OAC 310:403-31-3, 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 LBP, LBP candidate 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 Department or any designated representative thereof, unless a request for a protective order has been first made pursuant to the provisions of Chapter 2 of this title, in which case the LBP, LBP candidate or applicant may await the decision concerning the issuance or denial of a protective order before making any response.

310:403-7-7. Relations with the public and other professions

(a) **Misrepresentation.** LBPs shall not misrepresent nor accept the misrepresentation by others of the efficacy of the LBPs' professional services.

(b) **Credentials claimed.** LBPs shall claim or imply only the professional credentials possessed and shall be responsible for correcting any known misrepresentations of their credentials by others. Professional credentials include graduate degrees in behavioral health services or closely related mental health fields, accreditation of graduate programs, national voluntary certifications, government-issued certifications or licenses, or any other credential that might indicate to the public the LBPs' additional knowledge or expertise in behavioral health services.

(c) **The use of doctoral degrees and the title "Doctor. "** An LBP may use the doctoral degree and the title "Doctor" in advertising, practice and status as an LBP, only if the doctoral degree from a program in psychology and if the degree was granted by a regionally accredited college or university recognized by the United States Department of Education.

(d) **Advertisement.** When an LBP announces services or advertises, the LBP shall represent services to the public by identifying credentials in an accurate manner that is not false, misleading, deceptive, or fraudulent. An LBP shall only advertise the highest degree earned in behavioral health services or a closely related field from a regionally accredited college or university recognized by the U.S. Department of Education. All advertisements or announcements of behavioral health services including telephone directory listings by an LBP shall clearly state the LBP's licensure status by the use of a title such as "LBP", or "Licensed Behavioral Practitioner" or a statement such as "licensed by the Oklahoma State Department of Health."

(e) **License.** Each LBP shall display the original, current license in a prominent place in the primary location of practice.

(f) **Public statements.** When an LBP provides advice or comment by means of public lectures, demonstrations, radio or television programs, prerecorded tapes, printed articles, mailed material, or other media, they shall take reasonable precautions to ensure that:

(1) The statements are based on appropriate professional literature and practice;

(2) The statements are otherwise consistent with the LBP Rules of Professional Conduct; and

(3) There is no implication that a professional behavioral health services relationship has been established.

(g) **Rebates.** An LBP shall not give or accept a commission, rebate, or other form of remuneration for referral of clients for professional services.

(h) **Accepting fees from agency clients.** An LBP shall refuse a private fee or other remuneration for rendering services to persons who are entitled to such services through the agency or institution that employs the LBP. If the policies of a particular agency provide for agency clients to receive behavioral health services from members of its staff in private practice, the agency shall inform clients of other options open to them should they seek private behavioral health services.

(i) **Candidates for LBP licensure.** Candidates for licensure as a Licensed Behavioral Practitioner shall not refer to themselves as a Licensed Behavioral Practitioner or LBP.

SUBCHAPTER 11. APPLICATION PROCEDURES

310:403-11-12. Hearing upon denial of licensure application

Following the denial of a licensure application by the Department, as prescribed in Section 1941 of the Act, the applicant may request an administrative hearing to contest the denial of his/her application within 15 days of receiving notification from the Department. If a hearing is not requested within 15 days, the denial will be final.

SUBCHAPTER 13. ACADEMIC REQUIREMENTS

310:403-13-1. Graduate degree requirements

(a) Pursuant to the Act, all applicants shall possess at least a masters degree from a program in psychology from a regionally accredited college or university.

(b) The program must be intended to prepare a scientist-practitioner in the field of psychology at the masters level and meet all the following criteria:

(1) The masters program must be clearly identified as a psychology program. Such a program must specify in a pertinent institutional catalogue, its intent to educate and train students in the field of psychology at the masters level;

(2) The pertinent institutional catalogue must state the structure and content of the curriculum of the program; and

(3) The program must have faculty who hold graduate degrees in psychology or closely related fields.

~~(c) Beginning January 1, 2008, the program shall meet the above criteria and also be accredited by the Master's in Psychology Accreditation Council, its designees or successors. [59:1935(C)(2)]~~

(~~d~~c) The academic requirements set forth in the Act must be completed before a person applies for licensure.

[OAR Docket #07-1078; filed 5-18-07]

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

[OAR Docket #07-1079]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Oklahoma State Board of Health; 59 O.S. 2001, Section 1905(A)
DATES:
Comment Period:
February 1, 2007 through March 8, 2007
Public Hearing:
March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
This proposal defines more specifically dual relationship. The proposal establishes applicability of the regulations. The proposal establishes competency standards regarding impairment. The proposal establishes requirements for conducting forensic evaluations and also defines fact witness testimony. The proposal establishes requirements for requirement

and confidentiality of records. The proposal clarifies referral of services for current clients. The proposal establishes new requirements for providing services to persons of prior association and interaction with former clients. The proposal clarifies language regarding invasion of privacy, as well as bartering for tangible goods. The proposal establishes standards regarding personal relationships with supervisees, as well as candor to the Department. The proposal establishes a prohibition for reference for licensure candidates. The proposal establishes standards to request an administrative hearing following a denial of licensure application. The proposal clarifies language regarding semester hours and quarter hours of graduate credit for the academic requirements. The proposal eliminates language regarding required content of course work. The proposal establishes criteria, approval, and limitations for continuing education. The proposal establishes a requirement of disclosure before receiving licensure.

CONTACT PERSON:

Nena West, Director, Professional Counselor Licensing, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-6030; facsimile: (405) 271-1918; electronic mail: nenaw@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

310:405-1-2.1. Definitions

When used in this Chapter, the following words or terms shall have the following meaning unless the context of the sentence requires another meaning:

"Act" means Title 59, Sections 1901 et seq. of the Oklahoma Statutes.

"Advisory board" means the Oklahoma Licensed Professional Counselor Advisory Board appointed by the State Board of Health.

"Counselor" means a person licensed as a Licensed Professional Counselor pursuant to this Act.

"Dual relationship" means ~~the exploitation of the trust and/or dependency of a client which impairs the counselor's professional judgement and increases the risk of harm to the client. A dual relationship may include but not be limited to~~ a familial, social, financial, business, professional ~~or~~, close personal, sexual or other non-therapeutic relationship with a client, or engaging in any activity with another person that interferes or conflicts with the LPC's professional obligation to a client.

"Full time" means at least twenty (20) hours of on-the-job experience per week.

"Group supervision" means an assemblage of counseling supervisee consisting of from two (2) to six (6) members.

310:405-1-2.2. Applicability

Every duty, obligation or requirement described in this Chapter and imposed upon a LPC shall be applicable to every licensed professional counselor candidate, unless specifically provided otherwise.

SUBCHAPTER 3. RULES OF PROFESSIONAL CONDUCT

310:405-3-2. Competence

(a) **Counseling.** LPCs shall practice only within the boundaries of their competence, based on their education, training, supervised experience, state and national professional credentials, and appropriate professional experience.

(b) **Testing.** LPCs shall know the limits of their competence and shall therefore perform only those testing and assessment services for which they have been trained. LPCs shall be familiar with related standardization and proper application and security of any technique utilized. LPCs using computer-based test interpretations shall be trained in the construct being measured and the specific instrument being used prior to using this type of computer application. LPCs shall ensure the proper use of assessment techniques by persons under their supervision.

(c) **Specialty.** LPCs shall not represent themselves as specialists in any aspect of counseling, unless so designated by the Board.

(d) **Research.** LPCs shall plan, design, conduct, and report research only in a manner consistent with current American Counseling Association Code of Ethics ~~and Standards of Practice~~, pertinent ethical principles, federal and state laws, rules, and scientific standards governing research with human subjects.

(e) **Impairment.** LPCs shall not offer or render professional services when such services ~~are~~may be impaired by a personal physical, mental or emotional ~~problems~~condition(s). LPCs shall seek assistance for ~~problems~~any such personal problem(s) with their physical, mental or emotional condition, and, if necessary, limit, suspend, or terminate their professional ~~responsibilities~~ activities. If an LPC possesses a bias, disposition, attitude, moral persuasion or other similar condition that limits his or her ability to recommend a course of treatment or decision-making that is indicated, and under such circumstances where all other treatment and decision options are contra-indicated, then in that event the LPC shall not undertake to provide counseling and will terminate the counseling relationship in accordance with these rules.

(f) **Evaluations.** LPC candidates and licensees may not perform forensic services, which include, but are not limited to, assessments, interviews, consultations, custody evaluations, reports, or expert testimony, or other such activity that is undertaken or conducted by the candidate or licensee in contemplation that the results may, or are intended to be, later furnished to a trier of fact or other decision maker, except under the following conditions:

(1) LPC candidates and licensees must demonstrate competence by certification, education or experience in the subject matter relevant to the issues in question and must certify in writing that they have complied with all applicable provisions of the Rules and Regulations described in Sections 310:405-3-1, 310:405-3-2(a)(f), and 310:405-3-5(f)(1)(2)(3) of this Chapter.

(2) LPC candidates and licensees shall prepare a written report and include a separate section therein containing

the author's findings and conclusions relative to their analysis. Additionally, the candidate or licensee must provide to the person who is the subject of their forensic analysis, and such other person or persons who has/have a legally recognizable right in the subject matter of the proceeding, which may be directly adversely affected by the findings and conclusions made by the candidate or licensee, a copy of the written report at no cost to the person or persons entitled to receive a copy of the written report pursuant to this section. The copy(ies) must be provided at least ten (10) days prior to the report's publication unless otherwise required by law or court order.

(3) LPC candidates and licensees shall maintain written records, in a form or format that is legible or readable to third persons, of all contacts and information received and used in the preparation of their report.

(4) LPC candidates and licensees must conduct a thorough examination of the person who is the subject of their forensic analysis, and such other person or persons who has/have a legally recognizable right in the subject matter of the proceeding, which may be directly adversely affected by the findings and conclusions made by the candidate or licensee, and must utilize a "face-to-face" interview of the person who is the subject of the forensic analysis, or any other such person who may be directly adversely affected by the findings and conclusions made by the candidate or licensee.

(5) LPC candidates and licensees must base their findings and conclusions only upon information gained by appropriate and lawful means. Interviews of minor children must be preceded by written consent from the joint-custodial parents or from the custodial parent or from the legal guardian or from the legal custodian appointed by the Court.

(6) LPC candidates and licensees who provide counseling services for a client ~~shall limit their role to~~may only provide fact witness testimony in forensic matters involving that client, unless otherwise required by law or court order. LPC candidates and licensees who provide mediation, parent coordinating assistance or any other neutral participation, may not undertake to provide counseling to any person(s) involved or directly affected by the LPC candidate's or licensee's role as a neutral participant. Fact witness testimony means evidentiary statements that are limited to direct observations made by the LPC candidate or licensee and shall not include conclusions, opinions or recommendations.

(7) Assessments, interviews, consultations, custody evaluations, reports or other activity not performed in contemplation that the results would be furnished to a trier of fact or decision maker, must be kept confidential and cannot be utilized in the formation or publication of an opinion by the candidate or licensee.

310:405-3-3. Client welfare

(a) **Discrimination.** LPCs shall not, in the rendering of their professional services, participate in, condone, or promote discrimination on the basis of race, color, age, gender, religion or national origin.

(b) **Records.**

(1) **Requirement of records.** LPCs shall maintain verifiable records necessary for rendering professional services to their clients for at least five (5) years beyond termination of services. LPCs employed at an institution or facility that has a published records retention policy that is equal to the retention required by this subsection will be deemed to be in compliance with this subsection.

(2) **Confidentiality.** LPCs shall maintain the confidentiality of any information received from any person or source about a client, unless authorized in writing by the client or otherwise authorized or required by law or court order.

(~~2~~3) **Confidentiality of records.** LPCs shall be responsible for ~~securing the~~complying with the applicable state and federal regulations in regard to the security, safety and confidentiality of any counseling record they create, maintain, transfer, or destroy whether the record is written, taped, computerized, or stored in any other medium.

(~~3~~4) **Client access.** LPCs shall provide the client with a copy of the client's record in accordance with state and federal laws. In situations involving multiple clients, access to records is limited to those parts of records that do not include confidential information related to another client.

(c) **Dual relationships.** ~~LPCs are aware of their influential positions with respect to clients, and do not exploit the trust and dependency of clients. LPCs shall refrain from dual relationships with clients because of the potential to impair professional judgement and to increase the risk of harm to clients. Examples of such relationships include, but are not limited to, familial, social, financial, business, professional or close personal relationships with clients. When the possibility that a dual relationship exists, LPCs shall take appropriate professional precautions such as informed consent, consultation, supervision and documentation to ensure that judgement is not impaired and no exploitation occurs.~~LPCs shall not knowingly enter into a dual relationship(s) and shall take any necessary precautions to prevent a dual relationship from occurring. When the LPC reasonably suspects that he or she has inadvertently entered into a dual relationship the LPC shall record that fact in the records of the affected client(s) and take reasonable steps to eliminate the source or agent creating or causing the dual relationship. If the dual relationship cannot be prevented or eliminated and the LPC cannot readily refer the client to another counselor or other professional, the LPC shall complete one or more of the following measures as necessary to prevent the exploitation of the client and/or the impairment of the LPC's professional judgment:

(1) Fully disclose the circumstances of the dual relationship to the client and secure the client's written consent to continue providing counseling;

(2) Consult with the other professional(s) to understand the potential impairment to the LPC's professional judgment and the risk of harm to the client of continuing the dual relationship.

(d) **Providing counseling to persons of prior association.** LPCs shall not undertake to provide counseling to any person with whom the LPC has had any prior sexual contact or close personal relationship within the previous five (5) years.

(e) **Interaction with former clients.** LPCs shall not knowingly enter into a close personal relationship, or engage in any business or financial dealings with a former client for two (2) years after the termination of the counseling relationship. LPCs shall not engage in any activity that is or may be sexual in nature with a former client for at least five (5) years after the termination of the counseling relationship. LPCs shall not exploit or obtain an advantage over a former client by the use of information or trust gained during the counseling relationship.

(~~d~~f) **Invasion of privacy.** LPCs shall not make inquiry into persons or ~~situations not directly associated with the client's situations~~matters that are not reasonably calculated to assist or benefit the counseling process.

(~~e~~g) **Referral.**

(1) If LPCs determine that they are unable to be of professional assistance to a client, the LPC shall not enter a counseling relationship. LPCs shall refer clients to appropriate sources when indicated. If the client declines the suggested referral, the LPC shall terminate the relationship.

(2) LPCs shall not abandon or neglect current clients in treatment without making reasonable arrangements for the continuation of such treatment.

(3) When an LPC becomes cognizant of a disability or other condition that may impede, undermine or otherwise interfere with the LPC's duty of responsibility to the current client, including a suspension of the LPC's license or any other situation or condition described in subchapter 3 of these rules, the LPC shall promptly notify the client in writing of the presence or existence of the disability or condition and take reasonable steps to timely terminate the therapeutic relationship.

310:405-3-3.1. Fees and bartering

(a) **Advance understanding.** LPCs shall clearly explain to clients, prior to entering the counseling relationship, all financial arrangements related to professional services including the consequences for non-payment of fees.

(b) **Bartering.** LPCs may participate in bartering for ~~services~~ tangible goods only if the relationship is not exploitive, if the client requests it, if a clear written contract is established and if such arrangements are an accepted practice among professionals in the community.

(c) **Tangible goods.** LPCs shall not barter for services rendered by the client. Only tangible goods, at fair market value, may be accepted by the counselor in lieu of money for counseling services.

310:405-3-4. Professional standards

(a) **Violations of other laws.** It shall be unprofessional conduct for an LPC to violate a state or federal statute if the violation directly relates to the duties and responsibilities of the counselor or if the violation involves moral turpitude.

(b) **Drug and alcohol use.** LPCs shall not render professional services while under the influence of alcohol or other mind or mood altering drugs.

(c) **Sexual contact.**

(1) **Current clients.** LPCs shall not have any type of sexual contact with clients and shall not counsel persons with whom they have had a sexual relationship.

~~(2) **Former clients.** LPCs shall not engage in sexual contact with former clients for at least two (2) years after terminating the counseling relationship.~~

(2) **Supervisees.** LPCs shall not engage in sexual contact with supervisees and shall not supervise persons with whom they have had a sexual relationship within the previous five (5) years. LPCs shall not engage in sexual contact with supervisees they have supervised within the previous five (5) years.

(d) **Updating.** LPCs shall notify the Department of any change in address, telephone number, and employment and shall make necessary adjustments on the Statement of Professional Disclosure, supplying an updated copy to the Department.

(e) **Candor to the Department.** An LPC, LPC candidate, or applicant for LPC licensure, in connection with a license application or an investigation conducted by the Department pursuant to OAC 310:405-31-3, 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 LPC, LPC candidate 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 Department or any designated representative thereof, unless a request for a protective order has been first made pursuant to the provisions of Chapter 2 of this title, in which case the LPC, LPC candidate or applicant may await the decision concerning the issuance or denial of a protective order before making any response.

310:405-3-5. Relations with the public and other professions

(a) **Misrepresentation.** LPCs shall not misrepresent nor allow the misrepresentation by others of the efficacy of the LPC's professional services.

(b) **Credentials claimed.** LPCs shall claim or imply only the professional credentials possessed and shall be responsible for correcting any known misrepresentations of their credentials by others. Professional credentials include graduate degrees in counseling or closely related mental health fields, accreditation of graduate programs, national voluntary certifications, government-issued certifications or licenses, or any other credential that might indicate to the public the LPCs additional knowledge or expertise in counseling.

(c) **The use of doctoral degrees and the title "Doctor".** An LPC may use the doctoral degree and the title "Doctor" in advertising, practice and status as a counselor, if the doctoral degree is in counseling or a closely related mental health field, and if the degree was granted by a regionally accredited college

or university recognized by the United States Department of Education.

(1) Non-counseling doctorates. An LPC who holds a doctoral degree in a non-counseling related field shall not use the doctoral degree or the term "Dr." in advertising, practice or status as a counselor.

(2) Non-regionally accredited doctorates. An LPC who holds a doctoral degree from a college or university not regionally accredited and recognized by the United States Department of Education shall not use the doctoral degree or the title "doctor" in advertising, practice or status as a counselor, unless the following conditions are met:

(A) the degree was conferred or matriculation was begun before May 5, 1995; and

(B) the conferring institution was certified or accredited by the state wherein the institution is located.

(d) **Advertisement.** When an LPC announces services or advertises, the LPC shall represent services to the public by identifying credentials in an accurate manner that is not false, misleading, deceptive, or fraudulent. An LPC may only advertise the highest degree earned in counseling or a closely related field from a regionally accredited college or university recognized by the U.S. Department of Education. All advertisements or announcements of counseling services including telephone directory listings by an LPC shall clearly state the counselor's licensure status by the use of a title such as "LPC", or "Licensed Professional Counselor" or a statement such as "licensed by the Oklahoma State Department of Health."

(e) **License.** Each LPC shall display the original, current license in a prominent place in the primary location of practice.

(f) **Public statements.** When an LPC provides advice or comment by means of public lectures, demonstrations, radio or television programs, prerecorded tapes, printed articles, mailed material, or other media, they shall take reasonable precautions to ensure that:

(1) The statements are based on appropriate professional literature and practice;

(2) The statements are otherwise consistent with the LPC Rules of Professional Conduct; and

(3) There is no implication that a professional counseling relationship has been established.

(g) **Rebates.** An LPC shall not give or accept a commission, rebate, or other form of remuneration for referral of clients for professional services.

(h) **Accepting fees from agency clients.** An LPC shall refuse a fee or other remuneration for rendering services to persons who are entitled to such services through the employer of the LPC.

(i) **Candidates for LPC licensure.** Candidates for licensure as a Licensed Professional Counselor shall not refer to themselves as Licensed Professional Counselor or LPC.

SUBCHAPTER 7. APPLICATION PROCEDURES

310:405-7-9. Denial of licensure application

Following the denial of a licensure application by the Commissioner of Health, as prescribed in Section 1905 of the LPC Act, the applicant may request an administrative hearing to contest the denial of their application within 15 days of receiving notification from the Department. If a hearing is not requested within 15 days, the denial will be final.

SUBCHAPTER 9. ACADEMIC REQUIREMENTS

310:405-9-1. Graduate hours and degrees required

(a) Each applicant shall possess at least a master's degree in counseling, or a mental health related graduate degree deemed substantially content-equivalent. All graduate course work applied toward licensure shall be from a regionally accredited college or university recognized by the United States Department of Education. At least sixty (60) semester credit hours or ninety (90) quarter credit hours of graduate counseling-related course work, including internship, shall be earned. In order to be considered acceptable, the graduate degree(s) shall:

(1) follow a planned, sequenced mental health program of study which is reflected in the university catalog and approved by the governing authority of the college or university.

(2) include a program whose primary focus is clearly to prepare the applicant for a career in counseling.

(3) be listed in the college or university catalog, including the core courses from the knowledge areas outlined in 310:405-9-2 (1-7) and include at least five (5) of the sixteen (16) knowledge areas outlined in 310:405-9-2 (8).

310:405-9-2. Knowledge area required

(a) Each applicant shall possess as a part of the required sixty (60) semester credit hours or ninety (90) quarter credit hours of graduate curriculum, one (1) or more courses of at least three (3) semester credit hours or four (4) quarter credit hours per course in each of the following core counseling areas:

(1) Human growth and development - at least one (1) course which deals with the process stages of human intellectual, physical, social and emotional development of any of the stages of life from prenatal through old age.

(2) Abnormal human behavior - at least one (1) course which offers a study of the principles of understanding dysfunction in human behavior or social disorganization.

(3) Appraisal/assessment techniques - at least two (2) courses which deal with the principles, concepts and procedures of systematic appraisal, assessment, or interpretation of client needs, abilities, and characteristics, which may include the use of both testing and non-testing approaches.

(4) Counseling theories/methods - at least two (2) courses which survey the major theories and/or techniques of counseling.

(5) Professional orientation/ethics - at least one (1) course which deals primarily with the objectives of professional counseling organizations, codes of ethics, legal aspects of practice, standards of preparation and the role of persons providing direct counseling services.

(6) Research - at least one (1) course in the methods of social science or mental health research which includes the study of statistics or a thesis project in an area relevant to the practice of counseling.

(7) Practicum/internship - at least one (1) course of an organized practicum with at least three hundred (300) clock hours in counseling with planned experiences providing classroom and field experience with clients under the supervision of college or university approved counseling professionals.

(8) Knowledge areas - at least five (5) courses of at least three (3) semester credit hours or four (4) quarter credit hours each from the knowledge areas listed below.

(A) Group dynamics
(B) Life style and career development
(C) Social and cultural foundations
(D) Personality theories
(E) Crisis intervention
(F) Marriage/family counseling
(G) Addictions counseling
(H) Rehabilitation counseling
(I) Gerontology
(J) Human sexuality
(K) Counseling with children/adolescents
(L) Clinical supervision
(M) Psychopharmacology
(N) Consultation
(O) Physical and Emotional Health
(P) Specialty areas when established

(b) **Remaining courses.** Effective January 1, 2000, the remaining courses needed to meet the sixty (60) semester or ninety (90) quarter graduate-hour requirement shall be in any of the knowledge areas listed in 310:405-9-2(a) and may be in increments of one (1), two (2) or three (3) semester hour courses or one (1), two (2), three (3) or four (4) quarter hour courses.

~~(c) **Required content.** Effective January 1, 2000, if an applicant completes a titled course which does not meet the entire content requirements of any area named in 310:405-9-2(a), the applicant may be required to submit evidence to the Department that the required content was covered in portions of more than one (1) course.~~

SUBCHAPTER 11. SUPERVISED EXPERIENCE REQUIREMENT

310:405-11-5. Duration of supervision

(a) Three (3) years or three-thousand (3000) clock hours of full time, on-the-job experience, which is supervised by an approved LPC supervisor, shall be completed.

(b) For each one-thousand (1000) clock hours of full time, on-the-job experience, three hundred fifty (350) hours shall be direct face to face client contact.

(c) "Full time" means at least twenty (20) hours per week.

(d) Weekly, face-to-face supervision shall be accrued under an LPC at the ratio of forty-five (45) minutes of supervision for every twenty (20) hours of on-the-job experience.

(e) "Group supervision" means an assemblage of counseling supervisees consisting of from two (2) to six (6) members and no more than one-half ($\frac{1}{2}$) of the required supervision hours may be received in group supervision.

(f) One (1) or two (2) years of supervised experience may be gained at the rate of one (1) year for each thirty (30) graduate semester credit hours or forty-five (45) graduate quarter credit hours in counseling-related course work beyond the master's degree. (Minimal educational requirements are a master's degree [at least forty-five (45) hours] or doctorate with the first forty-five (45) hours meeting the minimal educational requirements. As of January 1, 2000, minimal educational requirements are a master's degree [at least sixty (60) semester credit hours or ninety (90) quarter credit hours] or a doctorate with the first sixty (60) semester credit hours or ninety (90) quarter credit hours meeting the minimal educational requirements.)

(g) Regardless of the number of hours earned beyond the master's degree, the LPC supervisee shall receive at least one (1) year or one-thousand (1000) clock hours of supervision in the ratio described in subchapter 11, section 310:405-11-5(b-d).

(h) If an applicant completes the supervised experience requirement before passing the licensure examination, the applicant shall continue to practice under LPC supervision as described in this subchapter, unless exempted by the Act, until licensed. Failure to do so constitutes a violation of the Act and may be subject to prosecution under the District Attorney and sanction by the Commissioner of Health.

(i) Applicants shall complete supervised experience requirements within sixty (60) months of the date of the approval of the first supervision agreement or the application shall be voided.

(j) Approved supervisors shall perform at least two (2) observations (live or tape) per each six (6) month evaluation period for each supervisee.

(k) Approved supervisors shall consult with on-site supervisor at least once during each six (6) month evaluation period for each supervisee.

SUBCHAPTER 17. CONTINUING EDUCATION REQUIREMENTS

310:405-17-2. Number of hours required

(a) Licensees shall complete and furnish documentation to the Department of twenty (20) clock hours of continuing education per year. One (1) academic hour is equal to fifteen (15) clock hours.

(b) ~~A minimum of three (3) clock hours of continuing education hours must be in counseling ethics.~~A minimum of three (3) clock hours of continuing education hours must be in counseling ethics from programs pre-approved by the Department or its designee. Continuing education in counseling ethics is acceptable as meeting the pre-approval requirements by the Department when the continuing education program:

(1) Addresses ethics issues specifically pertaining to the practice of counseling, as defined in Section 1902(6)

of this Act, counseling treatment interventions, consulting, referral activities, or research activities as defined in Section 1902 of this Act.

(2) Addresses regulations as promulgated in Subchapter 3 of this Chapter.

(3) Meets all requirements of sections 2-5 of Section 310:405-17-3 of this Chapter.

(4) As of the July 1, 2008 to June 30, 2009 renewal period, the three clock hours of counseling ethics continuing education must be accrued in a face-to-face setting.

(c) ~~Approved LPC Supervisors must complete a minimum of three (3) clock hours of continuing education in counseling supervision.~~Approved LPC Supervisors must complete a minimum of three (3) clock hours of continuing education in counseling supervision from programs pre-approved by the Department of its designee**.** Continuing education in Counseling Supervision is acceptable as meeting the pre-approval requirements by the Department when the continuing education program:

(1) Addresses issues specifically related to the practice of clinical supervision pursuant to regulations promulgated in Subchapter 11 of this Chapter.

(2) Contains content in one or more of the following knowledge areas:

(A) Ethical and legal considerations in the practice of clinical supervision;

(B) Theoretical models of clinical supervision;

(C) Clinical supervision intervention methods and modalities; and

(D) Research in clinical supervision; and

(3) Meets all requirements of sections 2-5 of Subchapter 310:405-17-3 of this Chapter.

(4) As of the July 1, 2008 to June 30, 2009 renewal period, the three clock hours of counseling supervision continuing education must be accrued in a face-to-face setting.

310:405-17-4.1. Continuing education accrual from home study courses

Continuing education may be accrued when the LPC completes home study programs that are approved by the Department. No more than ten (10) hours of continuing education may be accrued per renewal period through home study courses.

SUBCHAPTER 19. ISSUANCE OF LICENSE

310:405-19-1.1. Statement of Professional Disclosure

An LPC license shall be issued only after the Department has received the applicant's Statement of Professional Disclosure.

[OAR Docket #07-1079; filed 5-18-07]

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

[OAR Docket #07-1080]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 406. Licensed Genetic Counselors [NEW]
AUTHORITY:
Oklahoma State Board of Health; 2006 O.S.L. 174
DATES:
Comment Period:
February 1, 2007 through March 8, 2007
Public Hearing:
March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Chapter 406. Licensed Genetic Counselors [NEW]
Gubernatorial approval:
November 1, 2006
Register publication:
24 Ok Reg 197
Docket number:
06-1406
INCORPORATION BY REFERENCE:
Incorporated standards:
Robert's Rules of Order
Incorporating rules:
310:406-3-4
Availability:
Availability: 8:00 a.m. to 4:30 p.m., Oklahoma State Department of Health; Professional Counselor Licensing, 1000 Northeast 10thh Street, Oklahoma City, OK
ANALYSIS:
This action provides for permanent adoption of an emergency rule that is effective November 1, 2006 to July 14, 2007. This proposal establishes licensure requirements for Licensed Genetic Counselors. The proposal implements the Genetic Counselor Advisory Committee that was created by statute and establishes rules of professional conduct. The proposal establishes application procedures, academic and examination requirements, as well as supervision requirements. The proposal establishes fees and requirements for continuing education, issuance of license, license renewal and expiration of license, and enforcement procedures. The proposal establishes standards of professional conduct for licensed practitioners that are designed to preserve and promote the welfare of the public receiving genetic counseling.
CONTACT PERSON:
Nena West, Director, Professional Counselor Licensing, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299; telephone:(405) 271-6030; facsimile: (405) 271-1918; electronic mail: nenaw@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

310:406-1-1. Purpose

The rules in this Chapter implement the Oklahoma Genetic Counseling Licensure Act, (2006 O.S.L 174.)

310:406-1-2. Definitions

When used in this Chapter, the following words or terms shall have the following meaning unless the context of the sentence requires another meaning:

*"**ABGC**" means the American Board of Genetic Counseling* [63:1-562(1)].

*"**ABMG**" means the American Board of Medical Genetics* [63:1-562(2)].

"Act" means Title 63, Sections 1-561 et seq., of the Oklahoma Statutes.

"Active candidate status" means an individual who has been approved by the American Board of Genetic Counseling (ABGC) to sit for the certification exam in genetic counseling.

"Advisory Committee" means the Genetic Counseling Advisory Committee appointed by the Commissioner.

"Board" means the State Board of Health.

"Patient" means a person receiving genetic counseling from a genetic counselor.

"Commissioner" means the State Commissioner of Health.

"Department" means the State Department of Health.

"Dual relationships" means a familial, social, financial, business, professional, close personal, sexual or other non-counseling relationship with a patient, or engaging in any activity with another person that interferes or conflicts with the LGC's professional obligation to a patient.

"Licensed genetic counselor" or **"LGC"** means any person who is licensed pursuant to the provisions of the Genetic Counseling Licensure Act or offers to or engages in genetic counseling. The term shall not include those professions exempted by Section 1-566 of the Act.

SUBCHAPTER 3. ADVISORY COMMITTEE OPERATIONS

310:406-3-1. Purpose

This Subchapter creates the Genetic Counseling Advisory Committee, whose duty shall be to advise the Department regarding provisions of the Act, except as otherwise provided by law.

310:406-3-2. Advisory committee membership

(a) The advisory committee shall consist of five (5) members who shall be appointed by the Commissioner.

(b) Two members shall be licensed genetic counselors; provided, initial genetic counselor appointees shall not be required to be licensed under the Act before the end of the first year that the license is available. One member shall be an ethicist or a geneticist currently licensed by the State Board of Examiners for Medical Licensure and Supervision or the Board of Osteopathic Examiners. One member shall be a representative of the Oklahoma Genetics Advisory Council. One member shall be a lay person who is not affiliated with any practice of genetic counseling.

(c) The first advisory committee shall serve the following terms: one member for one (1) year, two members for two (2) years, and two members for three (3) years. Thereafter, at the expiration of the term of each member, the Commissioner shall appoint a successor for a four (4) year term.

(d) Vacancies occurring in the advisory committee shall be filled for the unexpired term by appointment by the Commissioner.

(e) Any advisory committee member may be removed by the Commissioner, after written notice, for incapacity, incompetence, neglect of duty, or misfeasance or malfeasance in office.

(f) Members of the advisory committee shall serve without compensation, but shall be reimbursed their actual and necessary travel expenses as provided in the State Travel Reimbursement Act.

(g) Advisory committee members may be reappointed at the completion of their term.

(h) The advisory committee may hold four regularly scheduled meetings each year and special meetings as needed. Meetings shall be held at such time and place as the advisory committee may provide. The advisory committee shall elect annually the following officers: A chair, a vice-chair, and a secretary. Three members of the advisory committee shall constitute a quorum.

310:406-3-3. Officers

(a) **Chair.** The chair shall preside at all meetings at which he or she is in attendance and perform all duties prescribed by law or rule. The chair is authorized to make day-to-day decisions regarding advisory committee activities in order to facilitate the responsiveness and effectiveness of the advisory committee.

(b) **Vice-chair.** The vice-chair shall perform the duties of the chair in the absence or disability of the chair.

(c) **Secretary.** In the absence of the chair and vice-chair, the secretary will preside until the chair or vice-chair is present.

310:406-3-4. Rules of Order

Robert's Rules of Order Newly Revised, 10th ed. (Cambridge, Mass.: Perseus Publishing, 2000) shall be the basis of parliamentary decisions except as otherwise provided by the advisory committee.

310:406-3-5. Subcommittees

(a) The chair with the approval of the advisory committee may establish subcommittees deemed necessary to carry out advisory committee responsibilities.

(b) The chair shall appoint the members of the advisory committee to serve on subcommittees.

(c) The chair may appoint non-advisory committee members to serve as subcommittee members on a consultant or voluntary basis subject to advisory committee approval.

(d) The subcommittee chair shall make regular reports to the advisory committee in interim written reports and/or at regular meetings.

(e) Subcommittees shall direct all reports or other materials to the Department for distribution.

(f) Subcommittees shall meet when called by the chair or when so directed by the advisory committee.

SUBCHAPTER 5. RULES OF PROFESSIONAL CONDUCT

310:406-5-1. Responsibility

LGCs shall accept responsibility for the consequences of their work and ensure that their services are used appropriately. LGCs shall not participate in, condone, or be associated with dishonesty, fraud, deceit or misrepresentation. LGCs shall not use their relationships with patients for personal advantage, profit, satisfaction, or interest.

310:406-5-2. Competence

(a) **Genetic counseling.** LGCs shall practice only within the boundaries of their competence and within professional standards, based on their education, training, and appropriate professional experience.

(b) **Impairment.** LGCs shall not offer or render professional services when such services may be impaired by a personal physical, mental or emotional condition(s). LGCs shall seek assistance for any such personal problem(s) with their physical, mental or emotional condition, and, if necessary, limit, suspend, or terminate their professional activities. If an LGC possesses a bias, disposition, attitude, moral persuasion or other similar condition that limits his or her ability to recommend a course of treatment or decision-making that is indicated, and under such circumstances where all other treatment and decision options are contra-indicated, then in that event the LGC shall not undertake to provide genetic counseling and will terminate the genetic counseling relationship in accordance with these rules.

(c) **Opinion Testimony.** LGCs shall not offer or accept an offer to engage in rendering opinion testimony relating to work performed for their patient and shall limit their role to fact witness in any matter involving that patient, unless otherwise required by law or court order.

310:406-5-3. Patient welfare

(a) **Discrimination.** LGCs shall not, in the rendering of professional services, participate in, condone, or promote discrimination on the basis of race, color, age, gender, religion or national origin.

(b) **Confidentiality.** LGCs shall maintain the confidentiality of any information received from any person or source about a patient, unless authorized in writing by the patient or otherwise authorized or required by law or court order.

(c) **Confidentiality of records.** LGCs shall be responsible for complying with the applicable state and federal regulations in regard to the security, safety and confidentiality of any genetic counseling record they create, maintain, transfer, or destroy whether the record is written, taped, computerized, or stored in any other medium.

(d) **Requirement of records.** LGCs shall maintain verifiable records necessary for rendering professional services to their patients for at least 3 (three) years beyond discontinuation of services. LGCs employed at an institution or facility that has a published records retention policy that is equal to the retention required by this subsection will be deemed to be in compliance with this subsection.

(e) **Patient access to records.** LGCs shall provide the patient with a copy of the patient's record in accordance with state law. In situations involving multiple patients, access to records is limited to those parts of records that do not include confidential information related to another patient.

(f) **Dual relationships.** LGCs shall not knowingly enter into a dual relationship(s) and shall take any necessary precautions to prevent a dual relationship from occurring. When the LGC reasonably suspects that he or she has inadvertently entered into a dual relationship the LGC shall record that fact in the records of the affected patient(s) and take reasonable steps to eliminate the source or agent creating or causing the dual relationship. If the dual relationship cannot be prevented or eliminated and the LGC cannot readily refer the patient to another genetic counselor or other professional, the LGC shall complete one or more of the following measures as necessary to prevent the exploitation of the patient and/or the impairment of the LGC's professional judgment:

(1) Fully disclose the circumstances of the dual relationship to the patient and secure the patient's written consent to continue providing genetic counseling;

(2) Consult with other professional(s) to understand the potential impairment to the LGC's professional judgment and the risk of harm to the patient of continuing the dual relationship;

(g) **Invasion of privacy.** LGCs shall not make inquiry into persons or situations not directly associated with the patient's situation.

(h) **Referral.**

(1) LGCs shall not abandon or neglect current patients without making reasonable arrangements for the continuation of necessary counseling services by another professional.

(2) When an LGC becomes cognizant of a disability or other condition that may impede, undermine or otherwise interfere with the LGC's competence or duty of responsibility to current patients, including a suspension of the LGC's license or any other situation or condition described in this Subchapter, the LGC shall promptly notify the patient in writing of the presence or existence of the disability or condition and take reasonable steps to timely terminate the genetic counseling relationship.

(i) **Providing counseling to persons of prior association.** LGCs shall not undertake to provide genetic counseling to any person with whom the LGC has had any prior sexual contact or close personal relationship within the previous five (5) years.

(j) **Interaction with former patients.** LGCs shall not knowingly enter into a close personal relationship, or engage in any business or financial dealings with a former patient for two (2) years after the termination of the genetic counseling relationship. LGCs shall not engage in any activity that is or may be sexual in nature with a former patient for at least five (5) years after the termination of the genetic counseling relationship. LGCs shall not exploit or obtain an advantage over a former patient by the use of information or trust gained during the genetic counseling relationship.

310:406-5-4. Professional standards

(a) **Violations of other laws.** It shall be unprofessional conduct for an LGC to violate a state or federal statute if the violation directly relates to the duties and responsibilities of the genetic counselor or if the violation involves moral turpitude.

(b) **Drug and alcohol use.** LGCs shall not render professional services while under the influence of alcohol or other mind or mood altering drugs.

(c) **Updating.** LGCs shall notify the Department of any change in address, telephone number or employment within thirty (30) days of such change.

(d) **Candor to the Department.** An LGC or an LGC candidate, in connection with a license application or an investigation conducted by the Department pursuant to OAC 310:406-23-3, 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 LGC or LGC candidate to have arisen in the application or the matter under investigation; or,

(3) fail to respond to a demand for information made by the Department or any designated representative thereof within twenty (20) days of the demand, unless a request for a protective order has been first made pursuant to Chapter 2 of this Title, in which case the LGC or LGC candidate may await the decision concerning the issuance or denial of a protective order before making any response.

SUBCHAPTER 7. APPLICATION FOR LICENSURE

310:406-7-1. General

(a) This Subchapter ensures that all applicants meet those requirements specified in the Act.

(b) Unless otherwise indicated, an applicant shall submit all required information and documentation of credentials on official Department forms.

310:406-7-2. Application materials and forms

(a) Each application shall include the following documents:

(1) Application form,

(2) Official transcript, mailed from a genetic counseling training program accredited by the ABGC or ABMG,

(3) Verification of certification by the ABGC or ABMG, or verification of active candidate status conferred by the ABGC, ABMG, or an equivalent acceptable entity.

(4) Two (2) classifiable sets of fingerprints, and

(5) Fees.

(b) The application form requires the following:

(1) Identifying information;

(2) Possession of other credentials;

(3) Previous misconduct (if applicable);

(4) Education;

(5) References;

(6) Proposed professional practice; and

(7) Notarization.

310:406-7-3. Denial of license

If the Department denies any application or request for licensure the applicant or requestor shall be notified of the Department's decision within thirty (30) days thereof and the applicant shall have fifteen (15) days to request a hearing to review the Department's decision. The notice shall advise the applicant or requestor of his or her right to a hearing and the time within which a request to review the Department's decision must be submitted.

SUBCHAPTER 9. ACADEMIC REQUIREMENTS

310:406-9-1. Degrees required

(a) Each applicant shall possess at least a master's degree from a genetic counseling training program that is accredited by the ABGC or an equivalent entity as determined by the ABGC, or

(b) An applicant may possess a doctoral degree from a medical genetics training program accredited by the ABMG or an equivalent as determined by the ABMG.

SUBCHAPTER 11. LICENSURE EXAMINATIONS

310:406-11-1. Examination required

All applicants shall take and pass the ABGC Genetics Counseling Certification Examination or have passed the

ABMG General Genetics and Genetic Counseling Specialty examinations.

SUBCHAPTER 13. SUPERVISION REQUIREMENTS

310:406-13-1. Purpose

This Subchapter establishes the supervision requirements for individuals practicing under the authority of a temporary license.

310:406-13-2. General supervision

All individuals practicing under the authority of a temporary license shall receive general supervision as required by the Act. Supervision shall at a minimum include a review of applicable genetic counseling services provided by the supervisee that have not been previously reviewed.

310:406-13-3. Frequency of supervision contact

Supervision contact shall occur at least every two weeks provided patient contacts have taken place in person, in writing or electronically.

310:406-13-4. Supervisor qualification

Any person serving as a supervisor to a person holding a temporary license must be a licensed genetic counselor or a licensed physician.

310:406-13-5. Documentation of supervision

(a) A supervision agreement form between the supervisor and supervisee shall be received and approved by the Department prior to beginning the accrual of supervision.
(b) A supervision agreement form between the supervisor and supervisee shall be submitted annually.
(c) The supervisor and supervisee shall sign and submit a documentation of supervision form annually.
(d) The supervision agreement may be renewed annually by the Department with the submission of a new supervision agreement and the documentation of supervision provided in the previous year.

SUBCHAPTER 15. FEES

310:406-15-1. Schedule of fees

(a) **Application fee.** Three hundred dollars ($300.00) shall be submitted with the application form.
(b) **License renewal fee.** After the initial two-year period of licensure, this fee is two hundred dollars ($200) and shall be submitted on or before two (2) years from the last day of the month in which the license was originally issued.
(c) **Late renewal fee.** An additional twenty-five dollars ($25.00) shall be submitted for the late renewal of a license.
(d) **Replacement fee.** Twenty-five dollars ($25.00) shall be submitted for the issuance of a license to replace a license, which has been lost, damaged, or is in need of revision.
(e) **Inactive license fee.** Twenty-five dollars ($25.00) shall be submitted with a request to place the license on inactive status.
(f) **Reactivation fee.** When an inactive license is reactivated, the biennial renewal fee must be paid in accordance with OAC 310:406-21-6 and shall be submitted at the time of reactivation.

310:406-15-2. Method of payment

Payment of all fees shall be by personal check, cashier's check, money order or cash. Any check returned to the Department for non-payment may result in expiration or suspension of license.

310:406-15-3. Fees non-refundable

Fees paid by applicants are not refundable.

310:406-15-4. Review of fees

The Department shall periodically review the fee schedule and recommend any adjustments necessary to provide funds to meet its expenses without creating an unnecessary surplus.

SUBCHAPTER 17. CONTINUING EDUCATION REQUIREMENTS

310:406-17-1. Purpose

This Subchapter establishes the continuing education requirements necessary for license renewal.

310:406-17-2. Number of hours required

LGCs shall complete and furnish documentation to the Department of thirty (30) clock hours of continuing education in each preceding two-year licensing cycle.

310:406-17-3. Acceptable continuing education

Continuing education must be ABGC approved for at least 10 of the continuing education hours. The remaining twenty hours of continuing education may consist of medical continuing education in the LGC's area of employment.

310:406-17-4. Submission of continuing education roster

LGCs shall submit a continuing education roster, along with individual verification of attendance documents with the license renewal fee. Rosters must include the identity and license number of the LGC receiving continuing education, the date name, and location of the conference, the number of hours

awarded, and the entity or organization sponsoring the conference. Only continuing education accrued in the preceding license renewal period can be used to satisfy the continuing education requirement for renewal.

310:406-17-5. Penalty for failure to submit continuing education

Failure to fulfill the continuing education requirements by the renewal date may result in the license being suspended and all rights granted by the license may be null and void, unless the LGC can show that he or she was subjected to circumstances which prevent the LGC from meeting the continuing education requirements.

310:406-17-6. Submission of fraudulent continuing education

The submission of fraudulent continuing education hours shall result in disciplinary action against any person who knowingly participates in the submission.

SUBCHAPTER 19. ISSUANCE OF LICENSE

310:406-19-1. License

The Commissioner shall issue a license certificate, which contains the licensee's name, license number, and highest accredited genetic counseling academic degree and date of issue.

310:406-19-2. Property of the Department

All licenses issued by the Commissioner shall remain the property of the Department and shall be surrendered on demand.

310:406-19-3. Notification

After the applicant fulfills all requirements for licensure the Department shall mail notification of qualification for licensure to the licensee at his or her last known address.

310:406-19-4. Replacement

The Department shall replace a license that is lost, damaged, or is in need of revision upon written request and payment of the license replacement fee. Requests must include the LGC's original license or be accompanied by the damaged license, if available.

310:406-19-5. Temporary license

The Department may issue a temporary license to an applicant who meets the licensure requirements.

310:406-19-6. Temporary licensure

(a) **Requirements.** An applicant for temporary licensure must meet the following requirements:

(1) Satisfy all of the qualifications for licensure established in the Genetic Counseling Licensure Act with the exception of certification by the ABGC, and have active candidate status conferred by the ABGC;

(2) Obtain a supervisor who is a licensed genetic counselor, or a physician licensed to practice in Oklahoma, with current ABMG certification in clinical genetics.

(b) **Examination.** A person granted a temporary license shall apply for and take the next examination that is available to the person as determined by ABGC. If an applicant fails the first sitting of the ABGC certification examination, the applicant may reapply for a second temporary license. A temporary license shall not be issued to an applicant who has failed the ABCG certification examination more than once.

(c) **Expiration.** A temporary license shall expire upon the earliest of the following:

(1) Issuance of full licensure;

(2) Thirty (30) days after failing the certification examination; or,

(3) The date printed on the temporary license.

SUBCHAPTER 21. LICENSE RENEWAL AND EXPIRATION

310:406-21-1. Responsibility

Each LGC is responsible for renewing the license before the expiration date.

310:406-21-2. Initial licensing period

The renewal date of the original license shall be two (2) years from the last day of the month in which the license was originally issued.

310:406-21-3. Renewal of license

The initial license will expire in two (2) years from the date of issuance unless renewed. License renewals shall expire every two years. Prior to submitting a request for license renewal the licensee must complete at least thirty (30) hours of continuing education.

310:406-21-4. Requirements for renewal

Requirements for renewal include the following:

(1) Compliance with the Act and this Chapter;

(2) Documentation of the required continuing education; and,

(3) Payment of the renewal fee(s).

310:406-21-5. Display of verification card

A current license verification card shall be displayed on the original or replaced license.

310:406-21-6. Inactive status

(a) An active license may be placed on inactive status by written request and payment of a one-time twenty-five dollar ($25.00) fee. An inactive license forfeits all rights and privileges granted by the license.

(b) When a license is placed on inactive status, the license and active verification cards shall be returned to the Department.
(c) When a license is placed on inactive status, it remains inactive for at least one (1) year from the date of inactivation.
(d Active status may be reestablished upon payment of the biennial renewal fee and proof of five (5) hours of continuing education in genetics professional education per year during the time of inactive status.
(e) Thirty (30) hours of continuing education shall be submitted at the end of the two-year renewal period of a reactivated license.

310:406-21-7. Renewal notification

The Department shall mail to licensee's last known address, at least forty-five (45) days prior to the expiration date of the LGC's license, a notice of expiration.

310:406-21-8. Failure to renew

If the licensee fails to renew the license by the expiration date, the Department shall mail a notification to the last known address which shall include the following:

(1) Suspension of the license and forfeiture of rights and any privilege granted pursuant to the license, and,

(2) The LGC has the right to reinstate the license by payment of the renewal fee and the late renewal fee and fulfillment of all other renewal requirements for up to one (1) year following the suspension of the license.

310:406-21-9. Return of license

Licenses not renewed within the one (1) year re-instatement period shall not be reinstated and the license shall be returned to the Department.

310:406-21-10. Misrepresentation

A LGC whose license has been inactivated, suspended, or revoked and continues to represent himself as an LGC, is in violation of the Act and shall be reported to the appropriate District Attorney for prosecution.

SUBCHAPTER 23. ENFORCEMENT

310:406-23-1. Purpose

This Subchapter specifies the administration of complaints and the filing of disciplinary actions against LGCs or against persons who practice genetic counseling without a license or exemption.

310:406-23-2. Complaints

(a) Any person may file a complaint against a LGC or a person practicing genetic counseling who is not otherwise exempt from the LGC Act. A person wishing to report a complaint or alleged violation against a licensee or person practicing genetic counseling may notify the Department in writing, by telephone, or by a personal visit. The Department will determine whether the complaint alleges a possible violation of the Act or this Chapter. The Department may present the complaint to the advisory committee for consultation.
(b) The complaint and the identity of the complainant shall be confidential and shall not be available for public inspection.

310:406-23-3. Investigation

If the Department has reason to believe that a possible violation of the Act or this Chapter has occurred, the Department may commence an investigation of the complaint.

310:406-23-4. Filing of an action

(a) The Department may begin a disciplinary action against an LGC or a person practicing genetic counseling who is not exempt from licensure by following the procedures in Chapter 2 of this Title. The Department shall specifically state the violation(s) and shall state the remedy sought by the Department. Remedies include revocation of a license, suspension of a license, probation of a licensee and/or administrative penalty.
(b) If in the course of an investigation the Department determines that a licensee or 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, the Commissioner may order a summary suspension of the genetic counselor's license or authorization to conduct genetic counseling. A presumption of imminent harm to the public shall exist if the Department determines that probable cause exists that a licensee or candidate has violated 310:406-5-3(f) or 310:406-5-4(a,b,c or e).

310:406-23-5. Hearing

Hearings shall be conducted by the Commissioner or his designee as specified in Chapter 2 of this Title. The Department shall recommend the most appropriate penalty at the conclusion of the evidence. In making its recommendation, the Department may seek the counsel of the advisory committee.

310:406-23-6. Final order

The Department, either by order of the Commissioner or his designee, shall issue a final order on all disciplinary matters. Final orders are appealable under the Administrative Procedures Act to the district courts.

310:406-23-7. Unauthorized practice

Any person found to be practicing genetic counseling without being either properly licensed, exempt or under approved supervision as part of the licensure process shall be ordered to cease practicing and may be subject to an administrative penalty. The Department may seek the assistance of the courts if the unauthorized practice of genetic counseling continues.

310:406-23-8. Administrative penalties

(a) The Department may assess an administrative penalty against an individual if the order includes a finding that the individual violated any of the following:

(1) Any provision of the Act, including practicing counseling without licensure or exemption; or

(2) Any rule within this Chapter; or

(3) Any order issued pursuant to this Chapter.

(b) The total amount of the administrative penalty assessed shall not exceed ten thousand dollars ($10,000.00) for any related series of violations.

[OAR Docket #07-1080; filed 5-18-07]

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

[OAR Docket #07-1081]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Disease and Injury Reporting Requirements [NEW]
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]
AUTHORITY:
Oklahoma State Board of Health; 63 O.S., 1991, Section 1-503
DATES:
Comment Period:
February 1, 2007 through March 8, 2007
Public Hearing:
March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
This rule requires certain diseases be reported to the Oklahoma State Department of Health. Reporting of disease is required by Oklahoma statute, 63 O.S. 1991, Section 1-503. The purpose of disease reporting is to protect the public health.
CONTACT PERSON:
Lauri Smithee, M.E.S., M.S., Chief, Acute Disease Service, Oklahoma State Department of Health, 1000 NE 10th, Oklahoma City, OK 73117-1299, ph (405) 271-4060, fax (405) 271-6680, or e-mail LauriS@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. DISEASE AND INJURY REPORTING

310:515-1-1.1. Definitions

"AIDS" means Acquired Immunodeficiency Syndrome.

"Anti-HAV-IgM+" means a positive test result for the hepatitis A virusimmunglobulin M antibody.

"Anti-HBc-IgM+" means a positive test result for the hepatitis B coreimmunglobulin M antibody.

"CD4" means cluster of differentiation 4 glycoprotein that serves as a receptor for HIV on T helper cells.

"Department"or**"OSDH"**means the Oklahoma State Department of Health.

"E. coli"means *Escherichia coli*.

"EHEC" means enterohemorrhagic *Escherichia coli*.

"EIA" means enzyme immunoassay.

"HBeAg+" means a positive test result for the hepatitis B "e" antigen.

"HBsAg+" means a positive test result for the hepatitis B surface antigen.

"HBV DNA+" means a positive test result for deoxyribonucleic acid of the hepatitis B virus.

"HIV" means Human Immunodeficiency Virus.

"PHIDDO" or**"PHIDDO system"** means Public Health Investigation and Disease Detection of Oklahoma system.

"NAT for HCV RNA+" means a nucleic acid amplification test with a positive test result for hepatitis C virus ribonucleic acid.

"Outbreak of an apparent infectious disease" means a cluster of cases from different households of potentially infectious disease of known or unknown etiology. The cases would have a similar clinical syndrome if laboratory testing is pending or inconclusive. Examples of such outbreaks include but are not limited to a cluster of cases of gastrointestinal illness, respiratory illness, or rash illness of unknown etiology.

"RIBA" means recombinant immunoblot assay.

"S/co" means the signal-to-cut-off-ratio.

"Spp." is an abbreviation referring to the term "species," and is used to broaden the anteceding term in order to include all organisms that may be found or described within a given genus.

"Unusual disease or syndrome" means a case of a rare, possibly infectious disease of known or unknown etiology, even if laboratory testing may be pending or inconclusive.

Examples of such unusual diseases or syndromes include but are not limited to, unexplained adult respiratory distress syndrome, hemorrhagic fever, vesicular rash illness, or an illness associated with an unusual pattern of illness or death among animals.

"VISA" means vancomycin intermediate *Staphylococcus aureus*.

"VRSA" means vancomycin resistant *Staphylococcus aureus*.

310:515-1-2. Diseases to be reported

The diseases listed in this Chapter must be reported, along with patient identifiers, demographics, and contact information, to the ~~Oklahoma State~~ Department~~ of Health~~ upon discovery as dictated in sections OAC 310:515-1-3 and OAC 310:515-1-4. The current OSDH Disease Reporting Manual shall serve as the reference for disease-specific diagnostic test results to be reported. Ancillary laboratory test results, signs, and symptoms must be reported upon request. Laboratories having greater than 400 positive tests performed on-site per year for reportable diseases described in 310:515-1-3, 310:515-1-4(1) and 310:515-1-4(2), or as may be otherwise required to be reported by OSDH, shall begin reporting no later than August 30, 2010 using secure electronic data transmission.

310:515-1-3. Diseases to be reported immediately

The following diseases must be reported by any health practitioner or laboratory personnel to the ~~Oklahoma State Department of Health~~OSDH by telephone (405-271-4060 or 800-234-5963) or ~~fax (405-271-6680 or 800-898-6734)~~electronically via the secure web-based Public Health Investigation and Disease Detection of Oklahoma system immediately upon suspicion, diagnosis, or testing as specified in the OSDH Disease Reporting Manual.~~ It is acceptable to report by telephone at anytime, including after hours, weekends, and holidays. It is also acceptable to report by fax during regular office hours (8am through 5pm, Monday through Friday, excluding holidays).~~

(1) Anthrax (*Bacillus anthracis*).
(2) Bioterrorism - suspected disease.
(3) Botulism (*Clostridium botulinum*).
~~(4) Brucellosis (*Brucella* spp.).~~
(~~5~~4) Diphtheria (*Corynebacterium diphtheriae*).
(~~6~~5) *Haemophilus influenzae* invasive disease.
(~~7~~6) Hepatitis A (Anti-HAV-IgM+).
(7) Hepatitis B during pregnancy (HBsAg+).
(8) Measles (Rubeola).
(9) Meningococcal invasive disease (*Neisseria meningitidis*).
(10) Outbreaks of apparent infectious disease. ~~An outbreak of an apparent infectious disease is a cluster of cases from different households of potentially infectious disease of known or unknown etiology. The cases would have a similar clinical syndrome but laboratory testing would be pending or inconclusive. Examples of such outbreaks include but are not limited to a cluster of cases of gastrointestinal illness, respiratory illness, or rash illness of unknown etiology.~~
(11) Plague (*Yersinia pestis*).
(12) Poliomyelitis.
(13) Rabies.
(14) Smallpox.
(15) Tularemia (*Francisella tularensis*).
(16) Typhoid fever (*Salmonella typhi*).
(17) Viral hemorrhagic fever.

310:515-1-4. Additional diseases, conditions, and injuries to be reported

The following diseases, conditions and injuries must be reported by physicians, laboratories, and hospitals (by infection control practitioners, medical records personnel, and other designees) to the ~~Oklahoma State Department of Health~~OSDH as dictated in the following subsections:

(1) **Infectious diseases.** Reports of infectious diseases and conditions listed in this subsection must be telephoned, faxed, ~~or mailed~~submitted electronically via the PHIDDO system, or submitted via secure electronic data transmission to the ~~Oklahoma State Department of Health (~~OSDH~~)~~ within one (1) business day of diagnosis or positive test as specified in the OSDH Disease Reporting Manual.

(A) Acid Fast Bacillus (AFB) positive smear.
(B) AIDS (Acquired Immunodeficiency Syndrome).
(C) Arboviral infections (West Nile virus, St. Louis encephalitis virus, Eastern equine encephalitis virus, Western equine encephalitis virus, Powassan virus, California serogroup virus).
(D) Brucellosis (*Brucella* spp.).
(~~D~~E) Campylobacteriosis (*Campylobacter* spp.).
(~~E~~F) Congenital rubella syndrome.
(~~F~~G) Cryptosporidiosis (*Cryptosporidium parvum*).
(~~G~~H) Cyclosporiasis (*Cyclospora cayetanensis*).
(~~H~~I) Dengue Fever.
(~~I~~J) *E. coli O157, O157:H7,* or a shiga-like toxin producing *E. coli* (EHEC infections).
(~~J~~K) Ehrlichiosis (*Ehrlichia* spp.).
(~~K~~L) ~~Encephalitis~~.
(~~L~~M) Giardiasis (*Giardia lamblia*).
(~~M~~N) Hantavirus pulmonary syndrome.
(~~N~~O) Hemolytic ~~Uremic~~uremic syndrome, postdiarrheal.
(~~O~~P) Hepatitis B. ~~(acute or chronic~~If HBsAg+~~, and/or~~ anti-HBc-IgM+~~)~~, HBeAg+, or HBV DNA+ then report results of the entire hepatitis panel.
(~~P~~Q) Hepatitis C. ~~(~~If hepatitis C EIA is confirmed by RIBA or~~ PCR only)~~ NAT for HCV RNA, or signal-to-cut-off (s/co) ratio is predictive of a true positive then report results of the entire hepatitis panel.
(~~Q~~R) Hepatitis, acute unspecified.
(~~R~~S) Human Immunodeficiency Virus (HIV) infection.
(~~S~~T) Legionellosis (*Legionella pneumophila*).

(~~T~~U) Leprosy (Hansen's Disease).
(~~U~~V) Leptospirosis (*Leptospira interrogans)*.
(~~V~~W) Listeriosis (*Listeria monocytogenes*).
(~~W~~X) Lyme disease (*Borrelia* ~~spp.~~*burgdorferi*. Erythema migrans or EIA+ confirmed by Western Blot).
(~~X~~Y) Malaria (*Plasmodium* spp.).
(~~Y~~Z) Mumps.
(~~Z~~AA) Pertussis (*Bordetella pertussis*).
(~~AA~~BB) Psittacosis (*Chlamydia psittaci*).
(~~BB~~CC) Rocky Mountain Spotted Fever (*Rickettsia rickettsii*).
(~~CC~~DD) Rubella.
(~~DD~~EE) Salmonellosis (*Salmonella* spp.).
(~~EE~~FF) Shigellosis (*Shigella* spp.).
(GG) *Staphylococcus aureus* with reduced susceptibility to vancomycin (VISA or VRSA).
(~~FF~~HH) *Streptococcus*, group A invasive disease.
(~~GG~~II) *Streptococcus pneumoniae*~~,~~ invasive disease, in persons less than 5 years of age.
(~~HH~~JJ) Syphilis (*Treponema pallidum*).
(~~II~~KK) Tetanus (*Clostridium tetani*).
(~~JJ~~LL) Trichinosis (*Trichinella spiralis*).
(~~KK~~MM) Tuberculosis (*Mycobacterium tuberculosis*).
(~~LL~~NN) Unusual disease or syndrome. ~~An unusual disease or syndrome is a case of a rare, possibly infectious disease of known or unknown etiology. Laboratory testing may be pending or inconclusive. Examples of such unusual syndromes or atypical disease presentations include but are not limited to: unexplained adult respiratory distress syndrome, hemorrhagic fever, vesicular rash illness, or an illness associated with an unusual pattern of illness or death among animals.~~
(~~MM~~OO) *Vibrio* spp. infections including cholera.
(~~NN~~PP) Yellow Fever.

(2) **Infectious diseases.** Reports of infectious diseases and conditions listed in this subsection must be ~~mailed~~reported to the ~~Oklahoma State Department of Health (~~OSDH~~)~~ within one (1) month of diagnosis or positive test as specified in the OSDH Disease Reporting Manual.

(A) CD4 ~~Cell~~cell ~~Count~~count < 500 with corresponding CD4 cell count percentage of total (by laboratories only).
(B) Chlamydia infections (*Chlamydia trachomatis*).
(C) ~~Crueutzfeldt~~Creutzfeldt-Jakob disease.
(D) Gonorrhea (*Neisseria* ~~*gonorrheae*~~*gonorrhoeae*).
(E) HIV viral load.
(~~E~~F) Pelvic ~~Inflammatory~~inflammatory ~~Disease~~disease (PID).

(3) **Occupational or Environmental diseases.**

~~(A) Blood Lead Levels.~~ Laboratories must report blood lead level results greater than 10 ug/dL within one (1) week and results less than 10 ug/dL within one (1) month. Health care providers must report blood lead level results 20 ug/dL or greater within twenty-four (24) hours and results 10-19 ug/dL within one (1) week.

(4) **Injuries (hospitalized and fatal cases only).**
(A) Burns.
(B) Drownings and Near Drownings.
(C) Traumatic Brain Injuries.
(D) Traumatic Spinal Cord Injuries.

310:515-1-7. Control of Communicable Diseases Manual

The ~~Oklahoma State Department of Health~~OSDH ~~has adopted~~adopts the most recently published edition of the publication, "Control of Communicable Diseases Manual,"~~,~~ published by the American Public Health Association, ~~Seventeenth Edition,~~ as a guideline for the prevention and control of communicable diseases. In order to determine the most recently published edition of the "Control of Communicable Diseases Manual," access the American Public Health Association web site at https://secure.apha.org/source/orders/index.cfm to identify the latest published edition of the "Control of Communicable Diseases Manual."

310:515-1-8. Organisms/specimens to be sent to the Public Health Laboratory

(a) Isolates or appropriate specimens of the following organisms shall be sent to the ~~Oklahoma State Department of Health~~OSDH Public Health Laboratory for typing.
(1) *Bacillus anthracis.*
(2) *Brucella* spp.
(3) *Campylobacter* spp.
(4) *E. coli O157, O157:H7,* or a shiga-like toxin producing *E. coli* (EHEC).
(5) *Francisella tularensis.*
(6) *Haemophilus influenzae* (sterile site).
(7) HIV.
(~~7~~8) *Listeria monocytogenes* (sterile site).
(~~8~~9) *Mycobacterium tuberculosis*.
(~~9~~10) *Neisseria meningitidis* (sterile site).
(~~10~~11)*Plasmodium* spp.
(~~11~~12)*Salmonella* spp.
(~~12~~13)*Shigella* spp.
(14) *Staphylococcus aureus* that are VISA or VRSA
(~~13~~15)*Vibrio* spp.
(~~14~~16)*Yersinia* spp.

(b) Following consultation with an ~~Oklahoma State Department of Health~~OSDH epidemiologist, clinical specimens from suspected cases of Botulism must be sent to the ~~Oklahoma State Department of Health~~OSDH Public Health Laboratory for testing.

SUBCHAPTER 3. DISCLOSURES AND USES OF DISEASE PREVENTION AND CONTROL INFORMATION

310:515-3-1. General provisions

Information received, created and/or maintained by the Department pursuant to the provisions of the Public Health Code relating to Disease Prevention and Control is confidential and shall be protected from disclosure unless release or disclosure is sought in accordance with this subchapter or is otherwise authorized by law.

310:515-3-2. Disclosures upon written consent

Information received, created and/or maintained by the Department pursuant to the provisions of the Public Health Code relating to Disease Prevention and Control may be disclosed to a requesting person upon the presentation of a valid written consent executed by the person whose information is being kept confidential or the legal guardian or legal custodian of such person, under the following conditions:

(1) If the written consent is delivered to the Department by a person other than the person whose information is being kept confidential or the legal guardian or legal custodian of such person, the written consent must either be verified under oath or contain some form of attestation certifying or confirming the authenticity of the signature of the person whose information is being kept confidential or the legal guardian or legal custodian of such person.

(2) The written consent must advise the person whose information is being kept confidential or the legal guardian or legal custodian of such person the identity of all persons and/or entities who are likely or intended to receive or view the information sought to be released or disclosed. The identity must include the full name, address and title or office of such person or entity identified in the written consent. The written consent must state that the information will not be released or disclosed to any person or entity not so identified.

(3) The written consent must include a notice thereon, in bold typeface, that the information authorized for release may include records that may indicate the presence of a communicable or venereal disease, which may include, but are not limited to, diseases such as hepatitis, syphilis, gonorrhea and the human immunodeficiency virus, also known as Acquired Immune Deficiency Syndrome (AIDS).

(4) The written consent must advise the person whose information is being kept confidential or the legal guardian or legal custodian of such person of the provisions of 63 O.S.Supp.2005, § 1-502.2.

310:515-3-3. Grounds for denial

A person whose information is being kept confidential or the legal guardian or legal custodian of such person may be denied access to information if the information was obtained from someone other than a health care provider under a promise of confidentiality, the access requested would be reasonably likely to reveal the confidential source of the information and the requested information cannot be presented in a manner that preserves the confidentiality of the source. The Department incorporates HIPAA, 42 C.F.R. § 164.524(a)(2)(v)(2006) only as guidance in applying this section.

310:515-3-4. Disclosures permitted without a written consent

Information received, created and/or maintained by the Department pursuant to the provisions of the Public Health Code relating to Disease Prevention and Control may, without first obtaining a written consent in accordance with this subchapter, be disclosed, shared and/or disseminated with health professionals engaged in activities described or identified in the provisions of the Public Health Code relating to Disease Prevention and Control.

[OAR Docket #07-1081; filed 5-18-07]

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

[OAR Docket #07-1083]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Oklahoma State Board of Health; 63 O.S., Section 1-502
DATES:
Comment Period:
February 1, 2007 through March 8, 2007
Public Hearing:
March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a

ANALYSIS:

The new Subchapter establishes standards and procedures for HIV disease diagnosis, prevention, treatment, management and control in Oklahoma, including enforcement authority to serve notice to those persons who continue to be identified, through the Oklahoma HIV/AIDS surveillance system, as sexual partners to reported HIV/AIDS cases.

CONTACT PERSON:

Michael G. Harmon, Chief, HIV/STD Service or Jan Fox, Director, Surveillance and Care Delivery, HIV/STD Service, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-4636

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

310:521-1-2. ~~Definition~~Definitions

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

"Commissioner" means the State Commissioner of Health or any other person delegated specific authority by the Commissioner to act under this Chapter.

"Compliance order" means an order issued by the Commissioner enforcing treatment, isolation and/or behavioral expectations.

"Department" means the Oklahoma State Department of Health.

SUBCHAPTER 3. *TUBERCULOSIS*

310:521-3-2. Definitions

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

"Clinical case definition" means a reactive tuberculin skin test, other signs and symptoms compatible with tuberculosis (e.g., an abnormal, unstable [i.e., worsening or improving] chest x-ray, or clinical evidence of current disease), treatment with two or more anti-tuberculosis medications and completed diagnostic evaluation.

~~**"Compliance order"** means an order issued by the Commissioner enforcing treatment, isolation and/or behavioral expectations.~~

"Directly observed therapy" or "DOT" means tuberculosis therapy administration by a Public Health Nurse, DOT Provider or other person authorized by the Commissioner who watches the TB patient swallow each dose of medication.

"Isolation" means the confinement of a person with suspected or active tuberculosis to his home or other quarters as specified by the Commissioner or designee.

"Laboratory criteria for diagnosis" means isolation of M. *tuberculosis* from a clinical specimen or demonstration of *M. tuberculosis* from a clinical specimen by nucleic acid amplification test, or demonstration of acid-fast bacilli in a clinical specimen when a culture has not been or cannot be obtained.

"Non-contagious" means a person with active or suspected tuberculosis who has completed a minimum of two weeks tuberculosis treatment, has a minimum of three (3) documented consecutive negative sputum AFB smear results, and the occurrence of a clinical response to therapy.

"Non-compliant behavior" means behavior on the part of the person with active or suspected tuberculosis which results in failure to comply with established tuberculosis therapy, isolation or clinical, laboratory and x-ray monitoring.

"Order for Examination" means an order issued by the Commissioner instructing a Tuberculosis suspect to undergo testing for Tuberculosis, to include Tuberculin Skin Testing, chest or other x-ray, and/or sputum examination.

"Tuberculosis" or "TB" means a chronic bacterial infection caused by *Mycobacterium tuberculosis*, characterized pathologically by the formation of granulomas.

"Tuberculosis contagious person" means a person diagnosed with active or suspected pulmonary or laryngeal tuberculosis who is not receiving therapy, has just started therapy, or has a poor clinical or bacteriologic response to therapy.

"Tuberculosis disease" means active tuberculosis is established by meeting the Clinical Case Definition or Laboratory Criteria for Diagnosis.

"Tuberculosis suspect" means a person with symptoms or signs of active tuberculosis, an abnormal chest x-ray with changes compatible with tuberculosis, and/or preliminary mycobacteriology results suggestive of TB.

"Tuberculosis treatment" means therapy with an American Thoracic Society/Centers for Disease Control and Prevention recommended regimen. The initial tuberculosis treatment regimen frequently contains Isoniazid, Rifampin, Pyrazinamide, Ethambutol and Pyridoxine (Vitamin B6).

SUBCHAPTER 5. HIV (HUMAN IMMUNODEFICIENCY VIRUS) AND AIDS (ACQUIRED IMMUNODEFICIENCY SYNDROME)

310:521-5-1. Specific authority

HIV/AIDS prevention and control is specifically delegated to the Oklahoma State Department of Health in 63 O.S., Section 1-502.

310:521-5-2. Definitions

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

"AIDS" means Acquired Immunodeficiency Syndrome and is the most severe manifestation of infection with the Human Immunodeficiency Virus (HIV). The Centers for Disease

Control and Prevention (CDC) lists numerous opportunistic infections and neoplasms (cancers) that, in the presence of HIV infection, constitute an AIDS diagnosis.

"Abstinence" means the absence of any sexual activity, which includes oral sex, anal sex or vaginal sex.

"Barrier protection" means the use of a latex condom during sexual activity.

"HAART" means Highly Active Antiretroviral Therapy, which is the combination of several antiretroviral medications used to slow the rate at which HIV multiplies in the body.

"HIV positive" means a person has tested positive, using a Western Blot confirmatory test, for HIV antibodies, the virus known to cause AIDS.

"HIV/STD Service surveillance section" means the unit of the Department tasked with the duty to process reports and information concerning the incidence and occurrence of sexually transmitted disease discovered or reported in Oklahoma.

"Opportunistic infection" means infections, which are rarely seen in those with normal immune systems, but are deadly to those people who have AIDS and a compromised immune system.

"PCRS" means Partner Counseling Referral Services, which are offered by the OSDH HIV/STD Service to persons infected with HIV and their sexual partners to assist with informing their sexual partners about potential exposure to HIV.

"Retrovirus" means RNA (ribonucleic acid) virus. Retroviruses replicate (duplicate) by making a DNA (deoxyribonucleic acid) copy of their RNA. It is the DNA genes that allow the virus to replicate in the human body.

"Sexual activity" means any activity, which includes oral sex, anal sex, or vaginal sex.

"Transmission activity" means activity that involves the sharing or use of an instrument or device that is invasive or pierces the epidermis.

"Viral load" means the relative amount of human immunodeficiency virus in a person's body.

310:521-5-3. Standards of HIV/AIDS prevention and treatment

(a) The Commissioner shall establish surveillance to identify all cases of HIV or AIDS in Oklahoma. All persons suspected of having AIDS or being HIV positive shall be investigated to establish or exclude the diagnosis of AIDS or being HIV positive.

(b) All health care providers, laboratories and county health departments are required to notify HIV/STD Service surveillance section of all reported cases of HIV and AIDS within 24 hours of diagnosis or notice. Upon receipt of reports to the surveillance section, the information will be entered into the HIV/AIDS database and a Disease Intervention Specialist (DIS) will be assigned to the report for case investigation and performance of PCRS.

(c) PCRS shall, at a minimum, include assisting HIV positive persons with informing their partners about potential exposure to HIV, how the risk of exposure can be decreased or minimized, or if already infected, how transmission to others may be prevented or avoided, and to information that will aid the infected person and his partners to gain access to counseling, testing, medical treatment, prevention and other services. Additionally, PCRS shall include any information that is generally scientifically accepted regarding measures that can be adopted or implemented to prevent the transmission of HIV or AIDS, including:

(1) Abstinence from sexual activity.

(2) If abstinence is not practiced, the correct use of an effective barrier protection device such as a latex condom.

(3) Refraining from sharing intravenous needles or other invasive drug injection devices.

(4) Refraining from the donation of blood, plasma, body organs or other tissue or semen.

(d) PCRS may include, as necessary and indicated, the following recommendations to a HIV positive person:

(1) Regular meetings with a Disease Intervention Specialist to monitor compliance with recommended PCRS.

(2) Seeking or remaining in the care of a physician who can monitor progression of the person's HIV infection, and when indicated by the physician, take such HIV medications, including HAART, that will reduce or stabilize the person's viral load.

(3) Periodic evaluations for tuberculosis, hepatitis, or any recognized form of sexually transmitted disease.

(4) Disclosure to all personal health care providers to or from whom the person seeks or receives care (physicians, dentists, nurses or other health care workers), that the person is HIV-positive.

(5) Disclosure, prior to engaging or contemplating the engagement of any sexual activity or other transmission activity, to all partners or participants, that the person is HIV-positive.

(e) If a person identified as HIV positive or diagnosed with AIDS refuses to voluntarily engage in PCRS is reported to have engaged in sexual activity without observing PCRS recommendations a compliance order will be issued to the person mandating compliance with PCRS recommendations.

[OAR Docket #07-1083; filed 5-18-07]

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

[OAR Docket #07-1083A]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Oklahoma State Board of Health; 63 O.S. Sections 1-105 and 1-2710 et seq.
DATES:
Comment Period:
February 1, 2007 through March 8, 2007
Public Hearing:
March 8, 2007

Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded 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:
November 1, 2006
Register publication:
24 Ok Reg 203
Docket number:
06-1407
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The proposed rule will implement the Oklahoma Dental Loan Repayment Act, 63 O.S. Section 1-2710 et seq., by creating the Oklahoma Dental Loan Repayment Program. The Program is designed to increase the number of dentists serving and caring for those dependent upon the state for dental care and to make dental care accessible to underserved metropolitan and rural areas by providing educational loan repayment assistance to as many as four (4) Oklahoma licensed full time dentists and one full time equivalent faculty dentist per year for a two (2) to five (5) year period per dentist.
CONTACT PERSON:
Michael L. Morgan, DDS, MPA, Chief of Dental Service, Oklahoma State Department of Health, 405-271-5502

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

310:526-1-1. Purpose

This chapter identifies the authority and provides definitions for dental services provided to individuals by the Department.

310:526-1-2. Authority

Oklahoma State Board of Health; 63 O.S. Sections 1-105 and 1-2710 et seq.

310:526-1-3. Definitions

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

"Advisory Committee" means a committee utilized during an Oklahoma Dental Loan Repayment Program (ODLRP) selection process whose responsibilities and makeup are described in these Rules.

"Commissioner" means the Commissioner of Health of the Oklahoma State Department of Health or his/her designee.

"Contract" means a written agreement between the participating dentist and the Oklahoma State Department of Health upon the dentist's acceptance into the Oklahoma Dental Loan Repayment Program (ODLRP.)

"Dental Health Professional Shortage Area" or **"DHPSA"** means a location in Oklahoma that has been officially designated, on or about January 1 of each year, as experiencing special dental health problems and dentist practice patterns that limit access to dental care.

"Dental Service" means the Dental Program of the Oklahoma State Department of Health.

"Dental services" means the provision of diagnostic, preventive, restorative, emergency and palliative services provided by licensed general or pediatric dentists. The provision of dental services includes a reasonable amount of time for performing tasks related to the service, such as record-keeping.

"Dentist" means a person who is licensed to practice dentistry by the Oklahoma Board of Dentistry.

"Dentistry" means the practice of dentistry by a dentist as defined in the latest editions of the Oklahoma State Dental Act and the Oklahoma Board of Dentistry Rules and Regulations.

"Department" means the Oklahoma State Department of Health.

"Educational expenses" means all or part of the principal and interest of an educational loan which has been taken out by an individual that meets eligibility criteria for the Program.

"Medicaid dental provider" means a dentist who has fulfilled the Oklahoma Health Care Authority requirements to be reimbursed fees for services provided to the Title XIX Medicaid population.

"Medicaid patient" means a patient enrolled, at the time of dental treatment, in the State Title XIX Medicaid Program as administered by the Oklahoma Health Care Authority.

"New dental school graduate" means a dentist who has graduated from an accredited U.S. dental school during the last three years prior to the effective funding cycle for which applicant is submitting an application for the ODLRA Program.

"ODLRA" means the Oklahoma Dental Loan Repayment Act.

"ODLRP" means the Oklahoma Dental Loan Repayment Program.

"Oklahoma Health Care Authority" or **"OHCA"** means the state agency responsible for the Title XIX Medicaid Program in Oklahoma.

"Participating dentist" or **"participant"** means a dentist selected to participate in the Program and who has an effective ODLRP contract with the Department.

"Patient" means the unduplicated count of individuals treated at an approved practice site.

"Program" means the Oklahoma Dental Loan Repayment Program.

"Service obligation" means the terms established by the contract as defined by the Department and may include options to renew for up to a total participation in the Program of five (5) years.

SUBCHAPTER 3. OKLAHOMA DENTAL LOAN REPAYMENT PROGRAM

310:526-3-1. Purpose

The rules in this subchapter implement the Oklahoma Dental Loan Repayment Act, 63 O.S. Section 1-2710 et seq. The purpose of this rule is to create a program designed to increase the number of dentists serving and caring for those dependent upon the state for dental care and to make dental care accessible to underserved metropolitan and rural areas by providing educational loan repayment assistance to qualified service providers.

310:526-3-2. Description and operation of the Program

(a) **Department's equal opportunity policies applicable.** The Department's Dental Service will administer the Oklahoma Dental Loan Repayment Program in accordance with the Department's policies governing equal opportunity and access to programs, services and activities.

(b) **General operation of the Program.** The Program will provide educational loan repayment assistance to as many as four (4) Oklahoma licensed full time dentists and one full time equivalent faculty dentist per year for a 2 to 5 year period per dentist. The Program will provide prorated educational loan repayment assistance based upon the percentage of time worked up to one dentist full time equivalent entering or participating in the Program each year agreeing to teach at the University of Oklahoma College of Dentistry if applicable faculty positions are available.

(c) **Determining individual awards.** The amount of award, not to exceed $25,000 per year for each participating full time dentist, shall be determined by the Department annually based upon the amount of funds appropriated to the Department. If the participating dentist's eligible loans are less than the cumulative repayment assistance total available over 5 years, that participating dentist shall be in the Program no longer than required to pay off the total eligible loans and shall not receive more funding assistance than the total eligible indebtedness.

(d) **Distributing the awards.** Each award shall be distributed to the participating dentist by two-party drafts made payable to the dentist and the appropriate loan agency in equal monthly disbursements throughout the service obligation.

(e) **Default.** If the participating dentist does not fulfill the terms of the service obligation, the Department may collect from the participant the entire amount of loan repayment assistance extended to the participant under the Program, plus interest.

310:526-3-3. Eligibility to participate in the Program

(a) **Eligibility requirements common to both non-faculty and faculty participants.** Eligibility for repayment assistance for non-faculty and faculty participants requires compliance with the following requirements:

(1) receipt or award of a dental degree from an accredited United States dental school within the previous three (3) years;

(2) completion of all requirements to receive or be awarded an active unrestricted license to practice dentistry in the State of Oklahoma at the time the service obligation begins; and,

(3) a financial need with outstanding eligible dental school loans.

(b) **Additional eligibility requirements for non-faculty participants.** Eligibility for repayment assistance for non-faculty participants requires compliance with the following additional requirements:

(1) an established practice, or the commitment to establish a practice, located in an Oklahoma DHPSA;

(2) fulfillment of all applicable requirements of the Oklahoma Health Care Authority to qualify as a Medicaid Dental Provider at the time the service obligation begins;

(3) agree that a minimum of 30% of patients treated during the service obligation/contract period are Medicaid recipients at the time of treatment; and,

(4) maintain a full time general or pediatric dental practice at the established practice described in the service contract.

(c) **Additional eligibility requirements for faculty participants.** Eligibility for repayment assistance for faculty participants requires compliance with the additional requirement of abiding by the rules and regulations for a faculty member, and the job duties assigned by the Dean of the University of Oklahoma College of Dentistry.

(d) **Limitations upon eligibility common to both non-faculty and faculty participants.** A non-faculty or faculty participant's eligibility may be rescinded or terminated if any of the following conditions occur:

(1) a breach of an obligation for service to a federal, state, or local government entity;

(2) an obligation for service to a federal, state, or local government entity that will interfere with the fulfillment of the requirements of the Program that remains unsatisfied; or,

(3) default or material breach of an agreement to repay a higher education loan or borrowing agreement.

(e) **Additional considerations.**

(1) Preference will be given to graduates of the University of Oklahoma College of Dentistry.

(2) An eligible practice site is a solo, group, or incorporated private practice, and any federal, state, local, or private for-profit or nonprofit dental facility.

(3) To qualify for the 30% minimum Medicaid recipient requirement the participant must use an unduplicated count of the patients treated during the service obligation. The 30% requirement will be monitored monthly, but the participant will be deemed to be compliant if the yearly average is 30% or greater.

(f) **Eligible loans.** Loans eligible for repayment assistance are any loans for educational expenses while attending dental school from a college, university, government, commercial source, or an organization, institution, association, society, or corporation that is exempt from taxation under 501(c)(3) or (4) of the Internal Revenue Code of 1986. The ODLRP participant must be able to provide, upon request, documentation that commercial loans were used for payment of educational expenses.

310:526-3-4. Procedures for administering the Program

The Program shall develop dental loan repayment procedures as may be necessary to carry out the administration of the Program. The Program shall delineate the following procedures:

(1) **Dental Health Professional Shortage Areas (DHPSA).** Dental health professional shortage areas for Oklahoma shall be established by the Commissioner using the following criteria.

(A) Those counties with less than the federally recommended target for the percentage of Medicaid enrollees who should receive dental services each year.

(B) Those counties for which the number of Medicaid enrollees under the age of 21 per Medicaid dental provider multiplied by the federally recommended target is equal to or greater than 30% of the average number of unduplicated patients in a general dentistry practice.

(C) Effective January 1, 2008, those counties for which the number of Oklahoma residents in the general population under age 21 per Oklahoma licensed general practice or pediatric dentist, multiplied by the federally recommended target, is equal to or greater than the number of patients under age 21 in an average dental practice.

(2) **Applications.** All interested new dental school graduates shall file an application with the Department. This application can be submitted at any time during the year. Applications may be printed from the internet or are available in the Dental Service office of the Oklahoma State Department of Health.

(3) **Approval by the Department.** Applications shall be reviewed by the Advisory Committee. Following this review, the Advisory Committee will forward their recommendations to the Department. Applications will be approved or declined as determined by the Department.

(4) **Renewal of loan repayment contracts.** The original loan repayment contract may be renewed for up to a total participation in the Program of five (5) years, contingent upon funding from the Legislature and continued approval of the Department based upon the dentist's performance and recommendations of the Advisory Committee if requested.

(5) **Advisory Committee.** The Department will appoint and convene an Advisory Committee to assist in the dental loan repayment process. The Advisory Committee shall include five (5) members with representation from the Oklahoma Dental Association, the University of Oklahoma College of Dentistry, the Oklahoma Health Care Authority, the Oklahoma Board of Dentistry, and the Oklahoma Children's Oral Health Coalition. The Advisory Committee is responsible for reviewing the eligible applicants, as determined by the Department, and making recommendations to the Department. The Department makes the final selection of Program participants.

310:526-3-5. Applicant Contracts

(a) Each applicant, before being granted loan repayment assistance under the Program, shall enter into a contract with the Department agreeing to the terms and conditions upon which the aforementioned assistance shall be granted to the applicant.

(b) The participant shall fulfill all contractual obligations outlined, referenced or described in the contract.

(c) The contract shall be signed by the Commissioner, or the Commissioner's designee, on behalf of the Department, and by the applicant.

(d) The Department may file suit against any participant for any balance due the Department for any contract, or portion thereof, that is unfulfilled or breached by the participant. The Department may cancel or amend any contract made between it and the participant upon cause deemed sufficient by the Department.

310:526-3-6. Annual Report

The Department shall present a report on the Program to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate within one month of the beginning of each regular session of the Legislature.

[OAR Docket #07-1083A; filed 5-18-07]

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

[OAR Docket #07-1084]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
310:527-1-1 through 310:527-1-5 [NEW]
AUTHORITY:
Oklahoma State Board of Health; 63 O.S. §§ 1-105 and 1-740.11-12
DATES:
Comment Period:
February 1, 2007 through March 8, 2007

Public Hearing:
March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
310:527-1-1 through 310:527-1-5 [NEW]
Gubernatorial approval:
November 1, 2006
Register publication:
24 Ok Reg 206
Docket number:
06-1408
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
This proposed rule will establish and implement the program to facilitate funding to nongovernmental entities that provide alternatives-to-abortion services.
CONTACT PERSON:
Annette Jacobi, Chief, Family Support & Prevention Service, Oklahoma State Department of Health, (405) 271-7611

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

310:527-1-1. Purpose

The purpose of this chapter is to provide definitions and eligibility requirements for the establishment and implementation of the program to facilitate funding to nongovernmental entities that provide alternatives-to-abortion services.

310:527-1-2. Definitions

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

*"**Alternatives to Abortion Services**" means those services that promote childbirth instead of abortion by providing information, counseling, and support services that assist pregnant women or women who believe they may be pregnant to choose childbirth and to make informed decisions regarding the choice of adoption or parenting with respect to their children. [63 O.S. § 1-740.11]*

"Department" means the Oklahoma State Department of Health.

310:527-1-3. Services

(a) Alternatives-to-abortion services must focus on positive outcome-based results that are measurable and relate to promoting childbirth, adoption or parenting of children.

(b) Alternatives-to-abortion services may include, but are not limited to: medical care, nutritional services, housing assistance, adoption services, educational and/or employment assistance, child care assistance, and parenting education and support services. [63 O.S. § 1-740.11]

(c) Services will be made available without requirement for age, sex, race, religion, nationality, marital status or pregnancy history.

(d) Services may be provided from the time a woman is pregnant, or believes she is pregnant, through the first year following the birth of her child.

310:527-1-4. Eligibility Requirements

(a) To be eligible to receive alternatives-to-abortion funding, organizations must provide services that promote childbirth by providing information, counseling and support services that assist pregnant women or women who believe they may be pregnant to choose childbirth and to make informed decisions regarding the choice of adoption or parenting with respect to their children.

(b) Any organization or affiliate of an organization that provides or promotes abortion or directly refers for abortion shall not be eligible to receive alternatives-to-abortion funding. Organizations that provide nondirective counseling relating to a pregnancy will not be disqualified from receiving these funds. [63 O.S. § 1-740.12]

(c) The Department may not contract for alternatives-to-abortion services with an adoption agency that is not licensed by the State. [63 O.S. § 1-740.11]

310:527-1-5. Alternatives-to-Abortion Services Revolving Fund

Awards to organizations providing alternatives-to-abortion services shall be made from the Alternatives-to-Abortion Services Revolving Fund in accordance with the Central Purchasing Act.

[OAR Docket #07-1084; filed 5-18-07]

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

[OAR Docket #07-1085]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Childhood Immunizations
310:535-1-2 [AMENDED]
310:535-1-3 [AMENDED]
AUTHORITY:
Oklahoma State Board of Health; 70 O.S.2001, §§ 1210.191 et seq.; 10 O.S.2001, § 412; 63 O.S.2001, § 1-104; 63 O.S.2001, § 1-502

DATES:
Comment Period:
February 1, 2007 through March 8, 2007
Public Hearing:
March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
This rule change adds pneumococcal conjugate vaccine to the childcare requirements; changes the minimum intervals between doses of Hib vaccine from months to weeks; changes the requirements for children who are past the recommended age for DTaP to allow use of the vaccines recommended for the student's current age to complete the DTaP series; and revises the requirement for polio vaccine for students who are 18 years of age and older.
CONTACT PERSON:
Susan Mendus, M.P.H. Immunization Service, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-4073; facsimile: (405) 271-6133; electronic mail: susanm@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. CHILDHOOD IMMUNIZATIONS

310:535-1-2. Criteria for immunizations required

(a) Each child shall present certification that he or she has received or is receiving the immunizations as specified below before he or she is admitted to any public, private, or parochial school.

(b) Certification shall include the following:

(1) Diphtheria, Tetanus and Pertussis (DTP/DTaP) vaccine in five doses unless the fourth dose is received on or after the fourth birthday in which case only four doses are required. <u>If the doses are not completed by the seventh birthday, the series must be completed with Adult Td vaccine and/or Tdap vaccine based on the individual's age at the time the first dose was received and age at the time the series is completed.</u>

(2) Poliomyelitis vaccine in four doses unless the last dose is on or after the fourth birthday in which case only three doses are required. <u>If the doses are not started or completed by the eighteenth birthday, no additional doses are required.</u>

(3) Measles, Mumps and Rubella (MMR) vaccine with the first dose on or after the first birthday and the second dose at least twenty-eight days thereafter for children in grades kindergarten through eighth grade in the school year beginning in 1998. In the school year beginning in 1999, this requirement shall apply to the children through the ninth grade. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2002, children in all grades shall be required to have the second dose of vaccine.

(4) Hepatitis B vaccine in three doses for students of any age or two doses for students eleven through fifteen years of age who complete the alternative dosage schedule providing that the alternative schedule is fully documented. Such documentation must include the name of the vaccine and the dosage received for each dose of that vaccine:

(A) before entering seventh and eighth grades in 1998. In the school year beginning in 1999, this requirement shall apply to the children entering the seventh through ninth grades. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2002, children in grades seven through twelve shall be required to have the three doses of the vaccine.

(B) before entering kindergarten in 1998. In the school year beginning in 1999, this requirement shall apply to the children entering kindergarten and first grade. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2004, all children entering school shall be required to have the three doses of the vaccine.

(5) Hepatitis A vaccine in two doses with the first dose on or after the first birthday and the second dose six to eighteen calendar months later:

(A) before entering kindergarten in 1998. In the school year beginning in 1999, this requirement shall apply to the children entering kindergarten and first grade. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2004, all children entering school shall be required to have the two doses of the vaccine.

(B) before entering grade seven in 1998. In the school year beginning in 1999, this requirement shall apply to the children entering the seventh and eighth grade. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2003, children in grades seven through twelve shall be required to have the two doses of the vaccine.

(6) Varicella (chickenpox) vaccine in one dose on or after the first birthday: before entering kindergarten in 1998. In lieu of vaccination, a parent's statement of a history of the disease chickenpox will be accepted. In the school year beginning in 1999, this requirement shall

apply to the children entering kindergarten and first grade. Each year thereafter the requirement shall be extended one grade level so that in the school year beginning in 2010, all children entering school shall be required to have the vaccine or a parent's statement of a history of the disease chickenpox.

(c) The minimum intervals between doses and minimum ages for doses shall be as follows:

(1) DTP/DTaP:

(A) First and second dose - 4 weeks

(B) Second and third dose - 4 weeks

(C) Third and fourth dose - 4 months

(D) Fourth and fifth dose - 6 months

(E) For all fifth doses given after January 1, 2003 the minimum age for the fifth dose is 4 years of age

(2) Polio:

(A) First and second dose - 4 weeks

(B) Second and third dose - 4 weeks

(C) Third and fourth dose - 4 weeks

(3) MMR: First and second dose - 4 weeks

(4) Hepatitis B 3-dose series:

(A) First and second dose - 1 month (4 weeks)

(B) Second and third dose - 2 months (8 weeks), and the third dose at least 4 months (16 weeks) after first dose, and the third dose not before 24 weeks of age

(5) Hepatitis B 2-dose series: First and second dose - 4 months

(6) (6) Hepatitis A: First and second dose -- 6 months and for all doses given on or after January 1, 2003, 6 months will be defined as 6 calendar months

(7) Four day grace period: Vaccine doses administered 4 days or less before the minimum intervals or ages listed in the preceding sections will be counted as valid.

(d) A child, through his parent or guardian, may apply for an exemption from this requirement by submitting a form to the school. The school shall maintain a copy of the application in the child's records and send a copy to the Department for approval.

(1) A request for exemption for medical reasons shall contain a certificate signed by a physician stating that the physical condition of the child is such that the immunization would endanger the life or health of the child and that the child should be exempt for immunization.

(2) A request for exemption for religious or other personal reasons shall contain a signed written statement from the parent or guardian stating a summary of the objections. Lost or unobtainable immunization records are not a ground for personal exemption.

(e) A child participating in a pre-kindergarten school program shall have received or be in the process of receiving the appropriate immunization for the listed diseases based on the child's age.

(f) The Department may grant exemptions or substitutions in the immunization schedule based on a medical history of a physical condition such that the immunization would endanger the life or health of the child or a medical history stating the child is likely to be immune as a result of having had a vaccine-preventable disease if the following are met:

(1) A history of having had diphtheria and/or tetanus is not acceptable as proof of immunity since infection with diphtheria or tetanus may not render an individual immune to either of these diseases,

(2) A history of having had polio, pertussis, rubella, mumps, hepatitis B, or hepatitis A must be supported by laboratory evidence to be acceptable as proof of immunity to these diseases,

(3) A history of having had measles must be accompanied by a statement from a physician, public health authority, or laboratory evidence to be acceptable as proof of immunity to measles,

(4) A parental history of having had varicella is acceptable evidence of immunity to varicella.

(g) Haemophilus influenzae type B (Hib) vaccine is not a requirement for children attending pre-kindergarten, kindergarten, or school.

(h) In some circumstances, the United States Food and Drug Administration may approve the use of an alternative dosage schedule for an existing vaccine. These alternative schedules may be used to meet the requirements only when the alternative schedule is fully documented. Such documentation must include the name of the vaccine and dosage received for each dose of that vaccine.

310:535-1-3. Criteria for immunizations required for day care

(a) Each child two months of age or older shall present certification that he or she has received or is receiving the immunizations as specified below before he or she is admitted to, and while enrolled in, a day care center or day care home.

(b) Certification shall include the following:

(1) 5 DTaP/DTP doses at 2, 4, 6, and 12 to 18 months and 4 to 6 years or beginning at 6 weeks of age with minimum intervals of 4 weeks between doses 1 and 2 and doses 2 and 3 and 4 months between doses 3 and 4 and 6 months between doses 4 and 5, with all fifth doses given on or after January 1, 2003 given on or after the fourth birthday; The fifth DTaP/DTP is not required if the fourth DTaP/DTP is administered on or after the fourth birthday;

(2) 4 Polio doses at 2, 4 and 6 to 18 months and 4 to 6 years or beginning at 6 weeks of age with minimum intervals of 4 weeks between all doses; The fourth Polio is not required if the third dose is given on or after the fourth birthday;

(3) 1 to 4 Haemophilus influenzae type B (Hib) doses at 2, 4, 6, and 12 to 15 months of age or older depending upon age at first Hib immunization and type of vaccine used or beginning at 6 weeks of age with minimum intervals of ~~1 month~~4 weeks between doses 1, 2, and 3, if a third dose is part of the primary series, and the booster dose no earlier than 12 months of age and at least ~~2 months~~8 weeks after the previous dose;

(4) 2 Measles, Mumps, Rubella doses with the first dose on or after the first birthday and the second dose at 4

to 6 years or at anytime after the first dose provided at least 4 weeks have elapsed since the receipt of the first dose;

(5) 1 Varicella dose on or after the first birthday;

(6) 2 Hepatitis A doses with the first dose on or after the first birthday and the second dose six to eighteen months later and for all doses given on or after January 1, 2003, 6 months will be defined as 6 calendar months;

(7) 3 Hepatitis B doses with minimum intervals as follows: 1 month (4 weeks) between doses 1 and 2, two months (8 weeks) between doses 2 and 3, four months (16 weeks) between doses 1 and 3, and dose 3 no earlier than 24 weeks of age;

(8) 1 to 4 doses of pneumococcal conjugate vaccine (PCV) for children 2 months through 59 months of age at 2, 4, 6, and 12 to 15 months of age or older depending upon age at first PCV immunization with minimum intervals between doses as follows: 4 weeks between doses 1, 2, and 3 and 8 weeks between doses 3 and 4 or any dose given as the final dose at age >12 months.

(9) Vaccine doses administered 4 days or less before the minimum intervals or ages listed in the preceding sections will be counted as valid.

(c) In the event that the parent, guardian, or responsible adult presenting a child for admission to a child care facility certifies in writing that a family emergency exists, the immunization requirements shall be waived for a period not to exceed thirty days. No such waiver shall be knowingly permitted more than once for any child.

(d) Immunization records for children attending school-age programs are not required if those records are maintained by the school and are readily available.

(e) A child, through his parent or guardian, may apply for an exemption from this requirement by submitting a form to the day care center or day care home. The day care center or day care home shall maintain a copy of the application in the child's records and send a copy to the Department for approval.

(1) A request for exemption for medical reasons shall contain a certificate signed by a physician stating that the physical condition of the child is such that the immunization would endanger the life or health of the child and that the child should be exempt for immunization.

(2) A request for exemption for religious or other personal reasons shall contain a signed written statement from the parent or guardian stating a summary of the objections. Lost or unobtainable immunization records are not a ground for personal exemption.

(f) The Department may grant exemptions or substitutions in the immunization schedule based on a medical history of a physical condition such that the immunization would endanger the life or health of the child or a medical history stating the child is likely to be immune as a result of having had a vaccine-preventable disease if the following are met:

(1) A history of having had diphtheria and/or tetanus is not acceptable as proof of immunity since infection with diphtheria or tetanus may not render an individual immune to either of these diseases;

(2) A history of having had polio, pertussis, rubella, mumps, or hepatitis A must be supported by laboratory evidence to be acceptable as proof of immunity to these diseases;

(3) A history of having had measles must be accompanied by a statement from a physician, public health authority, or laboratory evidence to be acceptable as proof of immunity to measles;

(4) A parental history of having had varicella is acceptable evidence of immunity to varicella.

(5) A history of having had Hib before age two years is not acceptable as proof of immunity since infection with Hib prior to age two years may not render an individual immune.

[OAR Docket #07-1085; filed 5-18-07]

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

[OAR Docket #07-1086]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Reporting
310:567-3-2 [AMENDED]
AUTHORITY:
Oklahoma State Board of Health; 63 O.S. 1991, §1-551.1 and 1-552
DATES:
Comment Period:
February 1, 2007 through March 8, 2007
Public Hearing:
March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
This proposal will add the requirement for reporting Nonmalignant Central Nervous system tumors.
CONTACT PERSON:
Adeline Yerkes, Chief of Chronic Disease Service, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-4072; facsimile: (405) 271-6315 electronic mail: AdelineY@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED

FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 3. REPORTING

310:567-3-2. Diseases to be reported

All types of cancer will be considered as reportable disease. This will include all skin cancers and the following precancerous and in situ cases:

(1) Moderate or greater cervical dysplasia and carcinoma in situ of the cervix uteri.

(2) Carcinoma in situ of the female breast.

(3) Nonmalignant Central Nervous System tumors.

[OAR Docket #07-1086; filed 5-18-07]

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

[OAR Docket #07-1087]

RULEMAKING ACTION:
PERMANENT final adoption
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, Actions
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]
AUTHORITY:
Oklahoma State Board of Health; 63 O.S. Section 1-104; 63 O.S., Section 1-2501 et seq.
DATES:
Comment Period:
February 1, 2007 through March 8, 2007
Public Hearing:
March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The proposed changes update and add definitions, allow voluntary downgrades of ambulance service licensure, expand allowable service areas for stretcher aid vans, add requirements for expansions of emergency ambulance service areas, ambulance manufacturers compliance certifications, air ambulance provider safety groups, stretcher aid van markings, and ground ambulance insurance verifications, exempt non-emergency interfacility transfers from the "duty to act" requirements for immediate ambulance response, expand data submission timelines, consolidate licensure requirements and lower some fees, allow testing of emergency medical responders (EMRs) by Oklahoma Career Tech, establish an EMR registry, add aspirin administration to the allowed EMR skills and clarify requirements for EMS training institutions.
CONTACT PERSON:
R. Shawn Rogers, Director, Emergency Medical Service, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299; telephone: (405) 271-4027; facsimile: (405) 271-4240 electronic mail: shawnr@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 3. AMBULANCE SERVICES

PART 1. GENERAL PROVISIONS

310:641-3-2. Definitions

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

"ACLS" means Advanced Cardiac Life Support.

"Act" means the "Oklahoma Emergency Response Systems Development Act".

"Advanced Life Support (ALS) Emergency Medical Services Training Program" means an organization approved by the Department to conduct the following ALS training: Emergency Medical Technician Intermediate, Emergency Medical Technician Intermediate Refresher, Emergency Medical Technician Paramedic, Emergency Medical Technician Paramedic Refresher, Continuing Education at the Emergency Medical Technician Intermediate and Paramedic levels, and such other courses of instruction that may be designated by the Department.

"AMLS" means Advanced Medical Life Support.

"ATLS" means Advanced Trauma Life Support.

"Base Station" means the primary location from which ambulances and crews respond to emergency calls on twenty-four (24) hour basis. The Base Station may include the principal business office, living quarters for personnel, training institution, and/or communications center.

"Basic Life Support (BLS) Emergency Medical Services Training Program" means an organization approved by the Department to conduct the following BLS training: First Responder, First Responder Refresher, Emergency Medical Technician Basic, Emergency Medical Technician Basic Refresher, Continuing Education at the Emergency Medical Technician Basic level, and such other courses of instruction that may be designated by the Department.

"BLS" means Basic Life Support, and includes cardiopulmonary resuscitation (CPR) and utilization of Semi-Automated advisory defibrillator (SAAD).

"BTLS" means Basic Trauma Life Support.

"Board" means the State Board of Health.

"Certificate" means any certification or certificate issued by the Department, pursuant to the Act, or this Chapter.

"Clinical Coordinator" means the individual designated in writing by a training program as responsible for coordination and supervision of clinical experiences.

"Clinical Experience" means all supervised learning experiences required and included as part of a training course in which the student provides or observes direct patient care. This includes vehicular experiences with a licensed ambulance service.

"Council" means the Oklahoma Emergency Response Systems Development Advisory Council.

"Department" means the State Department of Health.

"Distance Learning" is classroom instruction of didactic portions of curriculum which requires simultaneous participation of the instructor and students but does not require the students to be physically present in the same location as the instructor.

"Distributive Education" is instructional delivery of didactic portions of curriculum which is independent of time and place.

"DOT" means the United States Department of Transportation.

"Division" means the Emergency Medical Services Division.

"Emergency medical personnel" means all certified and licensed personnel which provide emergency medical care for an ambulance service.

"Emergency medical responder" means a person who has successfully completed a state-approved course using the national standard emergency medical responder curriculum and passed a competency-based examination from a state approved testing agency such as the National Registry of EMT's.

"EMS" means Emergency Medical Services.

"Emergency medical technician" EMT means an individual licensed by the Department as Basic, Intermediate, ~~Advanced Cardiac~~, or Paramedic.

"EMT-B" means Emergency Medical Technician-Basic as licensed pursuant to the Act, or this Chapter.

"EMT-I" means Emergency Medical Technician-Intermediate as licensed pursuant to the Act, or this Chapter.

"EMT-P" means Emergency Medical Technician-Paramedic as licensed pursuant to the Act, or this Chapter.

"Emergency Medical Dispatcher (EMD)" means a person trained using a Department-approved curriculum for the management of calls for emergency medical care.

"Emergency transfer" means the movement of an acutely ill or injured patient from the scene to a health care (pre-hospital),or the movement of an acutely ill or injured patient from one health care facility to another health care facility (inter-facility).

"En Route Time" means the elapsed time from the time the emergency call is received by the EMS agency until the ambulance and complete crew is en route to the scene of the emergency.

"License" means any license issued by the Department, pursuant to the Act, or this Chapter.

"NHTSA" means National Highway Traffic Safety Administration.

"National Registry" means the National Registry of Emergency Medical Technicians, Columbus Ohio.

"Non-emergency transfer" means the movement of any patient in an ambulance other than an emergency transfer.

"PALS" means Pediatric Advanced Life Support.

"PEPP" means Pediatric Education for the Prehospital Professional.

"PHTLS" means Prehospital Trauma Life Support.

"PIC" means Pilot in Command

"PPC" means Prehospital Pediatric Care.

"Post" means a location where an ambulance may be positioned for an unspecified period of time while awaiting dispatch.

"Preceptor" means an individual with education, experience and expertise in healthcare and approved by a training program to supervise and provide instruction to EMS students during clinical experiences.

"Program Administrator" means the individual designated in writing by a training program as responsible for all aspects of EMS training.

"Program Coordinator" means the individual designated in writing by a training program as responsible for all

aspects of a specified course(s) or EMS program. This individual shall have at least two (2) years experience of full-time equivalent employment as a healthcare practitioner.

"Response time" means the time from which a call is received by the EMS agency until the time the ambulance and complete crew arrives at the scene, unless the call is scheduled in advance.

"Statewide Ambulance coverage area" means a map of all ambulance response areas, maintained by the Department.

"Stretcher aid van" means any ground vehicle which is or should be approved by the State Commissioner of Health, which is designed and equipped to transport individuals on a stretcher or gurney type apparatus [63 O.S. § 1-2503].

"Stretcher aid van patient" means any person who is or will be transported in a reclining position on a stretcher or gurney, who is medically stable, non-emergent and does not require any medical monitoring equipment or assistance during transport [63 O.S. § 1-2503].

"Substation" means a permanent structure where a(an) ambulance(s) is/are stationed and available for ~~emergency~~ calls on a twenty-four (24) hour basis.

"Training" means that education which is received through training programs as authorized by emergency medical services rule and regulation for training programs (Subchapter 7 of this Chapter).

"Transfer" means the movement of a patient in an ambulance.

"Trauma transfer and referral center" means an organization certified by the Department and staffed and equipped for the purpose of directing trauma patient transfers within a region that consists of a county with a population of three hundred thousand (300,000) or more and its contiguous communities, and facilitating the transfer ~~or~~ of trauma patients into and out of the region for definitive trauma care at medical facilities that have the capacity and capability to appropriately care for the emergent medical needs of the patient.

PART 3. AMBULANCE SERVICES

310:641-3-11. Issuance of a ground ambulance license

(a) A license may be issued for basic life support, intermediate life support, paramedic life support, specialty care, or stretcher aid vans.

(1) Basic life support means that the ambulance service vehicles are equipped with the minimum basic equipment, and staffed with at least one EMT-Basic on each request for emergency medical services.

(2) Intermediate life support means that the ambulance service vehicles are equipped with the minimum intermediate equipment, and staffed with at least one EMT-I on each request for emergency medical services, except as specified in 310-641-3-15(a)(2).

(3) Paramedic life support means that the ambulance service vehicles are equipped with the minimum paramedic equipment, and staffed with at least one EMT-P on each request for emergency medical services, except as specified in 310-641-3-15(a)(2).

(b) The license shall be issued only for the name, service area (area of coverage), level, and type of service given in the application.

(c) The license is not transferable or assignable.

(d) The initial license period shall expire the second June 30th, following the date of issue. Subsequent renewal periods shall be twenty-four (24) months, or two (2) years.

(e) A temporary license, not to exceed one hundred twenty (120) days and for one (1) time only, may be issued by the Department. A temporary license may be issued to an applicant who substantially meets all requirements and may be granted only for an area of Oklahoma that may otherwise be without ambulance service. Sole determination for a temporary license shall be made by the Department and based upon the following:

(1) The safety, need, and well-being of the public and general populace to be served by the ambulance service;

(2) The availability of personnel in the area, and equipment of the ambulance service;

(3) The financial ability of the applicant to meet the minimum standards of emergency medical services law;

(4) The number of estimated runs to be made by the ambulance service;

(5) The desire of the community(ies) to be served.

(f) The original, or a copy of the original, license shall be posted in a conspicuous place in the principal business office. If an office, or other public place is not available, then the license shall be available to anyone requesting to see the license, during regular business hours.

(g) A licensed ambulance service may request a voluntary downgrade of its ambulance service license to certification as Emergency Medical Response Agency. The Department shall verify that the agency can maintain the requirements for Emergency Medical Response Agency Certification. No fee shall be required for such a downgrade.

(~~g~~h) The Department shall have the authority to upgrade or downgrade an advanced life support ambulance provider's license upon evidence that the license no longer meets existing license requirements for that level of care. Under no circumstance shall a downgrade be for less than basic life support, and during the time of a downgrade the service shall operate on State protocols. In order to return to a level of advanced life support, the service shall provide the Department written evidence that they now meet the requirements for a higher level of care. A fee of fifty ($50.00) dollars shall be required for reinstatement.

310:641-3-14. Severance of action, amendment, and re-instatement

(a) The issuance or renewal of a license after notice of a violation(s) has been given, shall not constitute a waiver by the Department of its power to rely on the violation(s) for subsequent license revocation or other enforcement action which may arise out of the notice of violation(s).

(b) Any change in the name of the service, level, service area, addition of substation, or type of service shall necessitate an application to amend the license and shall be accompanied by a fee of one hundred dollars ($100.00).

(c) Addition of a substation that expands the service area shall comply with 310:641-3-11.

(~~c~~d) If an existing license is placed on probation or suspension, a fee of one hundred ($100.00) dollars, in addition to any other provision of the action, shall be submitted prior to re-instatement of the license to full privilege.

310:641-3-15. Ground ambulance service - personnel staffing

(a) Each licensed ground ambulance service shall be staffed and available to respond to any request for service within the primary service area twenty-four (24) hours per day.

(b) Each ground ambulance service shall have on staff an adequate number of emergency medical personnel and a sufficient number of ambulances available in order to be en route to 90% of all emergency calls within five (5) minutes of the time the call is received in dispatch at the highest level of care for which the service is licensed.

(1) The request for emergency medical services shall be considered "received in dispatch" as soon as sufficient information has been received to allow appropriate response, i.e., location of the emergency and nature of the call.

(2) Staff licensed below the level of the ambulance service may be utilized provided one or more of the following conditions have been met:

(A) The request for service has been screened by a Department approved emergency medical dispatch system, or

(B) The patient is to be transported from a higher to a lower level of care, or

(C) The transport is approved in writing by the transferring physician at a specified lower level of care and scheduled in advance.

(c) Under no circumstance during the transport of an ambulance patient shall the attendant be less than a licensed emergency medical technician basic;

(d) In addition to the requirement of licensed emergency medical technicians, each ground ambulance service shall have drivers who, at a minimum, are certified as ~~a~~an ~~First~~Emergency Medical Responder. All drivers of a ground ambulance service shall successfully complete an emergency vehicle operator course approved by the Department within 120 days of employment. Emergency vehicle operators shall successfully complete a refresher course approved by the Department every two (2) years.

(e) In an unique and unexpected circumstance, including a disaster, the minimum driver requirement may be altered to facilitate a transport of an ambulance patient. The attendant, who is in charge of the vehicle while a patient is on board, may request a law enforcement officer or a firefighter, familiar with the operation of an authorized emergency vehicle, to drive the vehicle. If this option is utilized, a written report of the circumstances, reason, and any other pertinent information regarding the call shall be forwarded to the Division within ten (10) working days. Abuse and/or re-occurring incidents of this nature shall require a reassessment of the service's staff and staffing patterns. The service may be required to obtain additional personnel or other action by the Department may result.

(f) Only emergency personnel authorized by this Act, except for a physician, shall be utilized by an ambulance service for pre- hospital, or on-scene, patient care and transport. In some cases, involving inter-hospital transfer of an ambulance patient(s), a physician, physician assistant (PA), nurse practitioner, respiratory care practitioner, registered nurse or licensed practical nurse may be required to assist the emergency medical technician because the medical care required exceeds the level of the ambulance service personnel. If this option is utilized, written orders by a physician, and/or documentation of orders given via radio or telephone contact with a physician, shall become a part of the ambulance patient run report.

PART 5. GROUND TRANSPORT VEHICLES

310:641-3-20. New vehicles

(a) A used vehicle which has new ownership, or a new vehicle which is of first registration, either leased, contracted for, or purchased on or after July 18, 1991, shall conform to the General Service Administration (GSA) specifications KKK-A-1822, as amended and as in effect at the time of manufacture. These requirements shall not apply to stretcher aid vans.

(b) Copies of the GSA KKK-A-1822, and their respective dates of effect, may be obtained from the Department. These several specifications are as follows:

(1) KKK-A-1822, effective January 2, 1974;

(2) KKK-A-1822A, effective April 1, 1980;

(3) KKK-A-1822B, effective June 1, 1985;

(4) KKK-A-1822C, effective January 1, 1990;

(5) KKK-A-1822D, effective November 1, 1994;

(6) KKK-A-1822E, effective June 1, 2002; and

(7) any future GSA KKK-A-1822 specification, as may be issued.

(c) The business name, and/or a logo of the licensed ambulance service shall be placed on each side and the rear of the vehicle, and shall be at least three (3") inch high letters.

(d) The phrase "unless otherwise specified" shall mean that only the options printed within the respective KKK-A-1822 document are available for this purpose, specification, substitution, or option.

(e) Ambulance vehicles shall be exempt from the section of the KKK specifications which specifies color, emblems and markings.

(f) Specification KKK-A-1822 1.1.3 which requires the ambulance manufacture, or vendor who sells the vehicle, to furnish to the purchaser(s) a "Star of Life" certificate label, which shall be affixed in the oxygen compartment.

(g) Any vehicle initially placed in service after a purchase, lease, contract and/or remount shall be inspected, and approved and permitted under Section 310:641-3-22(e) of this Chapter, by the Department prior to utilization.

(h) Any part of a ground ambulance vehicle which is remounted by a professional remounting service shall meet the

KKK-A-1822 specifications. This includes the proper placement, or replacement, of the "Star of Life" certification label in the oxygen compartment of the finished vehicle, before it can be utilized again as an ambulance in this State.

(i) A copy of the "letter of certification", as described in specification KKK-A-1822 4.3.5, shall be submitted to the Department for each ambulance vehicle make and model proposed for use in Oklahoma. Certification documentation of test verification shall be accepted only if performed by an independent testing facility, qualified to perform such tests. No vehicle shall be approved for use in Oklahoma unless certification documentation has been filed with the Department. A file of all letters of certification received by the Department shall be maintained, and a list of certified vehicles, sorted by manufacturer, shall be forwarded to the Oklahoma Motor Vehicle Commission annually by the Department.

(j) A list of approved manufacturers, salesmen and dealers who meet the provisions of the Oklahoma Motor Vehicle Commission, shall be compiled annually and be made available from the Department upon request to any interested party. The Department shall issue to approved manufacturers, salesmen and dealers a Certificate of Compliance to remain effective until the next revision of the Federal Ambulance Specification KKK-A-1822.

(k) The purchaser of any ambulance vehicle which violates this section shall be responsible for corrective action, if the vehicle is accepted before receipt of the Department approval and permit.

(l) If, while awaiting delivery of a new, remounted, or refurbished ambulance vehicle, a manufacturer or dealer provides a licensed ambulance service with an ambulance vehicle on temporary loan or lease, such temporarily loaned or leased ambulance vehicle shall comply with Federal Ambulance Specification KKK-A-1822 in effect at the time of manufacture, and shall be properly inspected and permitted by the Department prior to utilization as an ambulance in accordance with Section 310:641-3-20(f).

PART 7. AIR AMBULANCES

310:641-3-38. Aircraft utilization

(a) Each air ambulance service shall have in place a protocol to insure no delay in aircraft response. In such cases where a delay is anticipated, the air ambulance service called has a responsibility to notify the caller and assist in referral to another licensed ambulance service.

(b) The air ambulance service shall ensure appropriate utilization and medical benefit to the patient. A documented review process shall be developed and utilized. Utilization review of scene transports shall include the following triage criteria. This is to minimize over utilization of air services: On scene transports - The following types of criteria shall be used in the triage plan for on-scene transports to minimize over triage:

(1) Anatomic and physiological identifiers.
(2) Mechanism of injury identifiers.
(3) Situational identifiers.
(4) Air vs. ground times.
(5) Road conditions.
(6) Entrapment or multiple injured.
(7) Capability of local ground provider verses patient needs.
(8) Safety of the transport environment.

(c) The air ambulance service shall be integrated with and communicate with other public safety agencies, including ground emergency service providers. This shall include participation in regional quality improvement reviews, regional disaster planning and mass casualty incident drills to include an integrated response to terrorist events.

(d) Air ambulance services shall conduct ~~Quarterly~~ quarterly scheduled post event reviews of cases with ground agencies and receiving facilities to enhance performance improvement.

(e) Air transport services shall develop and demonstrate use of a written code of ethical conduct that demonstrates ethical practices in business, marketing, and professional conduct.

(f) Air ambulance services shall report aviation incidents and accidents to the appropriate aviation authority immediately and the Department within 24 hours.

(g) A Flight Safety Committee/Work Group shall be established composed of a pilot and an appointed representative from each of the Oklahoma licensed air ambulance services, and shall submit a summary report of it's activities to the EMS Division annually.

PART 10. STRETCHER AID VANS

310:641-3-48. Stretcher aid van license

(a) **General.** The issuance of a license shall be in accordance with part 3 of this Subchapter.

(b) **Application.** In addition to meeting the requirements described at OAC 310:641-3-11, the applicant for stretcher aid van licensure shall be required to submit the following information along with an initial or renewal application:

(1) A map or narrative description which identifies the proposed service area;
(2) Evidence that the proposed service area is in an emergency medical service region, ambulance district, or ~~municipality~~ county with a population in excess of three hundred thousand (300,000) people;
(3) The defined hours of operation for the service; and
(4) An agreement demonstrating access to 24 hour per day emergency medical dispatch screening as required at 310:641-3-48.1(c).

310:641-3-48.1. Stretcher aid van services

(a) **Emergency transfers prohibited.** Stretcher aid van services are limited to providing non-emergency transfers of medically stable, non-emergent individuals who need to be transported in a reclining position on a stretcher or gurney but who do not require any monitoring equipment, medication other than oxygen and those other medications which are patient supplied and administered, or assistance during transfer. Stretcher aid vans are prohibited from conducting emergency

transfers or providing transportation from the scene of an accident.

(b) **Hours of Operation.** Stretcher aid van services shall define the days and hours of operation during which transport services shall be available.

(c) **Centralized dispatch.** Each request for stretcher aid van service to a hospital (as defined by 63 O.S. Supp. 2000, Section 1-701) or ambulatory surgery center (as defined by 63 O.S. Supp. 2000, Section 2657) shall be screened for the clinical criteria specified at OAC 310:641-3-48.1(a) using a nationally recognized medical priority dispatch model. A certified medical dispatcher working through a regional emergency medical dispatch center shall conduct such screening. Patients requiring emergency transfer shall be referred to the appropriate licensed ambulance service. Patients requesting non-emergency transfer and meeting the definition of stretcher aid van patient as specified at OAC 310:641-3-2 shall be referred to the requested stretcher aid van service for transport. Each request for transport which does not identify a specific stretcher aid van service shall be referred to the next available stretcher aid van service on the basis of an established rotation.

(d) **Entry into the emergency system.** When the medical condition of a passenger suddenly changes which requires care to be rendered, the operator of the stretcher aid van service shall immediately divert to the nearest hospital and contact the regional emergency medical services system control to request assistance and then notify their base of operations. Appropriate emergency care shall be initiated and continued until an ambulance service has intercepted the transport, or the aid van has arrived at the hospital. If the stretcher aid van service is operating in an area in which no regional emergency medical services system control is active when an emergent episode occurs, the aid van shall contact the nearest ambulance service rather than regional system control.

(e) **Reports.** Each stretcher aid van service shall maintain a record of each patient transport including at least the patient's name, pickup location, destination, times, crew members and medical condition. Run reports shall be submitted to the Department as required.

(f) **Medications.** Stretcher aid vans are prohibited from carrying medications other than oxygen and those other medications which are patient supplied and administered.

(g) **Veterans Centers.** Stretcher aid van transports may be made to and from any State or Federal Veterans Centers;

(h) **Origins of transports.** Stretcher aid van transports shall originate from an emergency medical service region, ambulance district, or county with a population in excess of three hundred thousand (300,000) people.

310:641-3-48.2. Stretcher aid van vehicles

(a) Each stretcher aid van vehicle shall meet the requirements at OAC 310:641-3-22(a), (b), (c), and (e).

(b) Each vehicle shall have sufficient room for two (2) attendants and appropriate equipment to properly secure the passengers and stretcher or gurney type apparatus to prevent injury or aggravation of an existing medical condition. The stretcher or gurney and mounting device(s) shall meet or exceed current KKK-1822 specifications.

(c) Each stretcher aid van shall be equipped with side and rear mounted loading lights.

(d) Each stretcher aid van shall have the capability for communications with dispatch bases and receiving facilities, and the ability to contact emergency services as necessary.

(e) The sanitation requirements in part 13 of this Subchapter shall apply to each stretcher aid van vehicle.

(f) Each stretcher aid van shall display exterior markings identifying the vehicle as a stretcher aid van to include ~~at least~~ the business name~~ or logo~~, the words "Stretcher Aid Van", and the telephone number.

PART 11. MEDICAL CONTROL

310:641-3-50. Requirement

(a) While performing with a licensed ambulance service and/or a certified~~ first~~emergency medical response agency, emergency medical personnel shall perform authorized procedures, which may not exceed the level of license or certification.

(b) Each licensed ambulance service and/or certified~~ first~~ emergency medical response agency shall have a physician medical director who is a fully licensed, non-restricted doctor of medicine (M.D.) or a doctor of osteopathy (D.O.) in the State of Oklahoma. Medical direction for a certified ~~first~~ emergency medical response agency shall be provided by or approved by the sponsoring licensed ambulance service. The Department shall be notified within twenty four (24) hours of any lapse of medical direction by the respective agency.

(1) The physician medical director of an air, ground, specialty care ambulance service and/or~~ first~~ emergency medical response agency based in another state shall not be required to be licensed to practice in the State of Oklahoma, but shall be fully licensed in good standing in the home state of that air, ground, or specialty care ambulance service and/or certified first response agency.

(2) The physician medical director for an ambulance service and/or~~ first~~ emergency medical response agency operated by the federal government shall be fully licensed in good standing in Oklahoma or another state. If not licensed in Oklahoma, the physician shall be actively employed by the federal agency responsible for the operation of the ambulance service or ~~first~~ emergency medical response agency.

(c) The physician director shall:

(1) Demonstrate appropriate training and experience in adult and pediatric emergency medical services. Demonstrated training and experience may include appropriate board certification or successful completion of training programs such as Advanced Cardiac Life Support (ACLS), Pediatric Advanced Life Support (PALS), and Advanced Trauma Life Support (ATLS) or other equivalent training.

(2) Be familiar with the design and operation of pre-hospital emergency medical services systems, and knowledgeable about the capabilities of the different levels of licensed personnel and of the established protocols.

(3) Have experience in the emergency department management of the acutely ill or injured patient(s), in the urban setting. In the rural setting, the physician shall routinely and actively participate in the care for acutely ill or injured patient(s).
(4) Be knowledgeable and actively involved in quality assurance and the educational activities of the emergency medical technician, by either direct involvement or appropriate designation and surveillance of his responsible designee.
(5) Have knowledge and a relationship with the licensed ambulance service(s) and/or ~~first~~ certified emergency medical response agency(ies) and their primary service area coverage. A physician may be the medical director for more than one (1) licensed ambulance service and/or ~~first~~ certified emergency medical Response agency.
(6) Provide a written statement, to the Department, which includes consent to be the medical director, address, an Oklahoma Bureau of Narcotics and Dangerous Drugs (OBNDD) number or appropriate state equivalent, medical license and a curriculum vitae, and be actively involved in pre-hospital care.
(7) Develop medical protocols for patient care techniques, both on-line and off-line standing orders and present written EMT Intermediate, ~~EMT Advanced/Cardiac~~ and EMT Paramedic life support protocols to the Department for approval, before use. Protocols shall include medications to be used, treatment modalities for patient care procedures, and appropriate security procedures for controlled and dangerous drugs.
(8) List all medications with quantities to be carried on each emergency vehicle.
(9) Supervise a quality assurance (QA) program. The QA program, or policy, shall be submitted with treatment protocols, for approval by the Department. Quality assurance documentation may be requested by the Department.
(10) Participate in the statewide emergency medical services system.

PART 17. CONTROLLED SUBSTANCES

310:641-3-80. Authority to carry controlled substances on a vehicle

(a) An ambulance service, with personnel licensed to utilize such, is hereby authorized to carry a limited supply of controlled substances, under lock and key when not on the person of the emergency medical technician, for use to benefit ambulance patient(s). The utilization, procurement, and accountability of such drugs shall be supervised by medical control for the service. An inventory shall be kept and signed according to the requirement of the Oklahoma Bureau of Narcotics and Dangerous Drugs (OBNDD), and the United States Department of Justice Drug Enforcement Administration (DEA). Each responsible medical director shall ~~provide~~ maintain a copy of their OBNDD ~~number~~ certificate to the Department, for this purpose. No medical director shall procure drugs for an ambulance service, while under adverse action of his/her medical license.
(b) Any loss or deficiency which occurs in the utilization, procurement, and accountability of controlled substances, shall be reported to the Department, within ten (10) working days.

PART 19. INSPECTION, CORRECTION, ACTIONS

310:641-3-91. Correction orders

(a) Violation of Oklahoma Statues, the Act or the rules constitute grounds to issue a correction order, citing the deficiency, indicating the time period in which a correction shall be made. This time period shall not exceed one hundred twenty (120) days, for any deficiency.
(b) Written notification, within the time period cited, shall be forwarded to the Department when a deficiency has been corrected. If this notice is not forthcoming, then the Department shall notify the service, by certified mail, that they are out of compliance. If no plan of correction is received within thirty (30) days, then action for remedy against the service may be undertaken by administrative procedure [Title 75 O.S., Sec. 301-et seq.]
(c) Violations which appear to be hazardous to the health and welfare of the public and/or employees shall require immediate correction.
(1) If such a violation is not, or cannot be, corrected immediately, the vehicle shall be removed from service and the ambulance permit shall be removed until such time as the vehicle is in compliance and has been re-inspected and permitted by the Department.
(2) Violations that may justify immediate removal of an ambulance vehicle permit include:
(A) Inadequate sanitation, including the presence of contamination by blood and/or body fluids;
(B) Inoperable heater/air conditioner;
(C) Inoperable AED or defibrillator;
(D) Tires in poor condition;
(E) Inoperable emergency lighting and/or siren;
(F) Inoperable oxygen system or less than 200psi in onboard oxygen tank;
(G) Inoperable suction apparatus;
(H) Carbon monoxide levels of greater than (50 ppm) fifty parts per million, or broken exhaust pipe;
(I) Lapse of required vehicle liability insurance; and
(J) Lapse of required worker compensation insurance.

PART 25. OPERATIONAL PROTOCOALS

310:641-3-120. Operational protocols

(a) Authorized emergency vehicles of licensed ambulance services shall adhere to the following for physically displaying and/or orally transmitting via voice communications, to the following modes of operation:

(1) "Code 1" shall mean a non-emergency mode, or status, for the purpose of operation of an ambulance service vehicle. Neither red lights or siren shall be utilized, and the vehicle shall not be considered or afforded the exemption of an "authorized emergency vehicle" pursuant to Title 47 ("Motor Vehicle Code");

(2) "Code 2" which means red lights, but no siren, shall not be considered or utilized for the purpose of operation of any ambulance service vehicle;

(3) "Code 3" shall mean an emergency mode, or status, for the purpose of operation of an ambulance service vehicle. Both red lights and siren shall be utilized, and the vehicle shall be considered and afforded the exemption of an "authorized emergency vehicle" pursuant to Title 47 ("Motor Vehicle Code").

(b) Acceptance of an ambulance service license carries with it the requirement of a "Duty to Act". Except for non-emergency interfacility transfers, ~~All~~ all licensed ambulance services shall respond when called, regardless of the patient's ability to pay or of the geographical funding district or boundaries. If the ambulance service can not physically respond within the limits of this Act, then the ambulance service called has a duty to immediately call for mutual aid from a neighboring licensed ambulance service.

(c) If an ambulance service receives a call for an emergency which is closer to another licensed ambulance service, the ambulance service called has a responsibility to immediately contact the nearest licensed ambulance service.

(d) Mutual aid and pre-arranged agreements between licensed ambulance services and surrounding licensed or certified emergency medical services providers shall be developed and placed in the service files for inspection. Mutual aid agreements shall be reviewed by all parties biennially. Licensed ambulance services shall provide mutual aid, if the capability exists without jeopardizing the primary service area.

PART 31. CERTIFIED ~~FIRST~~ EMERGENCY MEDICAL RESPONSE AGENCIES

310:641-3-150. Certified ~~first~~ emergency medical response agencies

(a) All organizations desiring to become certified by the Department as a ~~first~~ emergency medical response agency shall first secure a written agreement with a sponsoring licensed ambulance service, and an endorsement from the governmental authority in which the agency is located. The ambulance service shall submit an application for the proposed ~~first~~ emergency medical response agency, and provide such documentation and other requirements to the Department, as prescribed on forms provided by the Department.

(1) Transportation of ambulance patients shall not be performed by certified ~~first~~ emergency medical response agencies.

(2) An organization shall not be qualified, nor designate itself, as a Certified ~~First~~ Emergency Medical Response Agency unless certified by the Department.

(b) The ~~first~~ emergency medical response agency application for initial and renewal certification shall contain at least the following:

(1) The name, address, and officers of the organization;

(2) The name of the physician medical director of the organization;

(3) The name or names of licensed ambulance services, which shall serve as transport units for the service area;

(4) The names of all certified and licensed personnel acting or working in the organization, for this purpose;

(5) The level of care to be rendered; ~~and~~

(6) A list of equipment and supplies; and

(7) Details of vehicle liability, professional liability, and workers' compensation insurance

(c) Applications may be approved by the Department, based upon inspection and review of the purpose and capability of the applicant, and upon a written agreement with a licensed ambulance service which shall provide transportation.

(1) The application shall be accompanied by a non-refundable fee of fifty ($50.00) dollars.

(2) Upon submission of a complete application, the Department shall have sixty (60) days to determine the ability of the agency to meet the requirements of law and these rules.

(3) A certificate shall be valid for two (2) years, The Department shall mail all certified first response agencies a "Survey/Renewal Form" in October, each year. This form shall be considered and utilized as a renewal application, if due. This form along with supplemental forms shall be returned to the Department by December 1st each year. The renewal fee shall be twenty ($20.00) dollars.

(d) Personnel of a certified ~~first~~ emergency medical response agency may utilize procedures authorized to the extent and limitations set forth by required medical control of the ~~first~~ emergency medical response agency and within their license and certification level.

(e) The Department may place on probation, suspend, revoke, and/or fine certified ~~first~~ emergency medical response agencies, under the same laws governing ambulance services.

(f) Inspections shall be made at the discretion of the Department.

PART 33. SERVICE ANDAGENCY FILES

310:641-3-160. Ambulance service, ~~first~~ emergency medical response agency and stretcher aid van files

(a) Each licensed ambulance service and ~~first~~ emergency medical response agency shall maintain files about the operation, maintenance, and such other required documents, at the business office. These files shall be available for review by the Department, during normal work hours. Files which shall be maintained include the following:

(1) Ambulance services and stretcher aid van services shall maintain copies of all run reports for three (3) years, including copies of run sheets and narrative and;

(A) A copy of the run report shall be left with the receiving hospital at the time a patient(s) is (are) accepted at the hospital;

(B) All run reports shall contain administrative, legal, medical, community health and evaluation information required by the Department;

(C) All run reports and their narrative(s) shall be considered confidential;

(2) All licensed and certified providers shall maintain records on the maintenance, and regular inspections of each vehicle. Each vehicle must be inspected and a checklist completed after each call, or on a daily basis, whichever is less frequent;

(3) All licensed and certified providers shall maintain copies of licenses, certificates or other qualifications of staffing or personnel employed by or associated with the service or agency as required by this Act. These required documents shall be separate from other personnel records so as to ensure confidentiality of records which do not pertain to the requirements for the license or certificate;

(4) Copies of staffing patterns, schedules, or staffing reports which indicate the ambulance service is maintaining twenty four (24) hour coverage, at the highest level of license;

(5) Copies of in-service training and continuing education records;

(6) Copies of ambulance service operational and medical protocols;

(7) A log of each call received and/or initiated, to include the number of the run report, date, all required times, ~~name of the patient,~~ location of the ~~scene~~ incident, where the ambulance originated, and nature of the call;

(8) Copies of all Occupational, Safety, and Health Agency requirements, as required; and

(9) Such other documents which may be determined necessary by the Department.

(b) The standardized data set and an electronic submission standard for EMS data as developed by the Department shall be mandatory for each licensed ambulance service. Reports of the EMS data standard shall be forwarded to the Department by the ~~fifteenth (15th)~~ last business day of the following ~~the end of each~~ month. Exceptions to the monthly reporting requirements shall be granted only by the Director of EMS, in writing.

(c) Review and the disclosure of information contained in the ambulance service files shall be confidential, except for information which pertains to the requirements for license, certificate, or investigation issued by the Department.

(d) Department representatives shall have prompt access to files, records and property as necessary to appropriately survey the provider. Refusal to allow access by representatives of Department to records, equipment or property may result in summary suspension of licensure by the Commissioner of Health.

(e) All information submitted and/or maintained in files for review shall be accurate and consistent with Department requirements.

PART 39. ENFORCEMENT ACTION

310:641-3-190. Suspension, revocation, probation, or non-renewal of a licensee

(a) The Department may suspend or revoke a license, and/or fine or place on probation a license or licensee for the following:

(1) Violations of any of the provision of the Oklahoma Statutes, the Act or the rules and regulations promulgated by the Board;

(2) Permitting, aiding or abetting in any illegal act in connection with the ambulance service;

(3) Failure to provide emergency service to any person, unless a vehicle and/or personnel is not available, and failure to summon mutual aid;

(4) Conduct of any practice that is detrimental to the welfare of the patient or potential users of the service;

(5) Failure to operate the service on a twenty four (24) hour basis, except for the Specialty Care and/or Air Ambulance service;

(6) Placing a vehicle into service before it is properly inspected, approved and permitted by the Department, and/or;

(7) Failure to comply with a written correction order within the time frame specified by the Department.

(8) Engaging in any act which is designed or intended to hinder, impede or obstruct the investigation of any matter governed by the Act, by any lawful authority.

(9) An ambulance service who fails to renew their Oklahoma license within the time frame and other requirements as specified in these rules, shall be considered an expired or lapsed licensee, and therefore no longer licensed as an ambulance service in the State of Oklahoma.

(10) A ~~first~~ emergency medical response agency who fails to renew their Oklahoma certification within the time frame and other requirements as specified in these rules, shall be considered an expired or lapsed certification, and therefore no longer certified as a ~~first~~ emergency medical response agency in the State of Oklahoma.

(b) No person, company, governmental entity, or trust authority may operate an ambulance service or ~~first~~ emergency medical response agency except in accordance with Title 63, Section 1-2501, et seq., and the rules and regulations as promulgated by the State Board. The Commissioner, District Attorney of the county wherein a violation occurs, or the Attorney General of this State, shall have the authority to enforce provisions of the law.

(c) A license/certificate/permit holder or applicant, in connection with a license application or an investigation conducted by the Department pursuant to this rule 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 licensee to have arisen in the application or the matter under investigation; or

(3) fail to respond to a demand for information made by the Department or any designated representative thereof.

(d) If in the course of an investigation the Department determines that a license/certificate/permit holder or applicant has engaged in conduct that is detrimental to the health, safety, or

welfare of the public, and which conduct necessitates immediate action to prevent further harm, the Commissioner may order a summary suspension of the license/certificate/permit holder's license, certificate, or permit respectively. A presumption of imminent harm to the public shall exist if the Department determines probable cause exists that a violation of OAC 310:641-3-190 (a)(3) and (4) has been committed.

SUBCHAPTER 5. PERSONNEL LICENSES AND CERTIFICATION

PART 3. EMERGENCY MEDICAL PERSONNEL LICENSES

310:641-5-11. License qualification

Persons applying for initial license shall meet the requirements for qualification, application, and procedure as follows:

(1) Applicant shall be at least eighteen (18) years of age.

~~(2) Applicant shall within the past two (2) year period previous to examination, have successfully completed a Department approved emergency medical technician course. The two (2) year period is based upon the date of successful course completion.~~

(~~3~~2) Applicant shall submit the following:

(A) An appropriate State application ~~that specifies~~ form specifying true, correct and complete information as to eligibility and character.

~~(B) A National Registry application that has been completed on line with the National Registry of EMTs. Grading fee shall be paid to the National Registry.~~

(~~4~~B) An application fee as listed below:~~of seventy-five dollars ($75.00) for EMT-B and one hundred fifty dollars ($150.00) for EMT-I and EMT-P shall be submitted with the application. A ten dollar ($10.00) fee shall be submitted for a basic written re-test. EMT-I and EMT-P re-application fees shall be one hundred ten dollars ($110.00) for both written and practical, one hundred dollars ($100.00) for a full practical, fifty dollars ($50.00) for a partial practical and ten dollars ($10.00) for a written only.~~

(i) License fees for persons trained in Oklahoma, confirmed by a final course roster from a certified Oklahoma EMS Training Institution, including practical skills testing:

(I) EMT-Basic Licensure is Seventy-five dollars ($75.00).

(II) EMT- Intermediate or EMT Paramedic Licensure is One Hundred Fifty dollars ($150.00).

(ii) Practical skills retest fee:

(I) Partial: Fifty dollars ($50.00).

(II) Full: One Hundred dollars ($100.00)

(iii) License fee for persons holding current National Registry of EMT Certification:

(I) EMT-Basic Licensure is Seventy-five dollars ($75.00).

(II) EMT-Intermediate licensure including airway testing is One Hundred Seventy-five dollars ($175.00).

(III) EMT-Paramedic licensure is Two Hundred dollars ($200.00).

(3) Fees shall be in an acceptable form, made payable to the Oklahoma State Department of Health - Emergency Medical Services Division (OSDH/EMS). Fees are non-refundable except if the application is rejected. Candidates who fail to appear at the scheduled ~~test~~ examination will be charged the full fee when a new application is made.

~~(5) If national registration is obtained outside the State of Oklahoma the candidate must follow reciprocity requirements to obtain State licensure~~

(~~6~~4) A license application may be denied on the basis of a felony which includes any conviction of assault, battery, or assault and battery with a dangerous weapon; aggravated assault and battery; murder or attempted murder; manslaughter, except involuntary manslaughter; rape, incest, or sodomy; indecent exposure and indecent exhibition; pandering; child abuse; abuse, neglect or financial exploitation of any person entrusted to his care or possession; burglary in the first or second degree; robbery in the first or second degree; robbery or attempted robbery with a dangerous weapon, or imitation firearm; arson, substance abuse, and such other convictions or circumstances which in the opinion of the Department would render the applicant unfit to provide emergency medical care to the public. Each decision shall be determined on a case-by-case basis.

(~~7~~5) An applicant may request a review of adverse decisions, made within this section, by applying in writing within thirty (30) calendar days after the notice of rejection. Review, by the Department, shall be held in accordance with the Administrative Procedures Act.

(~~8~~6) Candidates are required to successfully complete ~~all sections of~~ the National Registry of Emergency Medical Technicians ~~practical and written~~ certification examinations.

(A) Practical examinations shall adhere to the policies of the National Registry and the Department. Candidates shall demonstrate an acceptable level of competency in all respective skill areas. The Department reserves the right to review and require additional practical examination of any candidate.

(i) A candidate for EMT-B shall complete a practical examination before applying for ~~a written~~ an examination. The practical examination may be conducted at an approved training program in accordance with National Registry policies and shall be separate from the completion of training. Verification of successful completion and the measured competency of each of the required skill areas shall be kept on file~~,~~ for a period of three (3) years at the training program, and summaries

shall be submitted to the Department with the final course documentation.

(ii) A candidate for EMT-I shall apply for both the ~~practical and written license~~ certification examinations. The ~~written and practical~~ examinations shall be administered in accordance with policies currently established by the National Registry of Emergency Medical Technicians.

(iii) A candidate for EMT-P shall apply for both the ~~practical and written license~~ certification examinations. The ~~written and practical~~ examinations shall be administered in accordance with policies currently established by the National Registry of Emergency Medical Technicians.

(B) Candidates are allowed three full attempts to pass the practical examination (one "full attempt" is defined as completing all six (6) stations and two retests if so entitled). Candidates who fail a full attempt or any portion of a second retest must submit official documentation of remedial training over all skills before starting the next full attempt of the practical examination and re-examining over all six (6) stations. This official documentation must be signed by the EMT-Paramedic Training Program Director or medical director of training/operations which verifies remedial training over all skills has occurred since the last unsuccessful attempt and the candidate has demonstrated competence in all skills. Should a candidate fail the third full and final attempt of the practical examination, the candidate must complete a new, entire, state-approved EMT-Paramedic Training Program.

(C) Successful completion of the practical examination is valid for one (1) year only.

(~~9~~7) The written examination is based on the respective national standard emergency medical technician curriculum, as developed and promulgated by the United States Department of Transportation including State approved changes. Each candidate shall realize an overall passing minimum score, and in the case of EMT-P a passing minimum score for each section. Candidates who fail the written examination may re-apply, if eligible, for subsequent examination by submitting another application and fee, and meet current entry requirements.

(A) Candidates are allowed three (3) opportunities to successfully complete the written examination, within the two (2) year limitation on training and within the one (1) year limitation of the practical examination.

(B) Candidates who opt to attempt a fourth written examination shall submit proof of successful completion of a Department approved emergency medical technician refresher course, at the respective level of training.

(C) No oral examination of the written test shall be permitted. Only special examination accommodations approved by the National Registry will be provided for examinations.

(~~10~~8) The Department shall administer all National Registry ~~written examinations and~~ EMT-I and EMT-P practical examinations. Training programs~~,~~ shall administer ~~national registry~~ National Registry basic ~~and first responder~~ practical examinations. ~~Licensed ambulance services and certified first response agencies~~ Agencies approved by the Department shall administer National Registry first responder practical examinations. All practical examinations are administered after completion of a State approved training course at all levels.

(~~11~~9) Department approved evaluators shall be used for all EMT-I and EMT-P practical examinations.

(10) The Department may issue a license to any Nationally Registered EMT who meets all other State requirements.

PART 9. MEDICAL CONTROL

310:641-5-50. Requirement and utilization

(a) Emergency medical personnel, licensed, certified, or otherwise authorized by this act, may perform procedures authorized while a duty to act is in effect, only under medical control of an identifiable medical director.

(b) Emergency medical personnel may be utilized by hospitals, health care facilities, ambulance services, and ~~first~~ emergency medical response agencies. Health care facilities may include, but not limited to, nursing homes, doctor offices or clinics, organized industrial or private health facility services, athletic training facilities, or any other organized group who may legally render patient care.

(1) While performing at a hospital and/or a health care facility, emergency medical personnel shall be limited to authorized procedures of a specific written "job description" approved by a physician, and/or medical staff, of that facility.

(2) While performing at a licensed ambulance service, emergency medical personnel may perform procedures authorized, not to exceed the level of license or certification.

(3) While performing at a certified ~~first~~ emergency medical response agency certified ~~first~~ emergency medical responders, EMT-B, EMT-I, and EMT-P shall practice at the ~~first~~ emergency medical responder level, unless they meet the requirements for individual protocols specified at 310:641-5-50(c).

(c) Upon application to, and approval of, the Department, EMT Basic an EMT Intermediate, and/or EMT Paramedic shall be able to practice their respective level of licensure while on staff at an ambulance service licensed at a lower life support level or a Certified ~~First~~ Emergency Medical Response Agency. This program shall be called "Individual Protocol". Quality assurance documentation shall be completed by the licensed ambulance service or Certified First Response Agency on a monthly basis. The quality assurance documentation shall be maintained by the service or agency for 3 years. All participants shall adhere to Department policy for this privilege.

(d) While performing under any other condition or situation, emergency medical personnel, licensed or certified by this act, may perform only to the level of care as described for the ~~certified~~ Certified ~~first~~ Emergency Medical Responder, or in accordance with the Act.

(e) The Department may suspend or revoke individual protocols when a violation of the Act or rules exists.

PART 11. EMERGENCY MEDICAL PERSONNEL CERTIFICATION

310:641-5-61. ~~First~~Emergency medical responder

(a) No person may present himself or perform as a ~~first~~ emergency medical responder in Oklahoma without ~~certification from~~ documentation of successful completion of training from Oklahoma Career Tech, the Department, or the National Registry. ~~Certification will be for a two (2) year period.~~

(b) Persons applying for initial certification shall meet the following requirements to be eligible for ~~first~~ emergency medical responder;

(1) Each applicant shall have successfully completed a Department approved ~~first~~ emergency medical responder course;

(2) Each applicant shall have, after completion of training, successfully completed a written and practical examination administered at the approved training facility, and based upon the First Responder curriculum objectives. Documentation ~~of this requirement~~ shall be submitted in writing on the final course roster, to the Department; and

(3) ~~As of January 1, 2000 a~~All new applicants shall ~~successfully become and maintain~~ pass the National Registry First Responder Registration test or the Oklahoma Career Tech Emergency Medical Responder test.

~~(A) First Responders certified by the Department before January 1,2000 shall be given the opportunity to become National Registered.~~

~~(B) First Responders certified by the Department, whose initial training is greater than two (2) years prior to January 1, 2000, shall be given the opportunity to become Nationally Registered. Candidates shall meet National Registry requirements for registration.~~

~~(C) Once an individual obtains National Registration as a First Responder, they shall maintain National Registration in order to remain certified in Oklahoma.~~

(4) The Department shall ~~issue by September 30, 2008 a new certification for a two-year period beginning October 1, 2008 through September 30, 2010 to all qualified First Responders who were initially certified prior to January 1, 2000~~ maintain a registry of all qualified emergency medical responders.

(A) ~~First Responders~~Emergency medical responders who were initially certified prior to January 1, 2000 shall provide the following to the Department:

(i) Current BLS CPR card

(ii) Documentation of successful completion of National Standard USDOT First Responder Refresher courses every two years since January 1, 2002.

(B) Subsequent ~~certification~~ registration shall be for a two year period beginning October 1 through September 30.

(C) Renewal forms shall be mailed by the Department in June of the ~~re-certification~~ re-registration year. The Department may ~~renew a certification~~ re-register the Emergency Medical Responder when the following documentation has been received:

(i) A completed ~~First~~ emergency medical responder certification renewal application.

(ii) A completion certificate or a final roster showing satisfactory completion of ~~a First Responder Refresher~~ an emergency medical responder refresher.

(iii) A current copy of a provider-level CPR card from the AHA, Red Cross, National Safety Council or other Department approved training program.

(iv) A completed felony statement. If a candidate or applicant ~~had~~has been convicted of or received a suspended sentence for a felony, documentation of the conviction, its deposition, and outcome will be sent to the Department for a case-by-case review. The Department may at its discretion deny certification to anyone convicted of a felony.

(c) Certified ~~First Responders~~ emergency medical responders may perform to the following level or standard of care:

(1) Patient assessment and triage;

(2) Basic wound management, including hemorrhage control;

(3) Bandaging and splinting of fractures;

(4) Basic life support (BLS) including use of the semi-automated external defibrillator (SAED);

(5) Upon approved standing order of local medical director, administer aspirin to patients complaining of chest pain;

(~~5~~6) Such other skills contained within the Department of Transportation national standard first responder curriculum, and;

(~~6~~7) Upon the approval of the Department, and recommendation of the Council, additional skills may be authorized upon the written request of a medical director.

(d) ~~A certified first~~An emergency medical responder, while performing in the employment or association of an ambulance service or certified ~~First~~ emergency medical response agency, or agency providing ~~first~~ emergency medical responder care to the general public shall perform medical procedures under medical control.

~~(e) No other State organization, school, chapter, or association may certify First Responders.~~

PART 13. RECIPROCITY [REVOKED]

310:641-5-70. Reciprocity [REVOKED]

~~(a) All candidates for reciprocity privileges shall submit an application for this purpose. Applications may be obtained from the Department. Fees shall be: Basic $100.00, Intermediate $200.00, Paramedic $200.00. Fees shall be in an acceptable form, made payable to the Oklahoma State Department of Health/Emergency Medical Services Division (OSDH/EMS). All fees are non-refundable.~~

~~(b) Emergency medical technician applicants for reciprocity licensing shall document National Registration in good standing.~~

~~(1) The Department may issue a license, based upon satisfactory verification by the Department, to a Nationally Registered emergency medical technician basic or emergency medical technician paramedic.~~

~~(2) The Department may issue a license to a Nationally Registered emergency medical technician intermediate, based upon satisfactory verification by the Department of completion of training and successfully passing a National Registry Practical examination on endotracheal intubation. The Department may issue an emergency medical technician basic license if the applicant meets all requirements except endotracheal intubation. The applicant may re-apply to be up-graded to the Intermediate level after all requirements have been met. Fees commensurate for re-examination as found in 310:641-5-11(4) shall be submitted with the application to up-grade to the Intermediate level. This up-grade may only occur during the initial license period.~~

~~(c) The Department may waive reciprocity fees for persons serving in the U.S. Military and deployed to a country in conflict or in support of such deployment.~~

~~(d) A decision to grant reciprocity to each applicant, as to qualification for Oklahoma license, shall be determined by the Department.~~

SUBCHAPTER 7. TRAINING PROGRAMS

PART 3. TRAINING PROGRAMS

310:641-7-15. Course approval

(a) Each training program shall submit a written course application to the Department on forms provided by the Department. The application shall be submitted at least thirty (30) days prior to the course start date and shall include, but not be limited to:

(1) Course information including type of course, location, start and end date, class session days and times, course coordinator, and instructors, final practical examination date, and time and location;

(2) Course outline including date and time, topic, curriculum division and section number, instructor and location if different than those listed on the application for each class session;

(3) A list of locations and site coordinator for each location, if multiple locations via distance learning technology are used; and

~~(4) A letter from the director and medical director of a certified first response agency, ambulance service or approved training institution documenting affiliation.~~

(~~5~~4) The Department may approve course requests submitted that do not meet the requirements of OAC 310:641-7-15(a) if non-approval would be detrimental to the interest of the public health and safety.

(b) A course application submitted by a training program in good standing which meets all course requirements will be issued a course authorization number by the Department.

(c) Courses must be instructed by Department approved emergency medical services instructors. Persons other than certified emergency medical services instructors recognized as experts in a specific area may instruct in an emergency medical services course with prior approval from the Department. The content and effectiveness of the presentation remain the responsibility of the training program and primary emergency medical services instructor.

(d) For each course conducted by a training program rosters reflecting the students participating in a given course shall be submitted to the Department under the following guidelines:

(1) An initial student roster within twenty-one (21) days of the course start date;

(2) A final student roster within twenty-one (21) days of the course end date. This roster shall identify students who have successfully completed all course requirements, withdrawn from the course, failed the course, or whose class work was incomplete;

(3) In exceptional circumstances, an amended roster may be submitted within forty-five (45) days of the original filing deadline, provided that the amendment be accompanied by the following:

(A) A written request for approval by the Training Institution EMS Coordinator;

(B) A statement describing the exigency or exceptional circumstance that necessitated the amendment; and,

(C) A change to a written request for additional extension may be submitted on forms provided by the Department.

(~~C~~D) In cases of an amendment to a final roster, evidence that any added students have satisfactorily fulfilled and completed all of the course content and requirements.

(e) The Department may conduct quality management visits to any training program. Visits may include, but not be limited to class visits, instructor evaluations, student surveys, review of required records, and visits to clinical experience sites.

(f) The Department may invalidate all or any portion of a course conducted where a violation of the Act or rules has been substantiated.

PART 5. INSTRUCTOR QUALIFICATIONS

310:641-7-20. Instructor requirements

(a) **State Certified Emergency Medical Service Instructor.**

(1) A registry of approved emergency medical services instructors shall be maintained by the Department. Each instructor candidate shall submit to the Department an application for initial instructor certification. The application shall be on forms provided by the Department and accompanied by current documentation of qualification. This application shall constitute authorization for any inspection or investigation by the Department.

(2) Qualifications for instructor certification include:

(A) A resume or letter documenting two (2) years of direct field experience in emergency medical services within the previous five (5) years which meets or exceeds the level of training being taught;

(B) Current approval as a Basic Life Support Healthcare Provider Instructor (CPR) in accordance with American Heart Association (AHA) Instructor, American Red Cross Professional Rescuer Instructor, or National Safety Council CPR for the Health Care Provider Instructor standards. At the paramedic level, the instructor shall be a current American Heart Association, Advanced Cardiac Life Support (ACLS) provider and a Pediatric Advanced Life Support (PALS), Pediatric Emergency Medicine (APLS), Pediatric Prehospital Care (PPC) or Pediatric Education for the Prehospital Professional (PEPP) provider. Copies of all required documentation will be forwarded to the Department with application; and

(C) Successful completion of a Department approved EMS Instructor Training Course or Fire Service Instructor I and/or II, with the EMS Instructor Training Bridge (ITC) Course or equivalent.

(3) To teach, a qualified instructor must have a letter from the director and medical director of a certified first response agency or ambulance service or the coordinator of an approved training institution, documenting affiliation.

(b) **Emergency Medical Service Lab Assistant.**

(1) A file of qualified Lab Assistants shall be maintained by each certified training program, licensed ambulance service or certified first response agency including documentation of qualification.

(2) Qualifications for lab assistants include:

(A) Affiliation with an approved training program, licensed ambulance service or certified first response agency;

(B) Two (2) years of current experience in medical services which meets or exceeds the level of training being assisted or evaluated; and

(C) Any certification required for the skill being assisted or evaluated.

(c) **Emergency Medical Service Instructor Educator.**

(1) Instructor Training Courses (ITC) and Instructor Refresher Courses (IRC) shall be taught by a state certified Instructor Educator.

(2) An application for Instructor Educator shall be submitted on forms provided by the Department and accompanied by current documentation of qualification.

(3) Qualifications for Instructor educator include:

(A) Affiliation with an approved training program

(B) Current Oklahoma licensure as a Basic EMT or higher.

(C) Five (5) years experience as a EMS field provider.

(D) Current approval as an Oklahoma EMS Instructor

(E) Completion of the NHTSA/DOT EMS Instructor Training Course;

(F) Successful completion of instruction of at least 3 major (initial) EMT courses at the Basic level or higher;

(G) Attendance at all mandatory meetings with the Department and other Instructor Educators.

(4) EMS instructor educators must maintain EMS instructor certification(s). A registry of approved emergency medical services instructor educators shall be maintained by the Department.

[OAR Docket #07-1087; filed 5-18-07]

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

[OAR Docket #07-1088]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 2. Licenses
310:661-2-6 [AMENDED]
Subchapter 6. Hospice Inpatient Service Requirements
310:661-6-4 [AMENDED]
AUTHORITY:
Oklahoma State Board of Health; 63 O.S. Section 1-104 et seq.; and Title 63 O.S. Section 1-860.1 et seq.
DATES:
Comment Period:
January 2, 2007 through March 8, 2007
Public Hearing:
February 1, 2007 and March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
Changes to the Hospice Licensing Act at 63 O.S. Section 1-860.15 removed hospice providers from the general fee caps imposed on the Department of Health by paragraph 2 of subsection A of Section 1-106.1. These proposed changes modify the fee structure to bring parity to the cost of a license for both new and established hospice providers by setting the fee for all providers at the same level. First-year and Permanent license holder's fees will remain unchanged at a total fee of $2000.00 per year; license fees for renewal of each permanent license will increase from $500.00 to $2000.00 per year. The changes to Subchapter 6 are necessary to correct references to *Chapter 256 Food Service Establishments* that was revoked and reenacted as Chapter 257.
CONTACT PERSON:
Tom Welin, Chief, Medical Facilities, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-6576; electronic mail: tomw@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 2. LICENSES

310:661-2-6. Licensure fees

(a) An application for a first-year license to establish or operate a hospice shall be accompanied by a non-refundable application fee of five hundred dollars ($500.00) and a non-refundable first-year license fee of one thousand five hundred dollars ($1500.00).
(b) An application for a permanent license to continue operation of a hospice after the first-year license period is complete shall be accompanied by a non-refundable permanent license fee of two thousand dollars ($2000.00).
(c) A renewal application for an existing permanent hospice license shall be accompanied by a non-refundable license fee of ~~five hundred~~ two thousand dollars ~~($500.00)~~ ($2000.00).
(d) A late renewal fee of fifty dollars ($50.00) shall be charged for any hospice submitting an application for renewal within thirty (30) days after the expiration date of the license.

SUBCHAPTER 6. HOSPICE INPATIENT SERVICE REQUIREMENTS

310:661-6-4. Dietary services

(a) The facility shall provide dietary service adequate to meet the dietary needs of the patients. Services may be provided on a contract basis as long as dietary needs of patients are met.
(b) Each facility shall serve at least three (3) meals or their equivalent each day at regular times, with not more than fourteen (14) hours between a substantial evening meal and breakfast.
(c) Menus shall be planned and followed to balance patient choice with nutritional needs of patients, in accordance with physicians' orders and to the extent medically possible, in accordance with the Dietary Reference Intakes (DRIs) of the Food and Nutrition Board of the Institute of Medicine, National Academy of Sciences.
(d) The facility shall procure, store, prepare, distribute, and serve all food under sanitary conditions in compliance with Chapter ~~256~~257 of this Title.
(e) Nourishments shall be available for all patients at anytime in accordance with approved diet orders.
(f) There shall be adequate trained staff available to manage and provide dietary services. A licensed/registered dietitian shall be available to provide consultation on patients' dietary needs, supervise services, and ensure medically prescribed special diets are provided as ordered.
(g) The system to be used for dishwashing shall be approved by the Department and operated in accordance with approved procedures and requirements of Chapter ~~256~~257 of this Title.
(h) Garbage and refuse shall be kept in durable, easily cleanable, insect-proof and rodent-proof containers that do not leak and do not absorb liquids. Adequate carriers and containers shall be provided for the collection and transportation, in a sanitary manner, of garbage and refuse from food service areas of the hospice to the place of disposal in accordance with the requirements of Chapter ~~256~~257 of this Title.

[OAR Docket #07-1088; filed 5-18-07]

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

[OAR Docket #07-1089]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
310:662-1-2 [AMENDED]
AUTHORITY:
Oklahoma State Board of Health; 63 O.S. Section 1-104 et seq.; and Title 63 O.S. Section 1-1960 et seq.
DATES:
Comment Period:
January 2, 2007 through March 8, 2007
Public Hearing:
February 1, 2007 and March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The amendments amplify the current rules to clarify that branch offices of home health agencies must operate under the same name as the parent agency.
CONTACT PERSON:
Tom Welin, Chief, Medical Facilities, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-6576; e-mail: tomw@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

310:662-1-2. Definitions

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

"Act" means the Home Care Act, 63 O.S. Supp. 1996, §1-1960 et seq.

*"**Affiliated person**" means:*

(A) *any officer, director or partner of the applicant,*

(B) *any person employed by the applicant as a general or key manager who directs the operations of the facility which is the subject of the application, and*

(C) *any person owning or controlling more than five percent (5%) of the applicant's debt or equity.* [63 O.S. Supp. 1998, Section 1-1965]

"Autonomy" means capacity to be self-determining, to make choices in accord with one's own goals and values.

"Branch office" means a business location from which a home care agency located in Oklahoma provides service within a portion of the total geographic area served by the parent agency. Branch offices from out of state parent agencies shall be licensed as home care agencies as required by this Chapter. Branch offices from in state parent agencies may be licensed as a part of the parent agency. Each home care agency branch office shall operate under the same name(s) as the parent agency.

"Certified/accredited agency" means any home care agency located in Oklahoma which is certified or accredited by:

(A) Title XVIII or XIX of the federal Social Security Act;

(B) the Joint Commission on Accreditation of Healthcare Organizations/Home Care Accreditation Services (JCAHO); or

(C) the Community Health Accreditation Program of the National League for Nursing (CHAP).

"Client" means the consumer/patient who receives the services of a home care agency.

"Client's representative" means the client's legal guardian or person authorized by the client or client's legal guardian to assist the client in receiving home care services.

"Coercion" means compelling, pressuring or otherwise improperly influencing the free will decisions made by a consumer(s) or a potential consumer(s) of home care services by an agency representative or affiliate. Coercive means include, but are not limited to, presentation of false and/or misleading information.

"Department" *means the Oklahoma State Department of Health.* [63 O.S. Supp. 1996, § 1-1961(3)]

"Governing body" means the person(s) having ultimate responsibility, including fiscal and legal authority for the home care agency.

"Harassment" means repetitive, intimidating, or otherwise distressing contact directed at a specific consumer(s) or potential consumer(s) of home care by a specific home care agency seeking to recruit clients.

"Home care agency" *means any sole proprietorship, partnership, association, corporation, or other organization which administers, offers, or provides home care services, for a fee or pursuant to a contract for such services, to clients in their place of residence. The term "home care agency" shall not include individuals who contract with the Department of Human Services to provide personal care services, provided such individuals shall not be exempt from certification as home health aides.* [63 O.S. Supp. 1996, § 1-1961(4)]

"Home care agency administrator" *means a person who operates, manages, or supervises, or is in charge of a home care agency;* [63 O.S. Supp. 1996]

"Home care services" *means skilled or personal care services provided to clients in their place of residence for a fee.* [63 O.S. Supp. 1996, § 1-1961(5)]

"Home health aide" *means an individual who provides personal care to clients in their temporary or permanent place of residence for a fee.* [63 O.S. Supp. 1996, § 1-1961(6)]

"Infectious wastes" means waste capable of producing an infectious disease because it contains pathogens of sufficient virulence and quantity so that exposure to the waste by a susceptible human host could result in an infectious disease.

"Licensed practical nurse" means a person currently licensed to practice practical nursing in Oklahoma.

"Nurse registry" means any person that procures, offers, promises, or attempts contracts for registered nurses, licensed practical nurses, home health aides, or other providers of personal care who are compensated by fees as independent contractors, for the provision of home care services. **"Parent agency"** means that part of a home care agency which develops and maintains administrative and professional control of subunits and/or branch offices.

"Personal care" *means assistance with dressing, bathing, ambulation, exercise or other personal needs.* [63 O.S. Supp. 1996, § 1-1961(7)]

"Personal needs" means assistance with activities of daily living such as getting out of bed, ambulation, exercise, toileting, dressing, eating, or bathing. Personal needs do not include domestic or maintenance services provided on a fee basis to maintain the home.

"Primary home care agency" means the agency that is responsible for the services furnished to clients and for implementation of the plan of care.

"Qualified therapist" means a trained respiratory therapist or technician, or a physical therapist, occupational therapist, or speech therapist who is currently licensed to practice their profession in Oklahoma.

"Qualified therapy assistant" means a physical therapy assistant or occupational therapy assistant who is currently licensed to assist physical therapists or occupational therapists in Oklahoma.

"Registered nurse" means a person currently licensed to practice registered nursing in Oklahoma.

"Sharps" means any discarded objects that can penetrate the skin including, but not limited to, hypodermic needles, syringes, lancet and scalpel blades. This definition includes broken glass or other sharp items that have come in contact with material defined as infectious wastes.

"Skilled care" *means home care services performed on a regular basis by a trained Respiratory Therapist/Technician or by a person currently licensed by this State, including but not limited to a Licensed Practical Nurse, Registered Nurse, Physical Therapist, Occupational Therapist, Speech Therapist, or Social Worker*. [63 O.S. Supp. 1996, § 1-1961(8)]

"Solicitation" means coercion or harassment of any person or contact with a patient knowingly being treated by another home care agency for the purpose of attempting to persuade the patient to change home care agencies.

"Subsidiary" *means any person, firm, corporation or other legal entity which:*

(A) *controls or is controlled by the applicant,*

(B) *is controlled by an entity that also controls the applicant, or*

(C) *the applicant or an entity controlling the applicant has directly or indirectly the power to control.* [63 O.S. Supp. 1996]

"Subunit" means a semi-autonomous organization that serves clients in a geographic area different from that of the parent agency. A subunit is required to independently meet requirements of this Chapter and shall be licensed separately because it is too far from the parent agency to share administration, supervision, and services on a daily basis.

[OAR Docket #07-1089; filed 5-18-07]

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

[OAR Docket #07-1090]

RULEMAKING ACTION:
PERMANENT final adoption

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]

AUTHORITY:
Oklahoma State Board of Health; 63 O.S. 2001, Section 1-104; and Title 63 O.S. Section 1-890.1 et seq.

DATES:
Comment Period:
February 1, 2007 through March 8, 2007
Public Hearing:
March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATION BY REFERENCE:
n/a

ANALYSIS:
The proposed amendments and new language update the rules based on survey experience, history of complaint allegations and investigations, and public meetings held by the Long Term Care Facility Advisory Board.

Definitions are updated to clarify terminology in the proposed rule. A section is added to direct facilities to other provisions of applicable statute in Title 63. This meets guidance within the Administrative Rules on Rule Making to not restate statutory language where possible, while directing facility attention to important statutory language.

Contents for a notice of involuntary termination of residency are specified which include the resident's right to a hearing and the process by which a resident may request a hearing.

A new section is added to address an omission in the rule clarifying that facilities must be in compliance with Oklahoma State Board of Health rules for Food Service Establishments in Title 310 of the Oklahoma Administrative Code, relating to food storage, preparation and service.

Staffing requirements are amended to increase resident supervision, public disclosure and emergency preparedness. New rules specify a minimum of two staff members on duty in facilities with units designed to prevent or limit access to areas outside the designated unit or program. One staff member must be on duty in the unit designed to prevent or limit access to areas outside the designated unit or program at all times.

The rule prohibiting an owner, operator, administrator or employee from appointment as a guardian or limited guardian of a resident is amended to include prohibiting appointment as power of attorney or durable power of attorney.

A new section of rule is created to require development, distribution and posting of facility procedures for receiving resident complaints. The rule includes a provision for distributing and posting the Department's complaint procedures.

The rules for incident reporting are amended to include additional incidents representing a threat to the health and safety of residents; requiring the reporting of those incidents to the Department; timelines for reporting; notification of the Nurse Aide Registry for allegations and incidents of resident abuse, neglect, or misappropriation of resident's property by nurse aide; and, content of the incident report.

Medication administration rules are amended to directly cite the rule. Previously, the rule did not cite the language but only provided a reference to rules in other Chapters.

A new rule for the maintenance of resident records is created. The rule provides for content, confidentiality, protection, retention time frames, and possession in case of closure or ownership change.

Standards of practice are updated in a new Appendix B.

The rule for Plans of Correction is expanded to define an acceptable plan of correction, penalties for failure to submit, and provisions for extension, rejection and right to appeal.

The notice requirements for voluntary closure are amended to define the content of the notice to residents and provide for a final notice to the Department to include effective date of closure, location of residents and provision for resident record storage.

CONTACT PERSON:

James Joslin, Assistant Chief, Long Term Care Service, Protective Health Services, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-6868; electronic mail: james@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

310:663-1-2. Definitions

When used in this Chapter, the following words or terms shall have the following meaning unless the context of the sentence requires another meaning:

"Abuse" means the willful infliction of injury, unreasonable confinement, intimidation or punishment, with resulting physical harm, impairment or mental anguish.

"Act" means the Continuum of Care and Assisted Living Act, Title 63 O.S. ~~Supp. 1997,~~ Sections 1-890.1 et seq. of the Oklahoma Statutes.

"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*; *Intermittent nursing care and home health aide services may be provided in an assisted living facility by a home health agency*~~[63:1-890.1.1]~~[63:1-890.2(1)].

"Chemical restraint" means the use of a medication for the purpose of discipline, convenience, or in an emergency situation to control mood or behavior and not required to treat the resident's symptoms. Chemical restraint does not mean medication prescribed to maintain emotional stability.

"Commissioner" means the Commissioner of Health.

"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].

"Department" means the Oklahoma State Department of Health.

"Direct care staff" in an assisted living center means qualified nursing, activity, social and therapy staff employed by or under the direct supervisory control of the assisted living center.

"Intermittent or unscheduled nursing care" means skilled nursing care given by a licensed practical nurse or registered nurse that is not required twenty-four (24) hours a day.

"Misappropriation of resident's property" means the taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of resident's property.

"Neglect" means a failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness.

"Personal care" *means assistance with meals, dressing, movement, bathing or other personal needs or maintenance, or general supervision of the physical and mental well-being of a person* [63:1-1902.17] and includes assistance with toileting.

"Qualified nutritionist" is a Department approved person who holds a baccalaureate with major studies in food and nutrition, dietetics, or food service management; has one year experience in the dietetic service of a health care institution; and participates in continuing education annually.

"Representative" means an agent under a durable power of attorney for health care, or a court-appointed guardian or, if there is no court-appointed guardian, the parent of a minor, a relative, or other person, designated in writing by the resident.

"Resident" means anyone accepted for care through contractual agreement and who meets the admission criteria established pursuant to 310:663-3-2.

"Physical restraint" means any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident's body that the resident cannot remove easily, that is not used for the purpose of therapeutic intervention or body alignment as determined by resident assessment

and care planning, and which restricts the resident's desired freedom of movement and access to his or her body.

"Significant change" is defined as a major change in the resident's status that is not self limiting; affects more than one area of the resident's health status; and requires interdisciplinary review and/or revision of the care plan.

310:663-1-4. Other provisions applicable to continuum of care facilities and assisted living centers

Continuum of care facilities and assisted living centers subject to the provisions of this chapter shall comply with the following Oklahoma statutes as applicable:

(1) 63 O.S. Sections 1-879.2a et seq., Alzheimer's Disease Special Care Disclosure Act;

(2) 59 O.S. Sections 367 et seq., Utilization of Unused Prescription Medications Act;

(3) 63 O.S. Section 1-1909. (relating to documents and papers required to be displayed);

(4) 63 O.S. Section 1-1945. (relating to Long Term Care Security Act definitions);

(5) 63 O.S. Section 1-1946. (relating to registered sex offender or violent crime offender seeking placement in a long-term care facility - notification - facility's duty to determine registration status of applicants for care, residents, and employees);

(6) 63 O.S. Section 1-1950.1. (relating to definitions - criminal arrest check on certain persons offered employment - exemptions);

(7) 63 O.S. Section 1-1950.3. (relating to nurses aides - employment of persons not licensed);

(8) 63 O.S. Section 1-1950.4. (relating to nurse aides - uniform employment application);

(9) 63 O.S. Section 1-1950.4a. (relating to uniform employment application - penalty for false information);

(10) 63 O.S. Section 1-1950.5. (relating to caregiver - compensation - definition); and

(11) 63 O.S. Section 1-1951. (relating to certified nurse aides).

SUBCHAPTER 3. SERVICES AND CARE

310:663-3-5. ~~Inappropriate placement or length of stay in assisted living center~~Involuntary termination of residency

(a) **Termination of residency when inappropriately placed.** If ~~an~~ a continuum of care facility or assisted living center finds pursuant to 310:663-3-4 (relating to appropriate placement) that a resident is inappropriately placed, the continuum of care facility or assisted living center shall inform the resident and/or the resident's representative if any. If voluntary ~~discharge or transfer~~ termination of residency is not arranged, the continuum of care facility or assisted living center shall provide written notice to the resident and to the resident's representative, giving the resident ~~ten (10)~~ thirty (30) days notice of the continuum of care facility's or assisted living center's intent to ~~discharge or transfer~~ terminate the residency agreement and move the resident to an appropriate care provider. The ~~ten (10)~~ thirty (30) day requirement shall not apply:

(1) when emergency ~~transfer or discharge~~ termination of the residency agreement is mandated by the resident's immediate health needs; or

(2) when ~~the transfer or discharge~~ termination of the residency agreement is necessary for the physical safety of the resident or other residents.

(b) ~~Involuntary discharge provisions in 310:680-17-2(b), 310:680-17-2(c) and 310:680-17-3 shall apply for residents of assisted living centers for reasons other than inappropriate placement.~~**Written notice of involuntary termination of residency for reasons of inappropriate placement.** The written notice of involuntary termination of residency for reasons of inappropriate placement shall include:

(1) A full explanation of the reasons for the termination of residency;

(2) The date of the notice;

(3) The date notice was given to the resident and the resident's representative; and,

(4) The date by which the resident must leave the continuum of care facility or assisted living center.

(c) **Involuntary termination of residency for residents residing in Medicare or Medicaid certified beds of a continuum of care facility.** Residents residing in Medicare or Medicaid certified beds of a continuum of care facility shall be subject to the discharge requirements at 310:675-7-4 (Relating to nursing home resident transfer or discharge).

(d) **Involuntary termination of residency for reasons other than inappropriate placement.** Procedures for involuntary termination of residency for reasons other than inappropriate placement, by a continuum of care facility or assisted living center, are as follows:

(1) Written notice shall be provided to the resident, the resident's legal representative, the person responsible for payment of charges for the resident's care, if different from any of the foregoing, and the Department, at least thirty (30) days in advance of the termination of residency date.

(2) The written notice shall include:

(A) A full explanation of the reasons for the termination of residency;

(B) The date of the notice;

(C) The date notice was given to the resident and the resident's representative;

(D) The date by which the resident must leave the continuum of care facility or assisted living center; and

(E) Information that the resident, the resident's representative or person responsible for payment of the resident's care who is aggrieved by the continuum of care facility's or assisted living center's decision, may file within ten (10) Department business days of receipt of the facility notice a written or verbal request for a hearing with the Department by sending a letter to, or calling, the Hearing Clerk, Oklahoma State Department of Health, 1000 NE Tenth Street, Oklahoma City, OK 73117, telephone (405)271-1269.

(3) A continuum of care facility or assisted living center shall not involuntarily terminate a residency agreement for reasons other than inappropriate placement without following the procedures in this section.

(4) If a written or verbal request for a hearing is timely filed by an eligible aggrieved party, the Department shall convene a hearing within ten (10) Department business days of receipt of the request. The request may be in the form of a written or verbal request for hearing from the resident or the resident's representative. In the event that the resident is unable to write, a verbal request made to the hearing clerk shall be sufficient. The Department shall reduce the verbal request to writing and send a copy to the resident. The request should state the reason for the termination of residency and attach a copy of the letter from the continuum of care facility or assisted living center.

(5) While waiting for the hearing, the continuum of care facility or assisted living center shall not terminate the residency agreement unless the termination was required by the Department or is an emergency situation. If the resident relocates from the continuum of care facility or assisted living center but wants to be readmitted, the Department may proceed with the hearing and the continuum of care facility or assisted living center shall be required to readmit the resident if the discharge is found not to meet the requirements of OAC 310:663.

(6) The Department shall provide the Administrative Law Judge and the space for the hearing. The parties, including the resident and the continuum of care facility or assisted living center, may be represented by counsel or may represent themselves. Continuum of care facilities or assisted living centers operating as a corporation or limited liability corporation shall be represented by counsel.

(7) The hearing shall be conducted at the Oklahoma State Department of Health building unless there is a request for the hearing to be held at the continuum of care facility or assisted living center or at another place. If the hearing is conducted at another location the parties are responsible for providing the hearing room. The Department shall maintain a record on the case in accordance with the Administrative Procedures Act.

(8) The hearing shall be conducted in accordance with the Administrative Procedures Act. The Administrative Law Judge's order shall include findings of fact, conclusions of law and an order as to whether or not the termination of the residency was according to law.

(9) If the Administrative Law Judge finds that the termination of residency was not according to law, the Department shall review, investigate and issue deficiencies as appropriate.

(10) If the termination of residency is according to law, the order shall give the continuum of care facility or assisted living center the right to terminate the residency agreement.

(11) The scope of the hearing may include:

(A) Inadequate notice;

(B) Discharge based on reason not stated in the law;

(C) Sufficiency of the evidence to support the termination of residency; or

(D) The finding of emergency.

(12) The Administrative Law Judge shall render a written decision within ten (10) Department business days of the close of the record.

(13) If the Administrative Law Judge sustains the decision of the continuum of care facility or assisted living center, the continuum of care facility or assisted living center may proceed with the termination of residency. If the Administrative Law Judge finds in favor of the resident, the continuum of care facility or assisted living center shall withdraw its notice of intent to terminate the residency agreement. The decision of the Administrative Law Judge shall be final and binding on all parties unless appealed in accordance with the provisions of the Administrative Procedures Act.

310:663-3-8. Food storage, preparation and service

(a) **Use of Food Service Establishment rule.** Food shall be stored, prepared and served in accordance with Chapter 257 of this Title (relating to food service establishments) with the following additional requirements:

(b) **Ice.** Ice machines available to the residents, or the public, shall be a dispenser type, or have a locking enclosure.

(c) **Food.** A whole, intact, fruit or vegetable is an approved food source. The food supply shall be sufficient in quantity and variety to prepare menus for three (3) days. Leftovers that are potentially hazardous foods shall be used, or disposed of, within twenty-four hours. Non-potentially hazardous leftovers that have been heated or cooked may be refrigerated for up to forty-eight hours.

(d) **Milk, milk products and eggs**

(1) **Milk grade.** Only grade A pasteurized fluid milk, as defined by the Oklahoma Milk and Milk Products Act, Title 2, Section 7-401 through 7-421, shall be used for beverage and shall be served directly into a glass from a milk dispenser or container.

(2) **Powdered or evaporated milk.** Powdered or evaporated milk products approved under the U.S. Department of Health and Human Services' Grade "A" Pasteurized Milk Ordinance (2003 Revision), may be used only as additives in cooked foods. This does not include the addition of powdered or evaporated milk products to milk or water as a milk for drinking purposes. Powdered or evaporated milk products may be used in instant desserts and whipped products or for cooking. When foods, in which powdered or evaporated milk has been added, are not cooked the foods shall be consumed within twenty-four hours.

(3) **Milk Temperature.** Milk for drinking shall be stored at a temperature of 41° F. or below and shall not be stored in a frozen state.

(4) **Eggs.** Only clean, whole eggs with shell intact, pasteurized liquid, frozen, dry eggs, egg products and commercially prepared and packaged hard boiled eggs may be

used. All eggs shall be thoroughly cooked except pasteurized egg products or pasteurized in-shell eggs may be used in place of pooled eggs or raw or undercooked eggs.

(e) **Food service training.** All staff assisting in, or responsible for food service shall have attended a food service training program offered or approved by the Department.

(f) **Applicability.** This section shall only apply to food prepared or served by the continuum of care facility or assisted living center within the licensed continuum of care facility or assisted living center.

SUBCHAPTER 7. PHYSICAL PLANT DESIGN

310:663-7-2. Privacy and independence

Each assisted living center shall ensure privacy and independence for its residents, to include the following:

(1) no more than two (2) residents shall occupy each sleeping room;

(2) shower and bathing facilities shall not be occupied by more than one (1) resident at a time;

(3) lockable doors on resident sleeping rooms or residences except in the case of documented contraindication;

(4) no more than four (4) residents sharing toilet facilities;

(5) no more than four (4) residents sharing bathing facilities, provided that the Department may approve more than four (4) residents per bathing facility based on documentation that the design of the bathing facility is appropriate to the special needs of each resident who uses the bathing facility;

(6) provisions shall be made for each resident to control the temperature in the individual living unit through the use of a damper, register, thermostat, or other reasonable means that is under the control of the resident and that preserves resident privacy, independence and safety, provided that the Department may approve an alternate means based on documentation that the design of the temperature control is appropriate to the special needs of each resident who has an alternate temperature control; and

(7) the resident shall have the right ~~of resident~~ to use personal furnishings in the individual living unit.

SUBCHAPTER 9. STAFFING REQUIREMENTS

310:663-9-6. Minimum staff for services ~~to cognitively impaired residents~~

(a) **Staffing.** The right number of trained staff shall be on duty, awake, and present at all times, 24 hours a day, 7 days a week, to meet the needs of residents and to carry out all the processes listed in the continuum of care facility's, or assisted living center's, written emergency and disaster preparedness plan for fires and other natural disasters.

(b) **Limitations on one-person staffing.** ~~An~~ A continuum of care facility or assisted living center that has only one direct care staff member on duty ~~and awake during the night shift~~ shall:

(1) Disclose the one-person staffing and the plan for dealing with urgent and emergent situations to ~~the resident or the resident's representative~~ residents and their representatives before admission or prior to one-person staffing if such staffing was not previously practiced by the continuum of care facility or assisted living center; and~~,~~

(2) Have in place a plan, approved by the Department, for dealing with urgent or emergent situations, including resident falls, during periods when the continuum of care facility or assisted living center has only one direct-care staff member on duty.

(c) **Units designed to prevent or limit access to areas outside the designated unit or program.** A continuum of care facility or assisted living center shall have a minimum of two staff members on duty and awake on all shifts if a continuum of care facility or assisted living center has a unit or program designed to prevent or limit access to areas outside the designated unit or program. A minimum of one direct care staff is required to be on duty and awake within the unit or program designed to prevent or limit access to areas outside the designated unit or program at all times.

SUBCHAPTER 13. RESIDENT CONTRACT

310:663-13-1. Resident service contract

(a) Each assisted living center shall furnish to each resident a complete and understandable copy of the resident service contract.

(b) All rights, privileges and assurances guaranteed to residents under these rules or marketing materials are deemed incorporated in any contract between an assisted living center and a resident.

(c) The assisted living center shall ensure that the resident or the resident's representative, if any, is informed of all provisions of the resident service contract.

(d) The assisted living center shall provide all services that are specified in the resident's current service contract.

SUBCHAPTER 15. RESIDENT RIGHTS AND RESPONSIBILITIES

310:663-15-1. ~~Familiarity with~~ Resident rights

Each assisted living center and its staff shall be familiar with and shall observe all resident rights and responsibilities enumerated under Title 63 O.S. ~~Supp. 1997,~~ Section 1-1918.B.

310:663-15-2. Guardians and power of attorney

No owner, operator, administrator or employee of a continuum of care facility or assisted living center subject to the provisions of the Continuum of Care and Assisted Living Act, Nursing Home Care Act, or the Residential Care Act, shall

be appointed power of attorney, durable power of attorney, guardian or limited guardian of a resident unless the owner, operator, administrator or employee is the spouse of the resident, or a relative of the resident within the second degree of consanguinity and is otherwise eligible for appointment.

310:663-15-3. Complaints

(a) **Procedures.** The continuum of care facility, or assisted living center, shall make available to each resident or the resident's representative a copy of the continuum of care facility's or assisted living center's complaint procedure. The continuum of care facility or assisted living center shall ensure that all employees comply with the continuum of care facility's or assisted living center's complaint procedure. The continuum of care facility's or assisted living center's complaint procedure shall include at least the following requirements.

(1) The continuum of care facility or assisted living center shall list in its procedures:

(A) The names, addresses and telephone numbers of continuum of care facility or assisted living center staff persons designated to receive complaints for the continuum of care facility or assisted living center;

(B) Notice that a good faith complaint made against the continuum of care facility or assisted living center shall not result in reprisal against the person making the complaint; and

(C) Notice that any person with a complaint is encouraged to attempt to resolve the complaint with the continuum of care facility's or assisted living center's designated complaint staff, that the person may submit a complaint to the Department or other entities without prior notice to the continuum of care facility or assisted living center.

(2) If a resident, resident's representative or continuum of care facility or assisted living center employee submits to the administrator or designated complaint staff a complaint concerning resident abuse, neglect or misappropriation of resident's property, the continuum of care facility or assisted living center shall comply with the Protective Services for Vulnerable Adults Act, Title 43A O.S. Sections 10-101 through 10-110 and OAC 310:663-19-1.

(b) **Posted complaint procedures.** Every continuum of care facility or assisted living center shall conspicuously post for display in an area accessible to residents, employees and visitors, the continuum of care facility's or assisted living center's complaint procedure specified in paragraph (a) and a description, provided by the Department, of complaint procedures established under this rule and the name, address and telephone number of a person authorized by the Department to receive complaints. A copy of the complaint procedure shall also be given to each resident, the resident's representative, or where appropriate, the court appointed guardian.

SUBCHAPTER 19. ADMINISTRATION, RECORDS AND POLICIES

310:663-19-1. Incident reports

(a) **Timeline for reporting.** All reports to the Department shall be made via facsimile or by telephone within one Department business day of the reportable incident's discovery. A follow-up report of the incident shall be submitted via facsimile or mail to the Department within five (5) Department business days after the incident. The final report shall be filed with the Department when the full investigation is complete, not to exceed ten (10) Department business days after the incident. Notifications to the Nurse Aide Registry using the ODH Form 718 must be made within one Department business day of the reportable incident's discovery.

(~~a~~b) **Incidents requiring report.** Each continuum of care facility and assisted living center shall ~~record incidents including falls that result in injury, injuries, runaways, violent behavior, and medication errors~~prepare a written incident report for the following incidents:

(1) allegations and incidents of resident abuse;

(2) allegations and incidents of resident neglect;

(3) allegations and incidents of misappropriation of resident's property;

(4) fires on the licensed real estate;

(5) storm damage resulting in relocation of a resident from a currently assigned room;

(6) deaths by unusual occurrence, including accidental deaths or deaths other than by natural causes;

(7) residents missing from the continuum of care facility or assisted living center upon determination by the continuum of care facility or assisted living center that the resident is missing;

(8) utility failure for more than 4 hours;

(9) incidents occurring at the continuum of care facility or assisted living center, on the continuum of care facility or assisted living center grounds or during continuum of care facility or assisted living center sponsored events, that result in fractures, head injury or require treatment at a hospital;

(10) reportable diseases and injuries as specified by the Department in OAC 310:515 (relating to communicable disease and injury reporting); and,

(11) situations arising where a criminal act is suspected. Such situations shall also be reported to local law enforcement.

(~~b~~c) **Incidents involving another provider.** Each continuum of care facility and assisted living center shall promptly refer incidents involving another provider, including a hospice or home health agency, to the certification or licensure agency having jurisdiction over the provider.

(~~c~~d) **Reports to the Department.** ~~The~~Each continuum of care facility and assisted living center shall report to the Department ~~allegations of resident abuse, neglect or misappropriation of resident's property~~ those incidents specified in 310:663-19-1(b). A continuum of care facility or assisted living center may use the Department's Long Term Care Incident Report Form.

(e) **Licensing boards.** ~~The~~Each continuum of care facility and assisted living center shall report allegations and incidents of resident abuse, neglect, or misappropriation of resident's

property by licensed personnel to the appropriate licensing board within five (5) business days.

(f) **Notification of nurse aide registry.** Each continuum of care facility and assisted living center shall report allegations and occurrences of resident abuse, neglect, or misappropriation of resident's property by nurse aide to the Nurse Aide Registry by submitting a completed "Notification of Nurse Aide Abuse, Neglect, Mistreatment or Misappropriation of Property" form (ODH Form 718), which requires the following:

(1) facility/center name, address and telephone;
(2) facility type;
(3) date;
(4) reporting party name or administrator name;
(5) employee name and address;
(6) employee certification number;
(7) employee social security number;
(8) employee telephone number;
(9) termination action and date (if applicable);
(10) other contact person name and address; and
(11) the details of the allegation or occurrence of abuse, neglect, or misappropriation of resident property.

~~(d) All reports to the Department shall be made by telephone within twelve (12) hours of the reportable incident. An initial report of the incident shall be mailed to the Department within five (5) working days after the incident. The final report shall be filed with the Department when the full investigation is complete.~~

(g) **Content of incident report.**

(1) The preliminary report shall at the minimum include:
(A) who, what, when, and where; and
(B) measures taken to protect the resident(s) during the investigation.

(2) The follow-up report shall at the minimum include:
(A) preliminary information;
(B) the extent of the injury or damage if any; and
(C) preliminary findings of the investigation.

(3) The final report, at the minimum, include preliminary and follow-up information and:
(A) a summary of investigative actions;
(B) investigative findings and conclusions based on findings;
(C) corrective measures to prevent future occurrences; and
(D) if items are omitted, why the items are omitted and when they will be provided.

310:663-19-2. Medication administration

(a) Each assisted living center shall adopt written procedures to ensure safe administration of medications ~~that are at least equivalent to 310:675-9-9.1(c)~~.

(1) Medications shall be administered only on a physician's order.

(2) The person responsible for administering medications shall personally prepare the dose, observe the swallowing of oral medication, and record the medication. Medications shall be prepared within one hour prior to administration.

(3) An accurate written record of medications administered shall be maintained. The medication record shall include:
(A) The identity and signature of the person administering the medication.
(B) The medication administered within one hour of the scheduled time.
(C) Medications administered as the resident's condition may require (p.r.n.) are recorded immediately, including the date, time, dose, medication, and administration method.
(D) Adverse reactions or results.
(E) Injection sites.
(F) An individual inventory record shall be maintained for each Schedule II medication prescribed for a resident.
(G) Medication error incident reports.

(4) A resident's adverse reactions shall be reported at once to the attending physician.

(b) An assisted living center may maintain nonprescription drugs for dispensing from a common or bulk supply if all of the following are accomplished.

(1) The assisted living center shall have and follow a written policy and procedure to assure safety in dispensing and documenting medications given to each resident.

(2) The assisted living center shall maintain records which document the name of the medication acquired, the acquisition date, the amount and the strength received for each medication maintained in bulk.

(3) Only a licensed nurse, physician, pharmacist, certified medication aide or medication aide technician may dispense for administration these medications and only upon a physician's written order for as needed or non-scheduled dosage regimens. The physician's written order shall be maintained in the resident's clinical record.

(4) Bulk medications shall be stored in the medication area and not in resident rooms.

(5) The assisted living center shall maintain records of all bulk medications that are dispensed on an individual signed medication administration record.

(6) The assisted living center shall maintain the original label on the container as it comes from the manufacturer or on the unit-of-use or blister package.

(7) The assisted living center shall establish in its policy and procedure the maximum size of packaging and shall ensure that each resident receives the correct dosage. The assisted living center shall not acquire nor maintain a liquid medication in a package size that exceeds 16 fluid ounces.

(8) An assisted living center shall have only oral analgesics, antacids, and laxatives for bulk dispensing. No other category of medication shall be maintained as bulk medication.

310:663-19-3. Maintenance of records

(a) There shall be an organized, accurate, clinical record, typewritten, electronic, or legibly written with pen and ink, for

each resident admitted. The resident's record shall document all services provided.

(b) Each resident's records shall be retained for at least five years after the resident's transfer, discharge or death. Destruction of records shall be done in a manner to preserve resident confidentiality.

(c) Records for the previous twelve (12) months of operation, whether original, electronic, or microfilm copies, shall be maintained in such form as to be legible and readily available upon request of the attending physician, the continuum of care facility or assisted living center and any person authorized by law to make such a request. Records more than twelve (12) months old, whether original, electronic, or microfilm copies, shall be maintained in such form as to be legible and available within seventy-two (72) hours upon request of the attending physician, the continuum of care facility or assisted living center, and any person authorized by law to make such a request.

(d) Information contained in each resident's record shall be confidential and disclosed only to the resident, persons authorized by the resident, and persons authorized by law or rule.

(e) Resident records shall be filed and stored to protect against loss, destruction, or unauthorized use.

(f) The Department shall be informed in writing within five business days of discovery whenever any resident's records are defaced, or destroyed, before the end of the required retention period.

(g) If a continuum of care facility or assisted living center ceases operation, the Department shall be notified within five business days of the arrangements for preserving the resident's record. The record shall be preserved for the required time and the information in the records shall be available to the health professionals or facilities assuming care of the resident so that continuity of care is available.

(h) If the ownership of the continuum of care facility or assisted living center changes, the new licensee shall have custody of original or true and correct copies of all records required by this section for all current residents and the records shall be available to the former licensee and other authorized persons.

(i) Incident reports required in 310:663-19-1. shall be retained, filed and stored to protect against loss, destruction, or unauthorized use for a period of two (2) years. Destruction of incident reports shall be done in a manner to preserve resident confidentiality.

SUBCHAPTER 25. INSPECTIONS AND INVESTIGATIONS

310:663-25-3. Outcome standards

~~If~~ To the extent allowed in this Chapter, if an assisted living center provides or arranges skilled nursing care, the Department shall assess the quality of that care against applicable ~~national~~ standards of practice ~~adopted by the American Nurses Association and Specialty Nursing Organizations, as follows:~~

~~Standards of Clinical Nursing Practice, 1991;~~

~~Standards for Nursing Staff Development, 1990;~~

~~Standards and Scope of Gerontological Nursing Practice, 1983;~~

~~Standards of Medical-Surgical Nursing Practice, 1974;~~

~~Standards of Oncology Nursing Practice, 1987;~~

~~Standards of Rehabilitation Nursing Practice, 1986; and~~

~~Standards of Psychiatric-Mental Health Nursing Practice, 1982~~ specified in Appendix B.

310:663-25-4. Notice of violation, plans of correction, and right to hearing

(a) **Notice of Violation.** If upon survey or investigation the Department finds that the continuum of care facility or assisted living center is in violation of the Act or this Chapter, the Department shall provide written notice of the violation to the continuum of care facility or assisted living center.

(b) **Plan of Correction.** ~~The continuum of care facility or assisted living center shall have ten (10) working days after receipt of the notice of violation to file a plan of correction with the Department.~~

(1) A continuum of care facility or assisted living center shall submit a plan of correction within ten (10) Department business days after receipt of notice of violation. Failure to timely submit a plan of correction shall be subject to the penalties provided in Title 63 O.S. Section 1-890.6.

(2) An acceptable plan of correction shall:

(A) Address how corrective action will be accomplished for those residents found to have been affected by the deficient practice.

(B) Address how the continuum of care facility or assisted living center will identify other residents having the potential to be affected by the same deficient practice. Plans of correction specific to residents identified on the deficiency statement are acceptable only where the deficiency is determined to be unique to that resident and not indicative of a possible systemic problem.

(C) Address what measures will be put into place or systemic changes made to ensure that the deficient practice will not recur.

(D) Indicate how the continuum of care facility or assisted living center plans to monitor its performance to make sure that corrections are sustained. The continuum of care facility or assisted living center shall develop a plan for ensuring that correction is achieved and sustained. The actions taken to correct the deficient practice must be evaluated for its effectiveness. The plan of correction shall be incorporated into the quality assurance system. At the revisit, the monitoring records may be reviewed to determine the earliest date of compliance. If there is no evidence of evaluation of the correction, the earliest correction date will be the date of the revisit. The continuum of care facility or assisted living center is not required to provide quality assurance minutes for the purposes of this section.

(E) Include dates when corrective action will be completed for each violation. The corrective action

completion dates shall not exceed sixty (60) calendar days from receipt of notice of violation.

(F) Be signed by the administrator.

(3) Upon written request from the continuum of care facility or assisted living center, the Department may extend the time period within which the violations are to be corrected where correction involves substantial structural improvement. Such request shall be provided to the Department within the timeline specified at 310:663-25-4(b)(1) (relating to submission within ten (10) Department business days) or prior to expiration of the correction time originally approved. The burden of proof shall be on the licensee to show good cause for not being able to comply with the timeline in 310:663-25-4(b)(2)(E) (relating to correction within sixty (60) days).

(4) The Department shall provide written notice of the acceptance or rejection of a plan of correction within ten (10) Department business days. If the Department fails to provide notice of acceptance or rejection within the required time frame, notice will be provided as soon as time permits and any delay on the Department's part will result in a day for day off-set in any per diem penalty. If the Department finds that the plan of correction does not meet the requirements for an acceptable plan of correction as specified in this section the Department shall provide notice of the rejection and the reason for the rejection to the continuum of care facility or assisted living center. The continuum of care facility or assisted living center shall have ten (10) Department business days after receipt of the notice of rejection in which to submit an amended plan. If the amended plan is not timely submitted, or if the amended plan is rejected, the Department shall give notice of intent to pursue penalties, as provided in Title 63 O.S. Section 1-890.6., or notice of intent to conduct a revisit to determine if violations continue.

(5) Acceptance of the plan of correction by the Department does not absolve the continuum of care facility or assisted living center of the responsibility for compliance should the implementation not result in correction and compliance. Acceptance indicates the Department's acknowledgment that the continuum of care facility or assisted living center indicated a willingness to make timely corrections.

(6) If the violation has been corrected prior to submission and approval of a plan of correction, the continuum of care facility or assisted living center may submit a report of correction in place of a plan of correction. The report of correction shall address those requirements specified in this section.

(7) If a continuum of care facility or assisted living center desires to contest any Department action under this section, it shall send a written request for a hearing to the Hearing Clerk, Oklahoma State Department of Health, 1000 NE Tenth Street, Oklahoma City, OK 73117. The request for hearing shall be submitted within ten (10) Department business days of receipt of notice of the contested action.

(c) **Right to Hearing.** The Department shall notify the continuum of care facility or assisted living center in writing of the Department's ~~its~~ intent to take remedial action, to impose an administrative penalty, or to take action against the license issued under the act, and of the rights of the continuum of care facility or assisted living center under this section, including without limitation the~~. The Department shall advise the continuum of care facility or assisted living center of its~~ right to a hearing.

SUBCHAPTER 29. TERMINATING AND CONTINUING SERVICES

310:663-29-2. Notice of voluntary closure

(a) **Timeline for notice of intent to close.** A continuum of care facility or assisted living center shall notify all residents, their representatives, and the Department in writing at least ninety (90) days before any of the following:

(1) voluntary cessation of business; or

(2) closure of all or part of a continuum of care facility or assisted living center.

(b) **Contents of notice.** The notice of closure shall state:

(1) the proposed date of closing;

(2) the reason for closing;

(3) an offer to assist the resident in securing an alternative placement;

(4) advise the resident or resident's representative on available housing alternatives and that where the resident is unable to choose an alternative placement and is not under guardianship, the Department shall be notified of the need for relocation assistance;

(5) the facility shall comply with all applicable laws and regulations until the date of closing, including those related to transfer or discharge of residents.

(c) **Final notice of closure.** Following the move-out of the last resident, the continuum of care facility or assisted living center shall provide the Department, in writing, the following:

(1) the effective date of closure based on the discharge date of the last resident;

(2) a list of residents transferred or discharged and the location to where they relocated, whether another continuum of care facility or assisted living center or alternative placement; and

(3) the plan for storage of resident records pursuant to 310:663-19-3(g)(relating to preservation of resident records) and the name, address and phone number of the person responsible for the records.

APPENDIX B. REFERENCE LIST FOR STANDARDS OF PRACTICE [NEW]

(Referring to OAC 310:663-25-3. Outcome Standards)

"Physical Examination and Health Assessment" - Third Edition - Carolyn Jarvis

"Medical-Surgical Nursing Assessment and Management of Clinical Problems" - Fifth Edition - Lewis, Heitkemper and Dirksen (Mosby)

"Handbook of Geriatric Nursing" - Second Edition - Lippincott, Williams and Wilkins

"Clinical Nursing Skills - Basic To Advanced Skills" - Fifth Edition - Smith, Duell and Martin

Oklahoma Board of Nursing Guidelines and Position Statements:

"A Decision-Making Model for Determining RN/LPN Scope of Practice Model - Model for Scope of Nursing Practice Decisions"

"Abandonment Statement"

"Advanced Practice Nurses with Prescriptive Authority Exclusionary Formulary"

"Delegation of Nursing Functions to Unlicensed Persons"

"Guidelines for Employment of Individuals Enrolled in or Non-Licensed Graduates of Nursing Education Programs"

"Guidelines for the Registered Nurse in Administering, Managing and Monitoring Patients Receiving Analgesia/Anesthesia by Catheter Techniques"

"Issuance of Temporary Licenses for RNs and LPNs"

"Licensure Verification and Photocopying of Nursing Licenses"

"Patient Assessment Guidelines"

"Refresher Course Policy"

"Wound Debridement by Licensed Nurses Guideline"

Standards of the American Nurses Association and Specialty Nursing Organizations:

"Nursing: Scope and Standards of Practice" Pub# 03SSNP - 2004

"Scope and Standards for Nurse Administrators" (Second Edition); Pub#03SSNA - 2004

"Scope and Standards of Diabetes Nursing Practice" (2nd Edition); Pub# DNP23 - 2003

"Scope and Standards of Forensic Nursing Practice" Pub# ST-4 - 1997

"Scope and Standards of Gerontological Nursing Practice" 2nd Edition; Pub# GNP21 - 2001

"Scope and Standards of Hospice and Palliative Nursing Practice" Pub# HPN22 - 2002

"Scope and Standards of Neuroscience Nursing Practice" Pub# NNS22 - 2002

"Scope and Standards of Nursing Informatics Practice" Pub# NIP21 - 2001

"Scope and Standards of Psychiatric-Mental Health Nursing Practice" Pub# PMH-20 - 2000

"Statement on the Scope and Standards for the Nurse Who Specializes in Developmental Disabilities and/or Mental Retardation" Pub# 9802ST - 1998

"Statement on the Scope and Standards of Oncology Nursing Practice" Pub# MS-23 - 1996

[OAR Docket #07-1090; filed 5-18-07]

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

[OAR Docket #07-1091]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Preparedness Program
310:664-5-2 [AMENDED]
AUTHORITY:
Oklahoma State Board of Health, 63 O.S. § 1-104 and 63 O.S. §1-1960a
DATES:
Comment Period:
January 2, 2007 through March 8, 2007
Public Hearing:
February 1, 2007 and March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 5. Preparedness Program
310:664-5-2 [AMENDED]
Gubernatorial approval:
July 26, 2006
Register publication:
23 Ok Reg 3166
Docket number:
06-1241
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The purpose of the proposed amendment is to permanently revoke the provision requiring training programs to be nationally, regionally or state accredited. The accreditation requirement was revoked on an emergency basis, effective July 26, 2006 through July 14, 2007. The accreditation requirement is unnecessary because other sections in Subchapter 5 establish substantive standards for State Health Department approval of administrator preparedness programs. The State Health Department knows of no national or regional accreditation specific to the preparation of home care administrators, and no Oklahoma post-secondary or higher education institution currently makes this training available. This amendment will permanently remove an unreasonable barrier to the development of preparedness programs.
CONTACT PERSON:
Boyd E. Murphy, Director, Managed Care Systems, Health Resources Development Service, Protective Health Services, (405) 271-9444 Ext 57268, Room 1010, State Department of Health Building, 1000 NE 10th Street, Oklahoma City, OK 73117-1299, boydm@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 5. PREPAREDNESS PROGRAM

310:664-5-2. Approved programs

(a) The Department shall approve a preparedness program that meets the requirements specified in this Chapter.

(b) An institution seeking approval shall apply on the Department form and submit the application fee of fifty dollars ($50.00) to the Department.

(c) The Department shall review, approve, or disapprove a preparedness program and notify the applicant of its action within ninety (90) days.

~~(d) To be eligible for Department approval for a preparedness program, the institution shall be accredited by a national accrediting agency or a nationally recognized regional accrediting agency or a state approval agency for post secondary or higher education.~~

(~~e~~d) An approved preparedness program shall allow a Department proctor or representative to make unannounced visits to review the program.

[OAR Docket #07-1091; filed 5-18-07]

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

[OAR Docket #07-1092]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Oklahoma State Board of Health; 63 O.S. Sections 1-104, 1-705, and 1-707
DATES:
Comment Period:
February 1, 2007 through March 8, 2007
Public Hearing:
March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATION BY REFERENCE:

n/a

ANALYSIS:

The proposed amendments add additional focus areas for quality indicators as specified by HB2842 passed during the first session of the 49th Legislature of 2006. The amendments make conforming changes that update the existing requirement for hospitals to be in compliance with Chapter 257, the most recent iteration of the rules for Food Service Establishments.

Additionally, changes are proposed to allow commingling of adolescent and adult patients in a behavioral health unit under limited and well defined circumstances and restricted to single gender populations undergoing treatment for certain eating disorders when appropriate monitoring is in place.

CONTACT PERSON:

Tom Welin, Chief, Medical Facilities, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-6576; electronic mail: tomw@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

310:667-1-3. Licensure

(a) **Application for licensure.**

(1) No person or entity shall operate a hospital without first obtaining a license from the Department. The license is not transferable or assignable.

(2) The applicant shall file a licensure application in a timely manner. The application shall be on forms provided by the Department, with a check of $10.00 for each census bed, crib and bassinet, payable to the Oklahoma State Department of Health.

(3) The entity responsible for operation of the hospital and appointment of the medical staff shall be considered the applicant for the license. This entity may be a lessee if the hospital is leased and the lessee is the operating entity. For the purposes of licensure, a company providing administrative management of a hospital, which functions by contract with the governing body of the hospital, shall not be considered the entity responsible for operation.

(4) An application is not considered to be filed unless it is accompanied by the application fee.

(b) **Application filing.** An initial license application or renewal application shall be filed as follows:

(1) The application for an initial license for a new hospital shall be filed prior to or at the time final drawings for construction are submitted to the Department for review which shall be at least thirty (30) days before a hospital begins operation.

(2) The application for an initial license for a change of ownership or operation, shall be filed at least thirty (30) days before the transfer. The sale of stock of a corporate licensee, where a majority of the governing body does not change, is not considered a change of ownership or operation. The sale or merger of a corporation that owns an operating corporation that is the licensed entity shall not be considered a change of ownership unless a majority of the governing body is replaced.

(3) The application for renewal of a license of an existing hospital shall be filed at least thirty (30) days before the expiration date of the current license.

(c) **Where to file.** The application and the license fee shall be delivered or sent to the Department. The effective date shall be the date the application and fee are received.

(d) **Forms.** The applicant for a license shall file application forms as follows:

(1) For an initial license of a new hospital, or for an existing hospital following a change in ownership or operation, the applicant shall file these forms: Application for License to Operate a Hospital or Related Institution; Board of Directors Information Sheet; and Designation of Licensed Beds Form.

(2) For renewal of a current license, the applicant shall file the Application for License to Operate a Hospital or Related Institution; Board of Directors Information Sheet; Designation of Licensed Beds Form; and a Fire Inspection Report For Hospitals.

(e) **Description of forms.** The forms used to apply for a hospital license are the following:

(1) The Application For License to Operate Hospital or Related Institution (Form 920) requests: identification of the type of license requested; the name and address of the hospital; the name and address of the operating entity; the number of beds and bassinets; the ownership of the building and grounds; the applicant's name; the chief executive officer/administrator's name; attachment for credentialed staff; and an affidavit attesting the signature of the applicant.

(2) The Board of Directors Information Form (Form AGH-2) requests: The names and addresses of the Board of Directors for the hospital.

(3) The Designation of Licensed Beds Form (Form 920-A) requests: A listing of the types of beds operated by the hospital and a total of the beds.

(4) The Fire Inspection Report for Hospitals (Form 928) requests: a check list of the annual inspection conducted by the local fire marshall.

(f) **Eligibility for license.**

(1) Hospitals making appropriate application that have been determined to be compliant with these standards are eligible for a license.

(2) A hospital may operate inpatient and outpatient facilities under one (1) license as a hospital campus as long as the following requirements are met:

(A) The facilities shall be separated by no more than fifty (50) miles. This requirement may be waived if the services of the facilities are totally integrated through telecommunication or by other means.

(B) The facilities are operated by the same governing body with one administrator.

(C) The medical staff for all facilities is totally integrated so that any practitioner's privileges extend to all facilities operated under the common license.

(3) An outpatient facility located at a different address from a hospital is eligible to be licensed as part of the hospital but is not required to be licensed.

(4) Each hospital shall participate in a functioning regional system of providing twenty-four (24) hour emergency hospital care approved by the Commissioner of Health in consultation with the Oklahoma Trauma Systems Improvement and Development Advisory Council. Participation in a regional system may include active participation of the hospital in the provision of emergency services based upon the system plan, participation of the hospital's medical staff in the provision of emergency services at other hospitals in the system based on the system plan, or payment into a fund to reimburse hospitals providing emergency services in the system.

(5) If an area of the state fails to develop a functioning regional system of providing twenty-four (24) hour emergency hospital care necessary to meet the state's needs for trauma and emergency care as established by the state-wide trauma and emergency services plan, the Commissioner of Health, in consultation with the Oklahoma Emergency Response Systems Development Advisory Council, shall develop a system for the area. Each hospital located in the area shall participate as specified by the system plan for that region.

(g) **Regional system of emergency hospital care.**

(1) In counties and their contiguous communities with populations of 300,000 or more, a functioning regional system of providing twenty-four (24) hour emergency hospital care shall include definitive emergency care for all clinical categories specified in OAC 310:667-59-7. In these regions, a functioning system shall only transfer emergent patients out of the system when treatment or diagnostic services are at capacity unless the patient has a special treatment need not normally provided by the system. Transfers out of the system may occur based upon the patient or the patient's legal representative's request or based upon a special circumstance for the transfer.

(2) In counties and communities with populations of less than 300,000, a functioning regional system of providing twenty-four (24) hour emergency hospital care shall include definitive care based upon the classification of hospital's emergency services in the region as specified in OAC 310:667-59-7. Transfers out of the regional system may be based upon lack of diagnostic or treatment capability or capacity. A functioning system shall not permit emergent patient transfers out of the system if the system has the capability and capacity to provide care unless the patient or patient's legal representative requests the transfer.

(3) A functioning regional system of providing twenty-four (24) hour emergency hospital care shall demonstrate compliance with OAC 310:667-1-3(g)(1) or (2) through system continuous quality improvement activities. Activities shall include monitoring of patient transfers and corrective actions when inappropriate transfers are identified. Special circumstance patient transfers shall be identified and reviewed through continuous quality improvement activities.

(h) **Quality indicators.** The Department, with the recommendation and approval of the Hospital Advisory Council, shall establish quality indicators to monitor and evaluate the quality of care provided by licensed hospitals in the state.

(1) The quality indicators shall focus on the following measurement areas:

(A) Acute myocardial infarction (including coronary artery disease);

(B) Heart failure;

(C) Community acquired pneumonia;

(D) Pregnancy and related conditions (including newborn and maternal care);

(E) Surgical procedures and complications;~~ and~~

(F) Patient perception measures such as satisfaction surveys~~.~~; and

(G) Ventilator-associated pneumonia and device-related blood stream infections for certain intensive care unit patients in acute care hospital settings.

(2) The quality indicators in use shall be periodically evaluated and revised as health care quality issues are identified and others are resolved.

(i) **Data submission requirements.**

(1) The Department shall define the parameters and scope of each quality indicator, the beginning and ending dates of the period when each indicator will be in effect, how the indicator will be measured, any inclusionary or exclusionary criteria, and the frequency and format of how the data shall be reported.

(2) Each hospital shall report applicable data related to these indicators to the Department in the specified format and within required time frames.

SUBCHAPTER 17. FOOD AND NUTRITIONAL SERVICES

310:667-17-4. Food preparation and storage

(a) Potentially hazardous food, as defined in Chapter ~~256~~257 of this Title, shall be maintained at one hundred-forty (140) °F (approximately 60 °C) or above or at an internal temperature of forty-one ° F (approximately 5 °C) or below. A product thermometer shall be available (metal stem-type numerically scaled indicating temperature, accurate to plus or minus two (2) °F and used to check internal food temperatures).

(b) Milk and milk products shall be served, handled and stored in accordance with the requirements of Chapter ~~256~~257 of this Title.

(c) All ice which is in contact with food or drink shall come from a source approved by the Department, including storage, transportation, handling, and dispensing, which shall be in a sanitary manner, approved by the Department in accordance with Chapter ~~256~~257 of this Title.

310:667-17-5. Sanitation

(a) The food and nutritional services shall be inspected and approved by state or local health agencies and licensed as a Food Service Establishment. Written reports of the inspection; e.g., Food Establishments Inspection Report Forms, shall be on file at the hospital with notations made by the hospital of action taken to correct violations.

(b) Storage, preparation, and serving of food shall be in compliance with the requirements of Chapter ~~256~~257 of this Title, including adequate and proper space for each activity.

(c) The system to be used for dishwashing shall be approved by the Department and operated in accordance with approved procedures and requirements of Chapter ~~256~~257 of this Title.

(d) Garbage and refuse shall be kept in durable, easily cleanable, insect-proof and rodent-proof containers that do not leak and do not absorb liquids. Adequate carriers and containers shall be provided for the collection and transportation, in a sanitary manner, of garbage and refuse from food service areas of the hospital to the place of disposal in accordance with the requirements of Chapter ~~256~~257 of this Title.

SUBCHAPTER 33. SPECIALIZED REQUIREMENTS - PSYCHIATRIC

310:667-33-2. Specialized requirements - personnel and policy

(a) **Personnel.**

(1) A physician with training and experience in psychiatry shall be appointed as medical director of the hospital or unit by the governing body based upon a recommendation from the medical staff. The medical director shall coordinate with other services provided by the hospital, and shall be responsible for developing policies concerning treatment and staffing.

(2) The diagnosis and treatment rendered to each patient in psychiatric hospitals or units shall be under the direction of a physician or licensed independent practitioner with training and experience in psychiatry.

(3) A registered nurse with experience in psychiatric nursing shall be responsible for nursing administration. At least one (1) registered nurse shall be assigned to care and provide active treatment for every fifteen (15) patients on each shift, except that if the unit census exceeds fifteen (15) patients but does not exceed twenty (20) patients during the shift, a licensed practical nurse may be substituted for the second required registered nurse. Licensed practical nurses and/or psychiatric nurse support staff shall be assigned by the registered nurse to support the care provided by the registered nurse and provide necessary active treatment.

(4) All personnel working within an area of psychiatric patients shall be trained in psychiatric patient care.

(b) Polices and procedures shall be developed and implemented that include at least the following:

(1) **Seclusion.** Patients shall be placed in seclusion only on the written order of the attending physician or licensed independent practitioner. Secluded patients shall be constantly monitored by facility staff while in seclusion. Patient seclusion shall terminate after four (4) hours unless the patient is reevaluated by the attending physician or licensed independent practitioner and a renewal order is received for the seclusion. Patients shall not be continuously secluded for longer than twenty-four (24) hours unless the attending physician or licensed independent practitioner attests in the patient's medical record that seclusion is necessary for the continued treatment of the patient.

(2) **Restraint.** Physical and chemical restraints shall be used in accordance with guidance outlined at OAC 310:667-3-5 and OAC 310:667-15-8 & 9. All staff providing active treatment or monitoring patients shall be trained in facility methods approved to physically hold or restrain patients before patient care responsibilities are assigned. These staff members shall be reoriented regarding these policies annually or when policies are revised.

(3) **Accommodations.**

(A) Patients shall be grouped for accommodations by gender, age, and treatment needs except as provided for at 310:667-33-2(b)(3)(B). As a minimum, children, adolescent, and adult treatment programs shall be separate with distinct units for each. Nursing staff and support staff shall be assigned to each program and unit to appropriately monitor patients and provide active treatment. Children, adolescents, and adult patient groups shall not be allowed to commingle at anytime.

(B) Patients being primarily treated with diagnosis of anorexia nervosa, bulimia nervosa or other unspecified eating disorder diagnosis, who are separated by gender, and from other non-eating disorder patients, may be grouped for accommodations and treatment with adolescent and adult patients. Such programs shall ensure appropriate monitoring of commingled populations at all times, and shall provide sleeping arrangements with all private rooms, or separate semi-private rooms for adolescent patient(s) and adult patient(s).

(4) **Procedures.** General procedures for the unit shall include at least the following:

(A) A description of the scope of each therapeutic service provided and the qualifications of staff providing these services.

(B) A description of the process for the appointment of a medical director, who shall be a physician with qualifications as specified in section (a). The medical director shall be appointed by the governing body based upon recommendations made by the medical staff.

(C) A description of how staffing for monitoring and active treatment is provided on a twenty-four (24) hour basis.

(D) A description of how comprehensive treatment plans for each patient are developed and time-frames

allowed for the development of an initial plan. Procedures shall also state how often comprehensive treatment plans are reviewed for possible revisions.

(E) If the patient is school age, the policies shall include arrangements to initiate appropriate educational exposure if the patient is to be hospitalized over five (5) days.

[OAR Docket #07-1092; filed 5-18-07]

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

[OAR Docket #07-1093]

RULEMAKING ACTION:
PERMANENT final adoption
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]
Subchapter 5. Fee Assessments [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]
AUTHORITY:
Oklahoma State Board of Health; 63 O.S. Section 1-104 et seq.; and 63 O.S. Supp. 2005 Section 1-702b
DATES:
Comment Period:
February 1, 2007 through March 8, 2007
Public Hearing:
March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
This action provides for revocation of Chapter 668, consistent with the repeal of 63 O.S. Section 1-702b, which authorized the Department of Health to promulgate rules associated with the annual data reporting, fee collection, and distribution of monies related to the State's uncompensated care fund.
CONTACT PERSON:
James Joslin, Chief, Health Resources Development Service, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-6868

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

310:668-1-1. Purpose [REVOKED]

~~This Chapter implements an uncompensated care fund under the authority of the following laws: 63 O.S. Supp. 1999, Section 1-702b; and 75 O.S. Supp. 1999, Section 250.1 through 323, (Administrative Procedures Act).~~

310:668-1-2. Definitions [REVOKED]

~~In addition to terms defined in 63 O.S. Supp. 1999, Section 1-702b, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:~~

~~**"Ambulatory surgery center"** means an ambulatory surgical center as defined by 63 O.S. Supp. 1999 Section 2657.~~

~~**"Assessable facility"** means a new hospital, specialty hospital or ambulatory surgery center that does not verify to the Commissioner that *at least thirty percent (30%) of its annual gross revenues are from Medicare, Medicaid, uncompensated care and/or corporate tax contributions.* [63:1-702b]~~

~~**"Audited financial statements"** means the independent auditors' report, comparative balance sheets or statements of fund balances, statements of operations, statements of cash flows, and all notes to the financial statements prepared by a Certified Public Accountant or a Public Accountant.~~

~~**"Bad debt"** means the actual amount of uncollectibles, charged off by a facility, and arising from providing inpatient or outpatient care, and that is calculated as the net of bad debt recoveries applied against bad debt expense.~~

~~**"Charity care"** means inpatient or outpatient *care for which a facility never expected to be reimbursed* [63:1-702b] based on the facility's determination of the patient's ability to pay based on the facility's established standards.~~

~~**"Commissioner"** means the State Commissioner of Health.~~

~~**"Cost report"** means the latest annual reporting statement filed by a facility with its fiscal intermediary in compliance with requirements enforced by the Health Care Financing Administration.~~

~~**"Department"** means the State Department of Health.~~

~~**"Eligible facility"** means an existing facility or a new hospital, specialty hospital, or ambulatory surgery center that verifies to the Commissioner that its gross revenues from Medicare, gross revenues from Medicaid, the value of its uncompensated care, and/or tax contributions exceed thirty percent (30%) of its annual gross revenues.~~

~~**"Existing facility"** means a hospital, specialty hospital or ambulatory surgery center that was licensed or received approval to construct a new facility from the Commissioner by July 1, 1999.~~

~~**"Facility"** means an assessable or an eligible facility unless only one type of facility is referenced.~~

~~**"Gross revenues"** means the charges for inpatient and outpatient services uniformly applied at the regular rates established to all patients by the facility prior to the application of any adjustments, allowances, discounts, or revenue deductions.~~

~~**"Hospital"** means a hospital as defined by 63 O.S. Supp. 1999 Section 1-701.~~

~~**"Medicaid gross revenues"** means the charges for inpatient and outpatient services, to patients who are determined by the State to be eligible for coverage under the Medicaid program, and for whom the facility will be reimbursed through a direct contract with the Oklahoma Health Care Authority, or for whom the facility will be reimbursed through a managed care or risk contract with a health maintenance organization which contracts with the Oklahoma Health Care Authority.~~

~~**"Medicare gross revenues"** means the charges for inpatient and outpatient services, to a patient who is determined by the appropriate Federal agency to be eligible for coverage under the Medicare program, and for whom the facility will be reimbursed through a direct contract with the Health Care Financing Administration, or for whom the facility will be reimbursed through a manged care or risk contract with a health maintenance organization which contracts with the Health Care Financing Administration.~~

~~**"New facility"** means a hospital, specialty hospital or ambulatory surgery center that did not receive approval to construct on or before July 1, 1999.~~

~~**"Specialty hospital"** means a specialty hospital as defined by 63 O.S. Supp. 1999 Section 1-701.~~

~~**"Tax contributions"** means the federal and state corporate income tax and state property tax payments or liabilities by a facility or the owners of a facility (for pass-through entities). Inclusion of sales tax payments in this formula is prohibited.~~

~~**"Uncompensated care"** means *care provided for which no payment was received from the patient or insurer. Uncompensated care is the sum of a facility's bad debt and charity care.* [63:1-702b]~~

310:668-1-3. Rounding of numbers [REVOKED]

~~The Department shall:~~

~~(1) Take fees and pro rata distributions to the second decimal point or hundredths place (.00) by rounding back from the third or thousandths place (.000); and~~

~~(2) Take the fraction for distribution calculations to the third decimal point or thousandths place (.000), by rounding back from the fourth decimal point or ten-thousandths place (.0000).~~

SUBCHAPTER 3. REPORTS AND FINANCIAL STATEMENTS [REVOKED]

310:668-3-1. Filing requirements [REVOKED]

~~(a) Within ninety (90) days after the end of each calendar year, each assessable facility and those eligible facilities requesting a distribution of a pro rata share of the uncompensated care fund shall file a report with the Commissioner for the prior calendar year.~~

~~(b) Each facility shall use the forms established by OAC 310:668-3-2 to verify the facility's total gross revenues and its gross revenues from Medicare, Medicaid, the value of its uncompensated care, and/or tax contributions.~~

~~(c) A facility shall not include in uncompensated care any deductible or coinsurance that the patient fails to pay to the facility unless the facility has pursued reasonable collection efforts consistent with those generally used by similar facilities. A facility shall not include an amount it is not entitled to collect from the patient.~~

~~(d) Federal or state tax payments or liabilities shall be evidenced by a filing made to the Internal Revenue Service or the Oklahoma Tax Commission.~~

~~(e) A facility shall include in the inpatient services component of its gross revenues the following:~~

~~(1) Acute care services;~~

~~(2) Rehabilitative services;~~

~~(3) Services provided within its skilled nursing facility; or~~

~~(4) Other services while the patient is admitted in the facility.~~

~~(f) A facility shall exclude from the outpatient services component of its gross revenues the following:~~

~~(1) Services that are not reported as part of the cost report; or~~

~~(2) Services that are not provided as part of the facility's licensure by the State.~~

~~(g) A facility shall include in its gross revenues only those physician components which the facility bills using a UB-92 form, or the successor to the UB-92 form.~~

310:668-3-2. Report forms [REVOKED]

~~(a) Hospitals and specialty hospitals shall report to the Department using an Oklahoma Cooperative Annual Hospital Survey.~~

~~(b) Ambulatory surgery centers shall report to the Department using the Oklahoma Ambulatory Surgical Center Survey.~~

~~(c) The Department shall provide in its annual instructions for the report forms the specific lines of the cost report to be included as Medicare gross revenues.~~

310:668-3-3. Verification and documentation [REVOKED]

~~Upon written request from the Department, a facility shall submit to the Department a copy of the following:~~

~~(1) Cost report;~~

~~(2) Audited financial statements; or~~

~~(3) Other financial, licensure, statistical, contractual, or tax information, or Oklahoma Health Care Authority filings, to verify the facility's data.~~

310:668-3-4. Amendments [REVOKED]

~~(a) A facility's original financial statements or cost report may be subject to audit as established by law, contractual agreement, or for the facility's owners or operators to exercise fiscal and fiducial responsibility. A State or Federal agency, a fiscal intermediary, or an independent auditor may perform the audit. The audit report may also be eligible for appeal.~~

~~(b) When an audit or its appeal results in revising data filed in accordance with OAC 310:668-3-1 and 3-2, the facility shall report to the Department using the following guidelines:~~

~~(1) Within thirty (30) days of filing the original report, the facility shall report the amendment to the Department within ten (10) days of its discovery; or~~

~~(2) After thirty (30) days of filing the original report, the facility shall report the amendment to the Department by filing it within thirty (30) days of learning the reason(s) for the revision and the amount(s) to be amended.~~

~~(c) To file an amendment with the Department, the facility shall write to the Department to explain the reason(s) for the revision(s), copy the original report filed under OAC 310:668-3-1 and 3-2, and on the copy indicate the following:~~

~~(1) Mark out the amount(s) to be revised; and~~

~~(2) Enter the revised amount(s).~~

SUBCHAPTER 5. FEE ASSESSMENTS [REVOKED]

310:668-5-1. Calculation of fee [REVOKED]

~~(a) The Department shall calculate the difference between thirty percent (.300) of each assessable facility's total gross revenue dollars and the sum of the facility's Medicare gross revenues, Medicaid gross revenues, value of its uncompensated care, and/or tax contribution dollars.~~

~~(b) A facility shall be eligible for a pro rata distribution if thirty percent (.300) of its gross revenue dollars is less than the sum of the facility's Medicare gross revenues, Medicaid gross revenues, value of its uncompensated care, and/or corporate tax contribution dollars.~~

~~(c) A facility shall be assessed a fee for the difference if thirty percent (.300) of the assessable facility's total gross revenue dollars exceed the sum of the facility's Medicare gross revenues, Medicaid gross revenues, value of its uncompensated care, and/or tax contribution dollars.~~

~~(d) An otherwise assessable facility will not be assessed a fee when its approval to construct from the Commissioner or its original license granted after July 1, 1999 result from replacement of, expansion of, or a change in the ownership of an existing facility.~~

310:668-5-2. Billing procedure [REVOKED]

~~(a) The Department shall bill each assessable facility in writing for the fee calculated by the Department in OAC 310:668-5-1 after the submission of report amendments under OAC 310:668-3-4.~~

~~(b) The Department shall include in the fee bill the contact person and the address at the Department to file a grievance in accordance with OAC 310:668-9-2.~~

310:668-5-3. Due date for fee payment [REVOKED]

~~An assessable facility shall remit the billed fee to the Department in the form of a check made payable to the Oklahoma State Department of Health within thirty (30) days after the assessable facility's receipt of the bill.~~

310:668-5-4. Adjustments to fees [REVOKED]

~~(a) The Department shall not calculate the pro rata distribution for the immediate prior calendar year until the periods expire to file and to receive a Department response to a grievance filed under OAC 310:668-9-2(a) to (c).~~

~~(b) The Department shall include an adjustment in its calculations of the uncompensated care fund of the first calendar year after the Department learns of the amounts altered through the appeal process under OAC 310:668-9-2(d).~~

SUBCHAPTER 7. FUND DISTRIBUTION [REVOKED]

310:668-7-1. Calculation of pro rata share [REVOKED]

~~(a) For each eligible facility that filed a report in accordance with OAC 310:668-3-1 to 3-2, the Department shall calculate the eligible facility's pro rata share of the uncompensated care fund developed in accordance with OAC 310:668-5-1 to 5-4 using the following fraction:~~

~~(1) The numerator of the fraction shall equal the sum of the eligible facility's own dollars of Medicare gross revenues, Medicaid gross revenues, the value of its uncompensated care, and tax contributions; and~~

~~(2) The denominator of the fraction shall equal the sum of the Medicare gross revenues, Medicaid gross revenues, the value of its uncompensated care, and tax contributions dollars for all eligible facilities.~~

310:668-7-2. Distribution procedure [REVOKED]

~~(a) The Department shall distribute once in each fiscal year of the state a pro rata share of the uncompensated care fund to each eligible facility that filed a report as required by OAC 310:668-3-1 and 3-2, as follows:~~

~~(1) Calculated in accordance with OAC 310:668-7-1; and~~

~~(2) Adjusted for amendments of data filed in accordance with OAC 310:668-3-4, 5-4, or 9-2.~~

~~(b) The Department shall notify each eligible facility in writing of the preliminary pro rata distribution share the Department calculated in accordance with OAC 310:668-7-2(a) when it bills the assessable facilities. The preliminary distribution notice shall include the following:~~

~~(1) The total preliminary uncompensated care fund calculated by summing each assessable facility's fees calculated in accordance with OAC 310:668-5-1;~~

~~(2) The numerator and the denominator of the eligible facility's pro rata distribution fraction calculated in accordance with OAC 310:668-7-1; and~~

~~(3) The contact person and the address at the Department to file a grievance in accordance with OAC 310:668-9-2.~~

~~(c) The Department shall issue checks to distribute the adjusted pro rata distribution after adjusting the preliminary total of the uncompensated care fund or the preliminary pro rata distributions calculated after accounting for the Department's responses to grievances in accordance with OAC 310:668-9-2(b).~~

~~(d) The Department shall include with the check to distribute a pro rata share of the uncompensated care fund a revised distribution notice including the same fields of information as the original notice prepared in accordance with OAC 310:668-7-2(b).~~

SUBCHAPTER 9. ENFORCEMENT AND GRIEVANCE [REVOKED]

310:668-9-1. Termination of license [REVOKED]

~~Grounds for the Department to terminate an operating license are established by 63 O.S. Supp. 1999 Section 1-702b,D. when an assessable facility:~~

~~(1) Fails to report to the Commissioner as required by OAC 310:668-3-1 or OAC 310:668-3-4; or~~

~~(2) Fails to pay the fee billed by the Department at OAC 310:668-5-2 within the time established by OAC 310:668-5-3.~~

310:668-9-2. Grievance procedure [REVOKED]

~~(a) An assessable facility may take exception to the fee billed, or an eligible facility may take exception to its pro rata distribution of the uncompensated care fund, by notifying the Department as follows:~~

~~(1) Notification shall be submitted, in writing, to the Department within thirty (30) days of the receipt of the preliminary billed fee under OAC 310:668-5-2 or the preliminary pro rata distribution under OAC 310:668-7-2; and~~

~~(2) The grievance notification shall include the additional information the facility requests the Department to consider.~~

~~(b) While the Department is investigating a grievance, an assessable facility may request, in writing, that the Department suspend the assessable facility's required payment of the billed fee in accordance with OAC 310:668-5-3 until the Department communicates its response to the grievance.~~

~~(c) The Department shall respond in writing to the facility's grievance within forty (40) days of receipt of the grievance and may seek and obtain additional or clarifying information to prepare its response.~~

~~(d) A facility aggrieved by the Department's response to its grievance may request a hearing to be conducted according to the Administrative Procedures Act and Chapter 2 of OAC 310:002.~~

[OAR Docket #07-1093; filed 5-18-07]

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

[OAR Docket #07-1094]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Oklahoma State Board of Health; 63 O.S. Section 1-104 et seq.; and Title 63 O.S. Section 1-2530.9
DATES:
Comment Period:
February 1, 2007 through March 8, 2007
Public Hearing:
March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The amendments broaden the eligibility requirements for disbursement from the Trauma Care Assistance Revolving Fund by defining eligible case criteria specific to time sensitive hand and oromaxillofacial traumatic injuries, clarify existing language, delete obsolete language, and correct grammatical and formatting errors.
CONTACT PERSON:
Patrice Greenawalt, Director, Trauma Division, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-2657; electronic mail: patriceg@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

310:669-1-2. Definitions

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

"Ambulance service" means an entity licensed in accordance with 63 O.S. Supp. 2000, 1-2501, et seq.

"Bad debt" means the actual amount of uncollectible charges written off by a distribution entity, and arising from providing trauma care at an inpatient or outpatient ~~care~~ facility, or transportation service, and that is calculated as the net of bad debt recoveries applied against bad debt expenses.

"Charity care" means trauma care at an inpatient or outpatient ~~care~~ facility, or transportation services for which a distribution entity never expected to be reimbursed based on the distribution entity's determination of the patient's ability to pay based on the distribution entity's established standards.

"Commissioner" means the State Commissioner of Health.

"Cost report" means the latest annual reporting statement filed by a facility with its fiscal intermediary in compliance with requirements enforced by the Centers for Medicare and Medicaid Services.

"Cost to charge ratio" means the factor(s) calculated annually using information reported as part of a facility's cost report.

"Department" means the State Department of Health.

"Distribution entity" means ~~a~~ an ambulance service or trauma facility~~, physician, or ambulance service~~ that provided uncompensated care and reported the care respectively to the pre-hospital emergency medical service database in accordance with OAC 310:631-3-160(b), ~~and/or~~ and the state trauma registry in accordance with OAC 310:669-3-1. This will also include physicians licensed in Oklahoma during the time the trauma care is provided.

"Fund" means the Trauma Care Assistance Revolving Fund.

"Gross revenues" means the charges for inpatient and outpatient services uniformly applied at the regular rates established to all patients by the distribution entity prior to the application of any adjustments, allowances, discounts, or revenue deductions.

"Medicare Allowed Reimbursement" means the allowed reimbursement established by the Centers for Medicare and Medicaid Services for the geographic location where inpatient or outpatient care is provided by a physician or transportation services are provided by a freestanding ambulance service.

"Run report" means the standard report form developed by the Commissioner to facilitate the collection of a standardized data set related to the provision of emergency medical and trauma care in accordance with 63 O.S. Section 1-2511.

"Tier A Physician" means a physician credentialed by the medical staff to provide emergency care to trauma patients in the specialties of emergency medicine, neurosurgery, general surgery, maxillo-facial surgery, orthopedic surgery, surgery specialties, anesthesiology, and trauma intensivists.

"Tier B Physician" means a physician credentialed by medical staff to provide care to trauma patients in a specialty area not defined in Tier A.

"Trauma" means bodily injury that produces injuries severe enough to cause disability or death.

"Trauma care" means treatment or transportation for treatment of a bodily injury that produces injures severe enough to cause disability or death.

"Trauma facility" means a hospital classified by the Department as providing a Level I, II, III, or IV Trauma and Emergency Operative Service.

"Trauma registry" means *the statewide emergency medical services and trauma analysis system developed pursuant to the provisions of Section 1-2511* of Title 63 of the Oklahoma Statutes. [63:330.97]

"Trauma team" means ~~a surgeon and~~ a specific team identified in policy and required to respond to the hospital to care for the traumatically injured within a specified period of time, monitored by a quality assurance process.

"Uncompensated care" means care provided for which ~~no~~ expected payment was not received from the patient or insurer or any other identified payor source. Uncompensated care is the sum of a distribution entity's bad debt and charity care.

SUBCHAPTER 5. REPORTS AND FINANCIAL STATEMENTS

310:669-5-1. Filing requirements

(a) There shall be a minimum of two filing periods annually with such filing periods to be designated by the Department. By the end of each filing period, each distribution entity requesting distribution of a pro rata share of the Trauma Care Assistance Revolving Fund shall file a report with the Commissioner for the designated filing period.

(b) Each distribution entity shall use the forms established by OAC 310:669-5-2 to report the following:

(1) A link(s) to identify the trauma registry data;

(2) The dollars of gross revenues for the distribution entity's trauma care bad debts;

(3) The dollars of gross revenues for the distribution entity's trauma charity care;

(4) The cost to charge ratio calculated using the costs and charges for all departments of a trauma facility; and

(5) The trauma facility's specific ambulance department cost to charge ratio for a hospital-based ambulance service.

(c) Trauma reported to the trauma registry is described by ~~an~~ one of the following:

(1) An ICD-9 code of 800.00 to 959.9, and is limited to contacts within thirty (30) days of the injury, and is

accompanied by one or more of the following events for the patient:

(~~1~~A) An admission to a hospital of at least forty-eight (48) hours; or

(~~2~~B) Transfer from a lower level to a higher level of trauma ~~facility~~ care for major trauma; or

~~(3) Activation of a trauma team; or~~

(~~4~~C) Admission to an intensive care unit; or

(~~5~~D) Admission directly to an operating room for surgery of the head, chest, abdomen, or vascular system; or

(~~6~~E) A declaration of dead on arrival; or

(~~7~~F) A declaration of dead in the emergency room or elsewhere in the hospital.

(~~d~~G) In addition to meeting the requirements at 310:669-5-1(c), each reportable case must also meet at least one of the following criteria as computed by the trauma registry software, unless the patient was declared dead on arrival to the hospital or died while in the hospital:

(~~1~~i) Have an Abbreviated Injury Score of 3 or higher; or

(~~2~~ii) Have an Injury Severity Score of 9 or higher; or

(~~3~~iii) Have a Survival Probability of 0.90 or less~~.~~; or

(2) Oral-maxillo-facial injuries requiring the immediate treatment and presence of a licensed physician or licensed dentist credentialed by the hospital to perform oral-maxillo-facial surgery, with an ICD-9 code of 800.0 to 959.9 and meeting at least one of the following criteria:

(A) Panfacial trauma involving fractures of the zygomaticomalar complex type, or a Lefort type (I, II, or III) and a mandibular fracture. Panfacial trauma may also include multiple soft tissue injuries, lacerations, or avulsions; or

(B) Bilateral fracture of the mandible with flail symphyseal segment; or

(C) Multiple severe mandibular fractures requiring tracheostomy or intubation of greater than 24 hours; or

(D) Depressed zygomaticomalar complex fractures with entrapment of the inferior rectus muscle or impingement on the optic nerve bundle; or

(E) Facial lacerations that involve major vessels, major branches of the facial nerve, or the parotid duct; or

(3) Traumatic injuries to the hand requiring the immediate presence and treatment by a physician credentialed by the hospital with ICD-9 codes of 800.00 to 959.9 and meeting one of the following criteria:

(A) Complete amputations or lacerations of the hand which result in disruption of the vascular supply to one or more digits or the entire hand; or

(B) Severely crushed or mangled hand injuries with associated vascular injuries, fractures and/or dislocations.

(d) Time sensitive traumatic injuries requiring immediate surgical intervention by a surgical specialist to prevent loss of life, limb, or vision, and not meeting the criteria identified in 310:669-5-1(c) may be considered for Trauma Fund Disbursement as approved by the Medical Audit Committee and the Oklahoma Trauma System Improvement and Development Advisory Council and reported to the Board of Health. Such approval shall occur periodically and shall not be effective retroactively.

(e) Cases meeting any of the following exclusionary conditions shall not be reported to the trauma registry or be eligible for reimbursement from the ~~fund~~ Fund:

(1) Isolated orthopedic injuries to the extremities due to a same level fall;

(2) Overexertion injuries;

(3) Injuries resulting from a pre-existing condition such as osteoporosis or esophageal stricture;

(4) Injuries greater than 30 days old;

(5) Poisoning and toxic events; and

(6) Submersion injuries.

(f) Uncompensated expenses incurred by a distribution entity associated with major trauma patients, and such trauma care has been reported to the state pre-hospital emergency medical service database and/or the state trauma registry, shall be eligible for reimbursement. Uncompensated expenses incurred for emergency transport to a trauma facility from the scene of the injury or from a lower level to a higher level of trauma care are eligible for reimbursement when the case meets one or more of the following conditions:

(1) The extent of patient injury is verified through a hospital trauma registry as described at OAC 310:667-5-1(c), (d), and (e); or

(2) Glascow coma score equal to or less than thirteen (13) directly related to the mechanism of injury; or

(3) ~~Respiratory~~Signs and symptoms of respiratory compromise resulting from trauma requiring intervention; or

(4) Hemodynamic compromise from trauma resulting in decreased blood pressure; or

(5) Penetrating injury above the groin; or

(6) Amputation proximal to the wrist or ankle; or

(7) Complete amputations or lacerations of the hand which result in disruption of the vascular supply to one or more digits or the entire hand; or

(8) Severely crushed or mangled hand injuries with associated vascular injuries, fractures and/or dislocations.

(~~7~~9) Paralysis resulting from traumatic injury~~;~~, including pre-hospital treatment for spinal precautions based upon the signs and symptoms of neurological deficit; or

(~~8~~10) Flail chest; or

(~~9~~11) Two or more proximal long bone fractures (humerus and/or femur); or

(~~10~~12) Open or depressed skull fracture; or

(~~11~~13) Unstable pelvis; or

(~~12~~14) Pediatric trauma score equal to or less than eight (8).

(15) Time sensitive traumatic injuries requiring immediate surgical intervention by a surgical specialist to prevent loss of life, limb, or vision, and not meeting the criteria identified in 310:669-5-1 (c) and approved by the Medical Audit Committee and the Oklahoma Trauma System Improvement and Development Advisory Council and reported to the Board of Health.

(g) A distribution entity shall exclude from its contractual adjustments gross revenue amounts written off as a result of governmental payors' set reimbursement rates that are not subject to negotiation by the entity. Contractual adjustment exclusions may include but are not limited to Medicare, Medicaid, and Indian Health Service reimbursement,and shall not include Workers Compensation.

(h) A free-standing ambulance service shall calculate transportation reimbursement using the Centers for Medicare and Medicaid Services reimbursement methodology in place as of the date of transportation.

(i) A physician shall calculate procedure reimbursement using the Centers for Medicare and Medicaid Services reimbursement methodology based on the appropriate procedure code.

(j) A distribution entity shall not include in uncompensated care any deductible or coinsurance that the patient fails to pay to the distribution entity unless the distribution entity has pursued reasonable collection efforts consistent with those generally used by similar entities. A distribution entity shall not include any amount it is not entitled to collect from the patient.

(k) If a trauma facility transfers a major trauma patient to another facility classified to provide a higher level of trauma care, the transfer shall be performed in accordance with the Oklahoma Triage, Transport, and Transfer Guidelines established under OAC 310:641-3-130(b)(3). The transferring facility shall include in uncompensated care reported in accordance with OAC 310:669-5-2 only those gross revenues incurred which were necessary to provide stabilizing treatment prior to effecting an appropriate transfer. Gross revenues for inappropriate definitive diagnostic testing prior to transfer shall not be reported as uncompensated care.

310:669-5-2. Report forms

(a) Each trauma facility shall detail eligible trauma cases, cross-reference report components, detail and summarize uncompensated care, and report the facility's cost to charge ratio on a ~~"Trauma Facility Revolving Fund Distribution Request Form"~~ "Hospital Claim Form" that includes the following:

(1) Demographic data downloaded from the trauma registry including:

(A) Creation number of the Trauma registry entry;

(B) Patient's Social Security Number, if available;

(C) Medical record number for the trauma facility;

(D) Patient's date of arrival at the trauma facility in the format mm/dd/yyyy;

(E) Patient last name;

(F) Patient first name; and

(G) Patient date of birth in the format mm/dd/yyyy, if available~~;~~

~~(H) Patient age in the format of yy, if available; and~~

~~(I) Patient gender in the format "M" for male or "F" for female~~.

~~(2) Injury acuity information and patient cross references downloaded from the trauma registry including:~~

~~(A) Creation number of the trauma registry entry;~~

~~(B) Patient's Social Security Number, if available;~~

~~(C) Patient's date of arrival at the trauma facility in the format mm/dd/yyyy;~~

~~(D) Patient date of birth in the format mm/dd/yyyy, if available;~~

~~(E) Patient age in the format yy, if available;~~

~~(F) Abbreviated Injury Score Value (AIS) calculated by the trauma registry software from data input to multiple fields;~~

~~(G) Revised Injury Severity Score (ISS) calculated by the trauma registry software from data input to multiple fields;~~

~~(H) Survival probability;~~

~~(I) Patient length of stay in the facility's intensive care unit (ICU); and~~

~~(J) Patient total length of inpatient stay in all departments of the trauma facility.~~

(~~3~~2) Financial Information from the trauma registry and/or the financial records of the trauma facility and cross-references and calculations including:

~~(A) Creation number of the trauma registry entry;~~

~~(B) Patient's Social Security Number, if available;~~

~~(C) Patient's date of arrival at the trauma facility in the format mm/dd/yyyy;~~

~~(D) Patient age in the format yy, if available;~~

(~~E~~A) Total hospital charges as reported in the trauma registry;

(~~F~~B) Total collections as reported in the trauma registry;

(~~G~~C) Total hospital gross revenues as reported in the trauma facility's financial records;

(~~H~~D) The cost to charge ratio for all departments of the facility in place as of the patient's date of arrival at the trauma facility;

(~~I~~E) Adjusted hospital gross revenues calculated by multiplying the figure in ~~(G)~~ C of this paragraph by the ratio in ~~(H)~~ D of this paragraph;

(~~J~~F) Actual total collection for the patient's services as of the date the ~~"Trauma Facility Revolving Fund Distribution Request Form"~~ "Hospital Claim Form" is prepared by the trauma facility;

(~~K~~G) Contractual adjustments pertinent to the trauma services received by the patient;

(~~L~~H) The trauma facility's uncompensated care services for the patient calculated by subtracting the figures in items ~~(J)~~ F of this paragraph and ~~(K)~~ G of this paragraph from the calculated amount in ~~(I)~~ E of this paragraph.

(b) Each free-standing ambulance service shall detail eligible trauma cases, detail and summarize uncompensated care on ~~a "Free Standing Ambulance Service Revolving Fund Distribution Request Form"~~ an "EMS Claim Form" that includes the following:

(1) Demographic data extracted from the run report including:

(A) Run report number or lithocode;

(B) Transported person's Social Security Number, if available;

(C) Transported person's last name;

(D) Transported person's first name;

(E) Transported person's date of birth in the format mm/dd/yyyy, if available;

~~(F) Transported person's age in the format yy, if available;~~

(~~G~~F) Transported person's pickup date in the format ~~mm/dd/yy or~~ mm/dd/yyyy;

(~~H~~G) The name of the delivered to facility; and

(~~I~~H) ~~The encoder number of the delivered to facility; and~~

(~~J~~I) The Glascow Coma Score and trauma criteria as reported on the run report, or information using such other uniform trauma reporting standards as the Department determines are reasonable and necessary to accurately classify each trauma case.

(2) Financial information from the free-standing ambulance financial records of the ambulance service including:

(A) Total reimbursement using the Medicare allowed reimbursement or other methodology in place on the date of transportation;

(B) Actual total collections for the transported person's services as of the date the "Free Standing Ambulance Service Revolving Fund Distribution Request Form" is prepared by the trauma facility;

(C) Contractual adjustments pertinent to the transportation services received by the transported person;

(D) The free-standing ambulance services uncompensated care for the transported person calculated by subtracting the figures in items (B) of this paragraph and (C) of this paragraph from the amount in (A) of this paragraph.

(c) Each hospital-based ambulance service shall, at a minimum, detail eligible trauma cases~~, detail~~ and summarize uncompensated care in a format approved by the Department which includes the following:

(1) Demographic data extracted from the run report including:

(A) Run report number or lithocode;

(B) Transported person's Social Security Number, if available;

(C) Transported person's last name;

(D) Transported person's first name;

(E) Transported person's date of birth in the format mm/dd/yyyy, if available;

~~(F) Transported person's age in the format yy, if available;~~

(~~G~~F) Transported person's pickup date in the format ~~mm/dd/yy or~~ mm/dd/yyyy;

(~~H~~G) The name of the delivered to facility; and

~~(I) The encoder number of the delivered to facility; and~~

(~~J~~H) The Glascow Coma Score and trauma criteria as reported on the run report, or information using such other uniform trauma reporting standards as the Department determines are reasonable and necessary to accurately classify each trauma case.

(2) Financial information from the hospital-based ambulance financial records of the ambulance service including:

(A) Total reimbursement using the lesser of the Medicare per trip limit or the services' charges multiplied by the hospital's ambulance department specific cost to charge ratio;

(B) Actual total collections for the transported person's services as of the date the ~~"Hospital-Based Ambulance Service Revolving Fund Distribution Request Form" "EMS Claim Form"~~ is prepared by the ~~trauma facility~~ emergency medical service provider;

(C) Contractual adjustments pertinent to the transportation services received by the transported person;

(D) The hospital-based ambulance services uncompensated care for the transported person is calculated by subtracting the figures in items (B) of this paragraph and (C) of this paragraph from the amount in (A) of this paragraph.

(3) As an alternative to the report described in (1) of this subsection, a hospital-based ambulance service may report using a format approved by the Department by extracting from the trauma registry all information the trauma facility reports and adding to that information the ambulance-specific information from (1) of this subsection and (2) of this subsection.

(d) ~~Each physician shall detail~~It is the responsibility of a physician submitting a claim for Trauma Fund disbursement to validate the submission of trauma cases meeting the requirements of 310:669-5-1 with the trauma registrar in the hospital in which the trauma care was provided, and to ~~detail~~ submit eligible trauma cases and summarize uncompensated care in a format approved by the Department which includes the following:

(1) Demographic data extracted from the trauma registry including:

(A) Creation number of the trauma registry entry ~~or EMS run number~~;

(B) Patient's Social Security Number, if available;

(C) Patient's date of arrival at the trauma facility in the format mm/dd/yyyy;

(D) Patient date of birth in the format mm/dd/yyyy, if available; and

~~(E) Patient age in the format yy, if available; and~~

(~~F~~E) Physical findings and treatment as specified in the Centers for Medicare and Medicaid Services reimbursement methodology based on the appropriate procedure code.

(2) Financial information from the physician records including:

(A) Total allowable reimbursement using the Medicare methodology in place on the date of care;

(B) Actual total collections for patient services as of the date the request for revolving fund distribution is prepared in a format approved by the Department;

(C) Contractual adjustments pertinent to the services received by the patient;

(D) The physician's uncompensated care cost calculated by subtracting the figures in items (B) of this paragraph; and (C) of this paragraph from the amount in (A) of this paragraph.

(e) Each distribution entity shall file with the appropriate request form a properly signed and notarized contract in accordance with the Central Purchasing Act (74 O.S. Supp. 2000 Section 85.1 et seq.) to permit encumbrance by the State of the funds for the distribution.

310:669-5-4. Amendments

(a) A distribution entity's data originally reported to the trauma registry may be subject to audit as established by law, contractual agreement, or for the facility's owners or operators to exercise fiscal and fiduciary responsibility. A State or Federal agency, a fiscal intermediary, or an independent auditor may perform an audit. The audit report may also be eligible for appeal.

(b) A distribution entity may also receive an additional collection(s) for care treated as uncompensated on a prior request for distribution report.

(c) When a late collection(s) or an audit or its appeal results in revising data filed in accordance with OAC 310:669-5-1 and 5-2, the distribution entity shall report to the Department according to Department guidelines. Any additional monies received from other sources of funding for a case that was reimbursed by the Trauma Fund must be returned to the Fund and applied towards future disbursements.

SUBCHAPTER 7. FUND DISTRIBUTION

310:669-7-1. Calculation of pro rata share

(a) Available monies in the Trauma Care Assistance Revolving Fund shall be disbursed as follows:

(1) A minimum of ~~Seventy~~ seventy-percent of the total available monies shall be allotted for distribution to ambulance services and hospitals in accordance with the Department's calculated pro rata share.

(2) Up to thirty (30) percent of the total available monies shall be allotted for distribution to Tier A physicians in accordance with the Department's calculated pro rata share. If the total available monies distributed to Tier A physicians is less than thirty (30) percent of the total available monies, the remainder of this thirty (30) percent shall be allotted for distribution to Tier B physicians. If the total available monies distributed to Tier A and Tier B physicians is less than thirty (30) percent of the total available monies, the remainder of the monies shall be allotted for distribution to ambulance services and hospitals.

(b) For each distribution entity that filed a report in accordance with OAC 310:669-5-1 and 5-2, the Department shall calculate the distribution entity's pro rata share of the available monies in the Trauma Care Assistance Revolving Fund developed in accordance with 47 O.S. Supp. 2000 Section 6-101 using the following fraction:

(1) The numerator of the fraction shall equal the sum of the distribution entity's own uncompensated trauma care dollars multiplied by the cost to charge ratio of the facility; and

(2) The denominator of the fraction shall equal the sum of the uncompensated trauma care dollars for all distribution entities after each facility's cost to charge ratio is applied.

[OAR Docket #07-1094; filed 5-18-07]

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

[OAR Docket #07-1096]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
310:675-1-2 [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]
AUTHORITY:
Oklahoma State Board of Health: Title 63 O.S. Section 1-104, and Section 1-1901 et seq.
DATES:
Comment Period:
February 1, 2007 through March 8, 2007
Public Hearing:
March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATION BY REFERENCE:

n/a

ANALYSIS:

The proposed amendments and new language update the rules based on changes in statute, survey experience, history of facility incident reports, complaint allegations and investigations, request and experience of the Department's Tuberculosis Division, and public meetings held by the Long Term Care Facility Advisory Board.

Definitions are updated to clarify terminology in the proposed rule relating to reports to local law enforcement.

The timeline for initial incident reporting is changed to correspond with statutory language of twenty-four hours. Further amendments clarify the types of incidents to be reported and the content to be included in filed incident reports.

Infection control rules are amended to reflect the latest guidance on facility tuberculosis risk assessment, and resident and staff tuberculosis skin testing from the Centers for Disease Control.

New rules are developed to implement the Long-term Care Security Act pertaining to determination of sex or violent offender status for all facility staff and residents; procedures for determination of status; recommended registry search strategy; change in status after employment or admission; posting of offender status; and, content of notice to department of sex or violent offender's presence in the facility.

Food storage, supply and sanitation rules are amended to reflect the newly adopted Chapter 257. Food service staff rules are amended to enhance the training requirements for food service staff while reducing routine food services staff in-service time.

Subchapter 21 is added to implement the abuse registry for nontechnical services workers as required in 63 O.S. Sections 1-1950.6 through 1-1950.9. The new subchapter includes procedures of investigations, notice, hearings, orders, and entry of findings into an abuse registry.

Standards of practice are updated in Appendix B.

CONTACT PERSON:

James Joslin, Chief, Health Resources Development Service, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-6868; email: James@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

310:675-1-2. Definitions

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

"Act" means Title 63 of the Oklahoma Statutes, Sections 1-1901 and following as amended also known as the Nursing Home Care Act.

"Allied health professional" means one of the following persons: physician assistant, physical, speech, or occupational therapist, occupational therapy assistant, physical therapy assistant, or qualified social worker.

"Attendant" means the person having control of an animal/pet visiting or in residence in a facility.

"Approval" means the mandatory state government process by which an agency or program is reviewed, and publicly proclaimed, to render a service worthy of note.

"CEP" means the nurse aide competency evaluation program.

"Certification" means the process by which a non-governmental agency, or association, or governmental agency attests that an individual or facility has met certain predetermined standards specified by the certifying body.

"Certified medication aide" means a person who has passed a Department approved program for administering medications.

"Certified nurse aide" means any person who provides, for compensation, nursing care or health-related services to residents of a facility, who is not a licensed health professional and has completed a Department approved training and competency program.

"Charge nurse" means a registered nurse or licensed practical nurse responsible for supervising nursing services on a specific shift.

"Chemical restraints" means the use of a medication for the purpose of discipline, convenience, or in an emergency situation to control mood or behavior and not required to treat the resident's symptoms.

"Consultant registered nurse" means a registered nurse who provides consultation to the director of nursing and administrator concerning the delivery of nursing care for all residents in the facility.

"Denial" means a decision made by the appropriate body to disapprove an application.

"Direct care staff" means nursing, activity, social and therapy staff.

"Director of nursing" means either a registered nurse or licensed practical nurse, who has the authority and responsibility to administer nursing services within the facility.

"Emergency" means, for the purposes of Title 63 O.S. Section 1-1912, a serious, potentially life-threatening or life-endangering situation in which immediate action is necessary to ensure the health, safety, or welfare of residents, and for which the facility:

(A) does not have a plan acceptable to the Department to ensure health, safety or welfare of residents; or

(B) refuses to remedy the situation.

"Health related services" means any medically directed service provided by any person in a facility that may include but is not limited to, the following:

(A) Positioning and turning of residents.
(B) Self-help skill training.
(C) Assistance with prosthetic/assistive devices.
(D) Medication administration.
(E) Nutrition and hydration.
(F) Monitoring of resident vital signs.
(G) Catheter and nasogastric care.
(H) Behavior modification programs.
(I) Administering a medically related care plan
(J) Restorative services.

"In charge" and **"supervision"** means the administrator must have the requisite authorization from the licensee to make those purchases and incur those necessarily attendant debts in order to comply with the rules promulgated by the Board and all pertinent state statutes.

"Inservice education" means activities intended to assist the individual to acquire, maintain, and/or increase competence in fulfilling the assigned responsibilities specific to the employer's expectations.

"Licensed health professional" means one of the following: a physician; dentist, podiatrist, chiropractor, physician assistant, nurse practitioner; pharmacist; physical, speech, or occupational therapist; registered nurse, licensed practical nurse; licensed or certified social worker; or licensed/registered dietician.

"Licensed nurse" means a registered nurse or a licensed practical nurse who is currently licensed by the Oklahoma Board of Nursing.

"Licensed pharmacist" means a person who is a graduate of an accredited pharmacy program and is currently licensed by the Oklahoma Board of Pharmacy.

"Licensed practical nurse" means a person who is a graduate of a state approved practical nursing education program, or who meets other qualifications established by the Oklahoma Board of Nursing, and is currently licensed by the Oklahoma Board of Nursing.

"Licensure" means the process by which the Department grants to persons or entities the right to establish, operate, or maintain any facility.

"Local law enforcement" means:

(A) The municipal police department, if the facility is within the jurisdiction of any municipality of this state, or

(B) The county sheriff, if the facility is outside the jurisdiction of any municipality within this state.

"Manager" or "supervisor" means the person or entity which performs administrative services for the licensee. The manager or supervisor is not legally responsible for the decisions and liabilities of the licensee, and does not stand to gain or lose financially as a result of the operation of the facility. The manager is paid a fee or salary for services, and the primary remuneration shall not be based upon the financial performance of the facility.

"Misappropriation of resident's property" means the taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident, without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of resident's property.

"Nurse aide" means any person providing nursing or nursing related services to residents in a facility, but does not include an individual who is a licensed health professional, or who volunteers to provide such services without monetary compensation.

"Nurse aide trainee" means any person who has been employed by a facility to provide nursing care or health related services, and is enrolled in but has not completed a Department approved training and competency program.

"Orientation" means the training for a particular job activity given to all employees.

"Perishables" means food supplies, to include dietary supplements and intravenous feedings, medical supplies, and medications.

"Physical restraints" means any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident's body that the resident cannot remove easily, that is not used for the purpose of therapeutic intervention or body alignment as determined by resident assessment and care planning, and which restricts the resident's desired freedom of movement and access to his or her body.

"Qualified nutritionist" is a Department approved person who holds a baccalaureate with major studies in food and nutrition, dietetics, or food service management; has one year experience in the dietetic service of a health care institution; and participates in continuing education annually.

"Registered/licensed dietitian" means a person who is registered as a dietitian by the American Dietetic Association and licensed by the Oklahoma Board of Medical Licensure and Supervision.

"Registered nurse" means a person who is a graduate of a state approved registered nursing education program, and who is currently licensed by the Oklahoma Board of Nursing.

"Registry" means a Department maintained list of individuals who have successfully completed a nurse aide training and competency evaluation program, or a competency evaluation program, approved by the Department.

"Revoke" means to rescind approval of a previous action.

"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.

"Standards of nursing practice" means an authoritative statement that describes a level of care or performance common to the profession of nursing by which the quality of nursing practice can be judged. Standards of nursing practice include both standards of care and standards of professional performance.

"Standards of care" means a description of a competent level of care demonstrated by a process of accurate assessment and diagnosis, planning, appropriate interventions, and predicted patient outcomes. (Appendix B of this Chapter.)

"Standards of professional performance" means a description of a competent level of behavior in the professional role including activities related to quality assurance, education, consultation, research, ethics, resource utilization, accountability, peer review, and interdisciplinary collaboration.

"Suspended license" means a license that is issued for a period not to exceed three years to a facility which has temporarily closed or ceased operations.

"Training and competency evaluation program" means a program approved by the Department to instruct and evaluate individuals to act as nurse aides.

"Transfer" means the move of a resident from one facility to another facility.

"Intra-facility transfer" means the moving of a resident from one room to another within a facility.

"Transfer of ownership" means a change of substantial, or controlling interest, in the ownership of a facility. A change of less than five percent (5%) of the interest of the owner does not constitute a transfer of ownership unless it also results in a change of control of the owner.

"Willful violation" means:

(A) a pattern of violation of the direct-care staffing requirement;

(B) a violation of the direct-care staffing requirement in which the facility knew or should have known staffing would be insufficient to meet the requirement yet took no action to avert the violation; or

(C) the reporting of materially inaccurate or misleading information of direct-care staffing to the Health Care Authority.

SUBCHAPTER 7. ADMINISTRATION

310:675-7-5.1. Reports to state and federal agencies

~~(a) The facility shall report communicable diseases to the Department as specified by the Board.~~

(a) **Timeline for reporting.** All reports to the Department shall be made by telephone or facsimile within twenty-four (24) hours of the reportable incident unless otherwise noted. A follow-up report of the incident shall be mailed or faxed to the Department within five Department business days after the incident. The final report shall be filed with the Department within ten Department business days after the incident.

~~(b) The facility shall report deaths by unusual occurrence, such as accidental deaths or deaths other than by natural causes, and deaths that may be attributed to a medical device, according to applicable state and federal laws. The facility shall also report such deaths to the Department.~~

(b) **Reporting abuse, neglect or misappropriation.** The facility shall report to the Department allegations and incidents of *resident abuse, neglect or misappropriation of residents' property* [63 O.S. §1-1939(I)(1)(e)]. This requirement does not supersede reporting requirements in Title 43A of the Oklahoma Statutes (relating to the Protective Services for the Elderly and for Incapacitated Adults Act).

~~(c) The facility shall report to the Department allegations of resident abuse, neglect or misappropriation of residents' property. The facility shall report allegations of resident abuse, neglect, or misappropriation of residents' property by licensed personnel to the appropriate licensing board.~~

(c) **Reporting to licensing boards.** The facility shall also report allegations and incidents of resident abuse, neglect, or misappropriation of residents' property by licensed personnel to the appropriate licensing board.

~~(d) The facility shall report unusual incidents, such as missing residents, abuse and neglect of residents, to the Department and to other appropriate agencies.~~

(d) **Reporting communicable diseases.** The facility shall report *communicable diseases* [63 O.S. §1-1939(I)(1)(a)] and injuries as specified by the Department in OAC 310:515 (relating to communicable disease and injury reporting).

~~(e) All reports to the Department shall be made by telephone or facsimile within twelve hours of the reportable incident. An initial report of the incident shall be mailed or faxed to the Department within five working days after the incident. The final report shall be filed with the Department when the full investigation is complete.~~

(e) **Reporting certain deaths.** The facility shall report *deaths by unusual occurrence, such as accidental deaths or deaths other than by natural causes, and deaths that may be attributed to a medical device,* [63 O.S. §1-1939(I)(1)(b)] according to applicable state and federal laws. The facility shall also report such deaths to the Department.

~~(f) The facility shall report to the Department allegations of abuse, neglect, or misappropriation of resident property by a nurse aide by submitting a completed Nurse Aide Abuse, Neglect, Misappropriation of Resident Property Form (ODH Form 718), which requires the following:~~

~~(1) facility name, address, and telephone;~~

~~(2) facility type;~~

~~(3) date;~~

~~(4) reporting party name or administrator name;~~

~~(5) employee name and address;~~

~~(6) employee certification number;~~

~~(7) employee social security number;~~

~~(8) employee telephone number;~~

~~(9) termination action and date;~~

~~(10) other contact person name and address; and~~

~~(11) facts of abuse, neglect, or misappropriation of resident property.~~

(f) **Reporting missing residents.** The facility shall report *missing residents* to the Department after a search of the facility and facility grounds and a determination by the facility that the resident is missing. *In addition, the facility shall make a report to local law enforcement agencies within two (2) hours if the resident is still missing* [63 O.S. §1-1939(I)(1)(c)].

(g) **Reporting criminal acts.** The facility shall report *situations arising where a criminal intent is suspected. Such situations shall also be reported to local law enforcement* [63 O.S. §1-1939(I)(1)(d)]. Where physical harm has occurred to a resident as a result of a suspected criminal act, a report shall immediately be made to the municipal police department or to the sheriff's office in the county in which the harm occurred. A facility that is not clear whether the incident should be reported to local law enforcement should consult with local law enforcement.

(h) **Reporting utility failures.** The facility shall report to the Department utility failures of more than 4 hours.

(i) **Reporting certain injuries.** The facility shall report to the Department incidents that result in fractures, head injury or require treatment at a hospital.

(j) **Reporting storm damage.** The facility shall report to the Department storm damage resulting in relocation of a resident from a currently assigned room.

(k) **Reporting fires.** The facility shall report to the Department all fires occurring on the licensed real estate.

(l) **Reporting nurse aides.** The facility shall report to the Department allegations and incidents of abuse, neglect, or misappropriation of resident property by a nurse aide by submitting a completed Nurse Aide Abuse, Neglect, Misappropriation of Resident Property Form (ODH Form 718), which requires the following:

(1) facility name, address, and telephone;
(2) facility type;
(3) date;
(4) reporting party name or administrator name;
(5) employee name and address;
(6) employee certification number;
(7) employee social security number;
(8) employee telephone number;
(9) termination action and date;
(10) other contact person name and address; and
(11) facts of abuse, neglect, or misappropriation of resident property.

(m) **Content of reports to the department.** Reports to the Department made pursuant to this section shall contain the following:

(1) The preliminary report shall at the minimum include:
(A) who, what, when, and where; and
(B) measures taken to protect the resident(s) during the investigation.
(2) The follow-up report shall at the minimum include:
(A) preliminary information;
(B) the extent of the injury or damage if any; and
(C) preliminary findings of the investigation.
(3) The final report at the minimum shall include preliminary and follow-up information and:
(A) a summary of investigative actions;
(B) investigative findings and conclusions based on findings; and
(C) corrective measures to prevent future occurrences.
(D) if items are omitted, why the items are omitted and when they will be provided.

310:675-7-12.1. Incident reports

(a) **Incident defined.** An incident is any accident or unusual occurrence where there is apparent injury, ~~or~~ where injury may have occurred, including but not limited to, head injuries, medication, ~~and~~ treatment errors or events subject to the reporting requirements in 310:675-7-5.1 (relating to reportable incidents).

(b) **Incident records.** Each facility shall maintain an incident report record and shall have incident report forms available.

(c) **Incident format.** Incident reports shall be on a printed incident report form.

(d) **Incident reports signatures.** The charge nurse, at the time of the incident, shall prepare and sign the report. The report shall include the names of the persons witnessing the incident and their signatures where applicable.

(e) **Incident reporting: scope.** The incident report shall cover all unusual occurrences within the facility, or on the premises, affecting residents, and incidents within the facility or on the premises affecting visitors or employees.

(f) **Incident records on file.** A copy of each incident report shall be on file in the facility.

~~(g) The facility shall notify the Department within twelve hours of all incidents pertaining to fire, storm damage, death other than by natural causes, missing residents, a utility failure for more than four hours, and incidents affecting the life and safety of residents. An initial incident report shall be submitted to the Department within five working days. A final report shall be filed with the Department, when the investigation is complete or the incident is resolved.~~

(~~h~~g) **Incident in clinical record.** The resident's clinical record shall describe the incident and indicating the findings on evaluation of the resident for injury.

(~~i~~h) **Incidents: reviewers.** All incident reports shall be reviewed by the director of nursing and the administrator and shall include corrective action taken where health and safety are affected.

310:675-7-17.1. Infection control

(a) The facility shall have an infection control policy and procedures to provide a safe and sanitary environment. The policy shall address the prevention and transmission of disease and infection. The facility, and its personnel, shall practice the universal precautions identified by the Centers for Disease Control. All personnel shall demonstrate their knowledge of universal precautions through performance of duties.

(b) The facility shall maintain a sanitary environment and prevent the development and transmission of infection in the following areas.

(1) Food handling practices.
(2) Laundry practices including linen handling.
(3) Disposal of environmental and resident wastes.
(4) Pest control measures.
(5) Traffic control for high-risk areas.
(6) Visiting rules for high-risk residents.
(7) Sources of air-borne infections.
(8) Health status of all employees and residents.
(9) Isolation area for residents with communicable diseases.

(c) Infection control policies to ~~break~~prevent the transmission of infection shall include the following:

(1) Excluding personnel and visitors with communicable infections.
(2) Limiting traffic in dietary and medication rooms.
(3) Using aseptic and isolation techniques including hand washing techniques.
(4) Bagging each resident's trash and refuse.
(5) Issuing daily damp wipe cloths, treated dust cloths and clean wet mops, as needed.
(6) Laundering the used wet mops and cleaning cloths every day.
(7) Cleaning the equipment for resident use daily, and the storage and housekeeping closets as needed.
(8) Providing properly identifiable plastic bags for the proper disposal of infected materials.

(9) **Tuberculosis risk assessment.** An annual facility tuberculosis risk assessment is to be performed by a licensed nurse or physician using a Department approved risk assessment tool.

(d) When scheduled to be cleaned, the toilet areas, utility rooms, and work closets, shall be cleaned with a disinfectant solution and fresh air shall be introduced to deodorize.

(e) **Tuberculin skin test for residents.** Within thirty (30) days from admission, all residents admitted to the facility after the adoption of this rule shall receive a two-step tuberculin skin test in conformance with the Centers for Disease Control and Prevention's, "Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-Care Settings;" CDC. Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-Care Settings, 2005. MMWR 2005; 54(No. RR-17).

(1) Tuberculin skin tests shall be administered by a licensed nurse or physician.

(2) Where a skin test is contra-indicated, a chest radiograph, interpreted by a medical consultant in collaboration with the city, county or state health department, is acceptable.

(3) Residents claiming a prior positive tuberculin skin test shall have documentation in their medical record, obtained from a licensed health care professional, of their test results and interpretation; otherwise, a two-step tuberculin skin test shall be done.

310:675-7-18.1. Personnel records

Each facility shall maintain a personnel record for each current employee containing:

(1) **Application for employment.** An application for employment which contains employee's full name, social security number, professional license or registration number, if any, employment classification, and information about past employment, including: place of employment, position held, length of employment, and reason for leaving.

(2) **Employee time records.** Copies of current employee time records, signed by the employee, shall be maintained by the facility for at ~~least thirty~~least thirty-six months.

(3) **Training, arrest check, and certifcation.** Documentation of orientation and training (may be kept in separate file), continuing education, a copy of the criminal arrest check, and appropriate certification and licensure.

(4) **Health examination on hire.** Record of health examination conducted within thirty days of employment which shall include, but not be limited to, a complete medical history, physical examination by body system and, a two-step tuberculin skin test in conformance with the Centers for Disease Control and Prevention's, "Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-Care Settings;" CDC. Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-Care Settings, 2005. MMWR 2005; 54(No. RR-17).

(A) Tuberculin skin tests shall be administered by a licensed nurse or physician.

(B) Where a skin test is contra-indicated, a chest radiograph, interpreted by a medical consultant in collaboration with the city, county or state health department, is acceptable.

(C) Employees claiming a prior positive tuberculin skin test shall have documentation in their file, obtained from a licensed health care professional, of their test results and interpretation, otherwise, a two-step tuberculin skin test shall be done.

(5) **Tuberculin skin test.** Results of ~~annual~~subsequent tuberculin skin test performed based on facility TB risk classification established in OAC 310:675-7-17(c)(9) (relating to annual facility tuberculosis risk assessment) or results of a physician's examination for signs and symptoms of tuberculosis for those employees who react significantly to a tuberculin skin test. All tests and examinations shall be in conformance with the Centers for Disease Control and Prevention's, "Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-Care Settings;" CDC. Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-Care Settings, 2005. MMWR 2005; 54(No. RR-17).

310:675-7-21. Sex or violent offender status

(a) **Determination of status.** A facility subject to the provisions of this Chapter shall determine whether the following individuals have registered pursuant to the Sex Offenders Registration Act or the Mary Rippy Violent Crime Offenders Registration Act:

(1) An applicant for admission or participation,

(2) A resident, client or participant of a facility subject to the provisions of this Chapter, and

(3) All employees of facilities subject to the provisions of this Chapter, in addition to the required criminal arrest check in 63 O.S. §1-1950.1 and 63 O.S. §1-1950.8 (relating to criminal arrest checks).

(b) **Procedures for determination of status.** Prior to admission or employment but no later than three (3) business days from acceptance of any resident or participant, the employing or receiving facility subject to the provisions of this Chapter shall determine from local law enforcement, the Department of Corrections, or the Department of Corrections' Sex Offender and Mary Rippy Violent Crime Offender registries, whether the prospective employee or accepted resident or participant is registered or qualifies for registration on either registry.

(c) **Recommended registry search strategy.** A facility subject to the provisions of this Chapter may utilize the first three letters of the last name and an asterisk, and the first letter of the first name and asterisk, any known alias, and appearance criteria as provided for search within the Department of Correction's Internet based sex and violent crime offender registries.

(d) **Change in status after employment or admission.** A facility subject to the provisions of this Chapter shall repeat the screening in OAC 310:675-7-21(b) (regarding procedures for

determination of status) subsequent to the receipt of any information that an employee, resident or participant's registration status may have been altered or updated after the initial screening.

(e) **Posting of offender status.** Pursuant to 63 O.S. §1-1909(4), a facility subject to the provisions of this Chapter shall conspicuously post for display in an area of its offices accessible to residents, employees and visitors a copy of any notification from the local law enforcement authority regarding the registration status of any person residing in the facility who is required to register pursuant to the Sex Offenders Registration Act or the Mary Rippy Violent Crime Offenders Registration Act.

(f) **Notice to Department of sex or violent offender's presence.** When a facility subject to the provisions of this Chapter is notified, or has determined, that an individual who is required to register pursuant to the Sex Offenders Registration Act or the Mary Rippy Violent Crime Offenders Registration Act is residing or participating at such facility, *the facility shall immediately, in writing, notify the State Department of Health*.[63 O.S. §1-1946(A)(3)]

(g) **Content of notice of sex or violent offender's presence.** Notice provided to the Department shall include the name, and identifying information used to make the determination in 310:675-7-21(b)(regarding determination of status).

(h) **Notification through other means.** Where a facility subject to the provisions of this Chapter determines through other means, excepting written notification by the Department, of an employee, resident or participant required to register pursuant to the Sex Offenders Registration Act or the Mary Rippy Violent Crime Offenders Registration Act, the facility shall notify the Department and shall be subject to all other requirements within this section.

SUBCHAPTER 9. RESIDENT CARE SERVICES

310:675-9-13.1. Food storage, supply and sanitation

(a) Food shall be stored, prepared and served in accordance with Chapter ~~255~~257 of this Title (relating to food service establishments) with the following additional requirements.

~~(1) All staff in the food service area shall use hair nets or caps.~~

~~(2) Hot foods shall be served at a palatable temperature range of 110° – 120° F. (43.3° – 48.8° C.).~~

~~(3) The facility shall provide appropriate utensils for consuming foods including assistive devices to promote resident independence.~~

(b) ~~All ice, used in food or drinks, shall be from a satisfactory source, and handled and dispensed in a sanitary manner.~~ Ice machines available to the residents, or the public, shall be a dispenser type, or have a locking enclosure.

(c) ~~All food supplies shall be from approved sources. Damaged merchandise or home processed foods shall not be used.~~A whole, intact, fruit or vegetable is an approved food source. The food supply shall be sufficient in quantity and variety to prepare menus for three days ~~menu~~. Leftovers that are potentially hazardous foods shall be used, or disposed of, within twenty-four hours. Non-potentially hazardous leftovers that have been heated or cooked may be refrigerated for up to forty-eight hours.

(d) **Milk, milk products and eggs.**

(1) Only grade A pasteurized fluid milk, as defined by the Oklahoma Grade A Milk and Milk Products Act, Title 2 O.S. §7-401 through 2 O.S. §7-421, shall be used for beverage and shall be served directly into a glass from a milk dispenser or container.

(2) Powdered or evaporated milk products approved ~~by~~ under the U.S. Department of Health and Human Services' Grade "A" Pasteurized Milk Ordinance (2003 Revision), may be used only as additives in cooked foods. This does not include the addition of powdered or evaporated milk products to milk or water as a milk for drinking purposes. Powdered or evaporated milk products may be used in instant desserts and whipped products, or for cooking. When foods, in which powdered or evaporated milk has been added, are not cooked, the foods shall be consumed within twenty-four hours.

(3) Milk for drinking shall be stored at a temperature of ~~35° F. (1.6° C.) to 40° F. (4.4° C.)~~ 41° or below and shall not be stored in a frozen state.

(4) Only clean, whole eggs with shell intact, pasteurized liquid, frozen, dry eggs, egg products and commercially prepared and packaged hard boiled eggs may be used. All eggs shall be thoroughly cooked except pasteurized egg products or pasteurized in-shell eggs may be used in place of pooled eggs or raw or undercooked eggs.

~~(e) **Dishwashing and handwashing**~~

~~(1) The dishwashing system and procedures shall be approved by the Department.~~

~~(2) Hands shall be properly washed or sanitized before handling clean dishes or equipment. In new or remodeled facilities, handwashing facilities, including soap and paper towels, shall be conveniently located in the kitchen to facilitate good handwashing techniques.~~

~~(f) **Kitchen room temperature.** The maximum room temperature in the food preparation area shall not exceed 90° F. (32.2° C.)~~

(e) **Applicability.** This section shall only apply to food prepared or served by the facility, within the licensed facility.

SUBCHAPTER 13. STAFF REQUIREMENTS

310:675-13-7. Food service staff

(a) **Food service supervisor.**

(1) The food service supervisor shall be responsible for all aspects of food service preparation and delivery. The food service supervisor may serve only one facility. The food service supervisor hours shall be sufficient to meet the residents' needs.

(2) ~~A~~The food service supervisor ~~hired after January 1, 1993,~~ shall complete~~, or be enrolled in, the first available Department approved course in dietary management~~ certification as a dietary manager within three years of beginning employment.

(3) The food service supervisor shall complete, and maintain continuous, ServeSafe food safety certification, or a Department approved alternative, within ninety (90) days of beginning employment.

(4) The food service supervisor shall complete ServeSafe food safety certification, or a Department approved alternative, within ninety (90) days of beginning employment.

(b) **Food service staff.**

(1) The facility shall have food service staff on duty sufficient to meet the residents' needs. There shall be at least one hour of food service staff per three residents, a day based on the daily census.

(2) The food service staff shall complete a basic orientation program before working in the food service area. This orientation shall include, but not be limited to~~,~~: fire and safety precautions, infection control, and ~~basic dietary guidelines~~ sanitary food handling practices.

~~(3) The facility shall provide each food service staff person with at least one hour of inservice training by a qualified staff/professional each month.~~

(3) Each food service staff member shall successfully complete a food service training program offered or approved by the Department within ninety (90) days of beginning employment. Food service training shall be renewed as required by the authorized training program.

SUBCHAPTER 21. ENFORCEMENT AND REGISTRY HEARINGS FOR NONTECHNICAL SERVICES WORKERS

310:675-21-1. Purpose

The purpose of this Subchapter is to implement the Nontechnical Services Workers Abuse Registry, 63 O.S. Section 1-1950.6 through 1-1950.9. For the purposes of this subchapter, abuse, verbal abuse, and exploitation, shall have the meaning assigned in Section 10-103 of Title 43A of the Oklahoma Statutes.

310:675-21-2. Complaint investigation

Upon receipt of a complaint against a non-technical service worker alleging abuse, verbal abuse, or exploitation of a resident within a nursing facility, or upon completion of a survey of a nursing facility by the Department with a finding that a non-technical service worker abused, verbally abused, or exploited a resident, the Department shall conduct an investigation. Upon completion of the investigation, a written report will be prepared. If sufficient evidence exists to initiate an individual proceeding, notice of the investigative findings and an opportunity for hearing will be prepared and served upon the nontechnical services worker.

310:675-21-3. Right to a hearing

Before the registry is notified that a finding of resident abuse, verbal abuse, or exploitation of a resident in a nursing facility has been made against a nontechnical services worker, the Department shall offer the nontechnical services worker an opportunity for a hearing. If the nontechnical services worker fails to request a hearing in writing within thirty (30) days from the date of the notice, the Department shall include on the registry a finding of resident abuse, verbal abuse, or exploitation of a resident in a nursing facility against the nontechnical services worker.

310:675-21-4. Petition and hearing

(a) **Petition.** If the nontechnical services worker requests a hearing, the Department shall commence an individual proceeding by filing a petition against the nontechnical services worker that states the facts supporting the allegation.

(b) **Notice of hearing.** All parties shall be given notice of the date, time and place of the hearing. The notice of hearing served upon the non-technical service worker shall include a copy of the petition.

(c) **Time.** The hearing shall be scheduled at least fifteen (15) working days after the nontechnical services worker has received notice of the hearing.

(d) The hearing shall be conducted in accord with the Oklahoma Administrative Procedures Act and Chapter 2 of this Title.

310:675-21-5. Orders

(a) **Authority.** The Administrative Law Judge shall issue a decision within fifteen (15) working days following the close of the hearing record. The decision shall include Findings of Fact and Conclusions of Law separately stated.

(b) **Delegation.** The Commissioner of Health may delegate the authority to issue a final decision in these matters as specified in 75 O.S. Section 311.1 and OAC 310:002.

(c) **Registry notification.** The decision shall direct the nontechnical services worker registry to include the findings as they relate to the nontechnical services worker. The decision shall direct the nontechnical services worker registry to include a statement by the nontechnical services worker disputing the decision if the nontechnical services worker chooses to submit such statement. If such a statement is submitted the statement of the nontechnical services worker shall be submitted to the nontechnical services worker registry within thirty (30) days after the decision is issued.

(d) **Notice.** Each party and attorney of record shall be mailed a copy of the Final Order. The Department shall transmit a copy of the Final Order to the nontechnical services worker registry when the Order is mailed.

(e) **Appeal.** An appeal of the Final Order shall be perfected pursuant to 75 O.S. Section 318 of the Administrative Procedures Act.

APPENDIX B. REFERENCE LIST FOR STANDARDS OF PRACTICE [REVOKED]

APPENDIX B. REFERENCE LIST FOR STANDARDS OF PRACTICE [NEW]

(Referring to OAC 310:675-1-2. Definitions: Standards of care)[1]

"Physical Examination and Health Assessment" - Third Edition - Carolyn Jarvis

"Medical-Surgical Nursing Assessment and Management of Clinical Problems" - Fifth Edition - Lewis, Heitkemper and Dirksen (Mosby)

"Handbook of Geriatric Nursing" - Second Edition - Lippincott, Williams and Wilkins

"Clinical Nursing Skills - Basic To Advanced Skills" - Fifth Edition - Smith, Duell and Martin

Oklahoma Board of Nursing Guidelines and Position Statements:

"A Decision-Making Model for Determining RN/LPN Scope of Practice Model - Model for Scope of Nursing Practice Decisions"

"Abandonment Statement"

"Advanced Practice Nurses with Prescriptive Authority Exclusionary Formulary"

"Delegation of Nursing Functions to Unlicensed Persons"

"Guidelines for Employment of Individuals Enrolled in or Non-Licensed Graduates of Nursing Education Programs"

"Guidelines for the Registered Nurse in Administering, Managing and Monitoring Patients Receiving Analgesia/Anesthesia by Catheter Techniques"

"Issuance of Temporary Licenses for RNs and LPNs"

"Licensure Verification and Photocopying of Nursing Licenses"

"Patient Assessment Guidelines"

"Refresher Course Policy"

"Wound Debridement by Licensed Nurses Guideline"

Standards of the American Nurses Association and Specialty Nursing Organizations:

---

[1] **310:675-1-2. Definitions**
"Standards of care" means a description of a competent level of care demonstrated by a process of accurate assessment and diagnosis, planning, appropriate interventions, and predicted patient outcomes. (Appendix B of this Chapter.)

"*Nursing*: Scope and Standards of Practice" Pub# 03SSNP - 2004

"Scope and Standards for Nurse Administrators" (Second Edition); Pub#03SSNA - 2004

"Scope and Standards of Diabetes Nursing Practice" (2nd Edition); Pub# DNP23 - 2003

"Scope and Standards of Forensic Nursing Practice" Pub# ST-4 - 1997

"Scope and Standards of Gerontological Nursing Practice" 2nd Edition; Pub# GNP21 - 2001

"Scope and Standards of Hospice and Palliative Nursing Practice" Pub# HPN22 - 2002

"Scope and Standards of Neuroscience Nursing Practice" Pub# NNS22 - 2002

"Scope and Standards of Nursing Informatics Practice" Pub# NIP21 - 2001

"Scope and Standards of Psychiatric-Mental Health Nursing Practice" Pub# PMH-20 - 2000

"Statement on the Scope and Standards for the Nurse Who Specializes in Developmental Disabilities and/or Mental Retardation" Pub# 9802ST - 1998

"Statement on the Scope and Standards of Oncology Nursing Practice" Pub# MS-23 - 1996

[OAR Docket #07-1096; filed 5-18-07]

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

[OAR Docket #07-1095]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
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]
AUTHORITY:
Oklahoma State Board of Health; 63 O.S. Sections 1-104 and 1-1901 et seq.
DATES:
Comment Period:
January 2, 2007 through March 8, 2007
Public Hearing:
February 1, 2007 and March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
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]
Gubernatorial approval:
July 26, 2006
Register publication:
23 Ok Reg 3167
Docket number:
06-1242
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The proposed amendments permanently delete requirements for nursing facilities to submit the Federal Tax Waiver, ODH Form 953-H. The tax waiver requirement was revoked on an emergency basis effective July 26, 2006 through July 14, 2007. This action is necessary because the Internal Revenue Service will no longer accept the ODH Form 953-H. The Internal Revenue Service in April 2006 advised the State Department of Health that all requests for verification of federal taxes must be submitted on the IRS Form 4506-T. The Internal Revenue Service can no longer provide the Department of Health with a "yes/no" answer as to whether an entity is in compliance with federal tax requirements.

This rule change is needed to avoid the unnecessary cost for facilities and the Health Department to prepare and process the unusable ODH Form 953-H. If this rule amendment is approved, then the ODH Form 953-H will not be required of approximately 430 nursing and specialized nursing facilities that are due to file for license renewals in July 2007 and after.
CONTACT PERSON:
Darlene Simmons, Director, Health Facility Systems, Health Resources Development Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299; telephone (405) 271-9444 ext. 57265; facsimile: 405-271-7360; email: darlene@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 3. LICENSES

310:675-3-1.1. Application for licensure

(a) No person or entity shall operate a facility without first obtaining a license.

(b) The applicant shall file a licensure application in a timely manner, on the forms provided by the Department, with a check for the filing fee payable to the Oklahoma State Department of Health. The filing fee is set by statute, and currently is calculated as Ten Dollars ($10.00) per licensed bed.

(c) The facility owner shall be the applicant for the license, unless a receiver has been appointed. If there is a receiver, the receiver shall be the applicant.

(d) If the facility is leased, then the person or entity to whom the facility is leased shall be the applicant. If the lessee does not assume all rights to the facility and the lessor reserves some participatory rights in the operation of the facility, then both entities shall make joint application for the license.

(e) The applicant or licensee shall disclose the name, address, and tax identification number of a person or entity who has the legal duties of filing employment tax returns and paying employment taxes with respect to staff required to meet the needs of facility residents, including but not limited to administrators, nurses, nurse aides, certified medication aides, dieticians, nutritionists, food service staff, qualified mental retardation professionals, and activities, social services, maintenance and housekeeping personnel. ~~The Department shall require such a person or entity to sign a Federal Tax Waiver to verify that employment taxes are being paid for staff required to meet the needs of residents.~~

(f) An application is not considered to be filed unless it is accompanied by the application fee. The application fee, however, shall not be required from a receiver or temporary manager appointed by, or at the request of, the Department.

(g) An initial or renewal application for a license shall include a certification by the applicant that, at the time of the filing of the application:

(1) The applicant and any person or entity disclosed pursuant to 310:675-3-1.1(e) are current in their payment of all state and federal income, employment and unemployment taxes;

(2) The applicant and any person or entity disclosed pursuant to 310:675-3-1.1(e) have filed all required returns for such taxes;

(3) Whether any state tax warrants or federal tax liens have been filed against the applicant, the facility or any person or entity disclosed pursuant to 310:675-3-1.1(e); and

(4) Whether any state attachments or federal levies have been made and are currently pending to collect delinquent state or federal income, employment or unemployment taxes owed by the applicant, the facility, or any person or entity disclosed pursuant to 310:675-3-1.1(e).

(h) An applicant or any person or entity disclosed pursuant to 310:675-3-1.1(e) is current with its federal and state taxes if at the time of the submission of its initial or renewal application it has filed all tax returns that are due for state and federal income taxes, Form 941 federal employment taxes, Form 940 federal unemployment taxes, and all state employment and unemployment taxes and has paid all such taxes, interest, and penalties in full.

310:675-3-4.1. Forms

The applicant for a license shall file application forms as follows:

(1) For an initial license of a new facility, or for an existing facility following a transfer of ownership or operation, the applicant shall file these forms: License Application; Disclosure Statement of Owner, Lessee and Manager, with Detail Attachment and Affirmation Attachment; the Staffing Projection and Professional Certification; and the Certification of Tax Liens and Timely Payment of Taxes~~; and the Federal Tax Waiver~~.

(2) For renewal or suspension of a current license, the applicant shall file the License Application form, and the Certification of Tax Liens and Timely Payment of Taxes~~, and the Federal Tax Waiver~~. The application forms shall provide for the facility to file an abbreviated report if no change has been made since the time of the last application.

310:675-3-5.1. Description of forms

(a) The forms used to apply for a facility license are the following.

(1) The License Application for a Nursing or Specialized Facility (Form 953-A) requires: identification of the type of license; the name and address of the facility; the administrator's name; the number and type of beds; the applicant's name; confirmation of changes in the owner, lessee, manager or any person or entity disclosed pursuant to 310:675-3-1.1(e); a zoning statement for new facilities; and an oath affirming the truth, correctness and completeness of the information provided.

(2) The Disclosure Statement of Owner, Lessee and Manager for a Nursing or Specialized Facility (Form 953-B) requires: the names and types of legal entities for the owner, lessee and manager; name, address and tax identification number for any person or entity disclosed pursuant to 310:675-3-1.1(e); and an oath affirming the truth, correctness and completeness of the information provided.

(3) The Detail Attachment (Form 953-C) supplements the Disclosure Statement (Form 953-B) and requires the names and addresses for the following as applicable:

(A) All shareholders and officers of a corporate entity;

(B) All partners of a general or limited partnership;

(C) All managers and members of a limited liability company;

(D) The trustees and beneficiaries of a trust;

(E) All persons or entities that own an interest of a joint venture;

(F) All persons or entities that own an interest of an association;

(G) The owners of any other type of legal entity;

(H) Each shareholder that owns, at the time of application, 5% or more of the outstanding stock of any corporation that is publicly traded and is required to file annual reports with the Securities and Exchange Commissioner;

(I) Any other person holding at least a five percent (5%) interest in the entity which owns, operates, or manages the facility; and

(J) The owners of any shareholder, partner, member or other person or entity disclosed in (A) through (G) of this paragraph that is in turn an entity described in (A) through (G) of this paragraph. The disclosure shall be made at each level of the organization.

(4) The Affirmation Attachment (Form 953-D) supplements the Disclosure Statement (Form 953-B) and requires the following: the names and addresses of individuals, members, officers and/or registered agents for the applicant; and an affirmation from each of the above concerning their age, character and health.

(5) The Staffing Projection and Professional Certification for a Nursing or Specialized Facility (Form 953-E) requires: a projected staffing pattern; and a certification from the director of nursing, the physician on call for medical emergencies, and the pharmacist providing consultation and emergency pharmacy services.

(6) The Periodic Report for Suspended License (Form 953-F) requires: the name and address of the facility; the applicant's name and address, contact person and address; report of progress in reopening the facility; request for extension based on extenuating circumstances; and an oath affirming the truth, correctness and completeness of the information provided.

(7) The Certification of Tax Liens and Timely Payment of Taxes (Form 953-G) requires: certification of compliance with OAC 310:3-1-1(g).

~~(8) The Federal Tax Waiver (Form 953-H) requires authorization from the applicant and any person or entity disclosed pursuant to 310:675-3-1.1(e) to allow the Internal Revenue Service to provide tax return information to the Department to verify current compliance with the filing and payment requirements for federal Form 941 employment taxes, and Form 940 unemployment taxes and to verify that there are no notices of federal tax liens that have been filed against the applicant or any person or entity disclosed pursuant to 310:675-3-1.1(e).~~

(b) The Notice of Change requests information on the name and address of the facility; the administrator; the number and

type of beds; the applicant; confirmation of changes in the owner, lessee or manager; any change in disclosure of persons or entities pursuant 310:675-3-1.1(e); and any change in compliance status with the tax certification requirements specified in 310:675-3-1.1(g).

310:675-3-8. Notice of change

(a) If changes occur so that information previously submitted in a facility's license application is no longer correct, the facility shall notify the Department. Notice is required of changes to the following information:

(1) Facility identification including facility business name, mailing address, telephone number or facsimile number;

(2) Changes in licensed bed capacity, including proposed increases;

(3) The administrator;

(4) Owner, lessee or manager disclosure or detail information that does not otherwise necessitate an initial license;

(5) Disclosure of persons or entities pursuant 310:675-3-1.1(e); and

(6) Compliance status with the tax filing and payment requirements certified pursuant to 310:675-3-1.1(g).

(b) The facility shall file the Notice of Change form with the Department on or before the effective date of the change, with the following exceptions.

(1) When a change is unexpected or beyond the control of the facility, the facility shall provide notice to the Department within five (5) working days after the change.

(2) For an increase in licensed bed capacity, the facility shall file the notice of change prior to the requested license amendment date. The notice of change shall be accompanied by the $10 per-bed license fee pursuant to 63 O.S. Section 1-1905(A), prorated by the number of beds to be added and the proportion of time remaining on the license until expiration. Prior to occupying additional beds, the facility shall obtain an amended license from the Department.

(c) Following receipt of information that an applicant or any person or entity disclosed pursuant 310:675-3-1.1(e) is not in compliance with the tax filing, payment or disclosure requirements of 310:675-3-1.1. or 63 O.S. Section 1-1930.1, the Department may require an applicant or licensee to submit~~:~~

~~(1) Such additional Federal Tax Waivers as are necessary to ensure compliance with federal tax laws for the above; and~~

~~(2) Proof~~ proof that the applicant or person or entity disclosed pursuant to 310:675-3-1.1(e) is in compliance with state or federal taxes. Such proof may include a letter from the taxing agency, a file-stamped copy of a return, a receipt for a tax payment, or a tax transcript or account.

[OAR Docket #07-1095; filed 5-18-07]

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

[OAR Docket #07-1096A]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Oklahoma State Board of Health; 63 O.S. Section 1-104; and 63 O.S. Sections 1-1950.1 through 1-1950.5, and Section 1-1951
DATES:
Comment Period:
February 1, 2007 through March 8, 2007
Public Hearing:
March 8, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2007
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 1. General Provisions
310:677-1-3 [AMENDED]
Subchapter 5. Nurse Aide Registry
310:677-5-2 [AMENDED]
Gubernatorial approval:
July 26, 2006
Register publication:
23 Ok Reg 3169
Docket number:
06-1243
INCORPORATION BY REFERENCE:
n/a

ANALYSIS:

Provisions relating to nurse aide trainees and uncertified aides are modified to be consistent with Title 63 O.S. Section 1-1950.3. Provisions that require applicants to submit copies of social security cards are deleted. Criteria are simplified and shortened for placement of nursing school graduates on the nurse aide registry. The amendments include a brief description of the application form required for recertification. The deadline for reporting an allegation of abuse is changed to 24 hours to be consistent with current law.

General requirements for approval of training and competency evaluation programs are modified to reduce the time for review of applications. Requirements for training programs are amended to reduce paperwork required for Health Department approval of instructors and classrooms. Criteria are specified for the use of clinical training sites after substandard quality of care has been cited.

Criteria and procedures for denial, suspension, withdrawal and nonrenewal of nurse aide certifications are specified.

Instructor qualifications are modified to allow registered nurses with certain experience as instructors or trainers to serve as supervisors for home health aide training programs.

The amendments include clarification of requirements for certified medication aides. The numbers of glucometer tests and insulin preparations that must be performed during training are modified. The changes authorize advanced programs that provide limited training in blood glucose monitoring, in use of gastrostomy tubes, or in use of inhalers and nebulizers. Competency and skills examination programs are required to obtain written attestations of compliance from medication aide candidates. Requirements are clarified for retesting and retraining after expiration of a medication aide's certificate.

Application requirements for medication aide training and evaluation programs are modified to identify the program owner, and to reduce paperwork filings for instructors and classrooms. Criteria and procedures for approval of continuing education are specified.

The proposed amendments include permanent adoption of emergency rules that eliminated certification and application fees for long-term care aides, the category of nurse aides eligible to work in nursing facilities and skilled nursing facilities. Under emergency rules effective July 26, 2006, fees ranging from $5 to $15 were deleted for long-term care aides. In the emergency rule and in this permanent proposal, the fees will continue to apply to certifications and applications for home health aides, certified medication aides, aides providing direct care to persons with developmental disabilities, residential care aides and adult day care aides. The elimination of certification and application fees for long-term care aides is intended to comply with Sections 1819(e)(2) and 1919(e)(2) of the Social Security Act, and Title 42 Code of Federal Regulations Section 483.156(b)(4), and with recent instructions from the Centers for Medicare and Medicaid Services.

The February 1, 2007 notice of rulemaking intent indicated that hearing procedures for nurse aides and medication aides would be revoked in Subchapter 7 and expanded in a new Subchapter 23. However, during the rule drafting process a determination was made that the existing hearing procedures in Subchapter 7 adequately describe the Department's hearing process. The rule as adopted does not revoke Subchapter 7 and does not add a Subchapter 23.

CONTACT PERSON:

Henry F. Hartsell Jr., Deputy Commissioner, Protective Health Services, 1000 N.E. 10 Street, Oklahoma City, OK 73117-1299; telephone: 405) 271-9444 ext. 57269; facsimile: 405-271-1420; email: hank@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

310:677-1-3. Applicability

(a) This Chapter shall apply to specified employers~~ and persons who are employed by such employers, as~~ nurse aides, certified medication aides and other unlicensed employees providing health related services, and training and competency evaluation programs.

~~(b) An employer shall not use on a full-time, temporary, per diem, or other basis persons as nurse aides for more than 120 cumulative days unless the individual has completed a training and competency examination program approved by the Department and placed on the Nurse Aide Registry.~~

~~(c) An employer shall not use on a temporary, per diem, leased, or for any other basis other than a permanent employee, any individual who has not successfully completed the training and competency examination requirements and who is not listed in the nurse aide registry.~~

(~~d~~b) An employer shall not use an individual as a nurse aide unless the employer has consulted the ~~State~~ Oklahoma Nurse Aide Registry to determine whether the individual is listed~~ in good standing in~~ on the nurse aide registry~~, or~~ and whether the individual has~~ had~~ no confirmed findings ~~regarding allegations~~ of abuse, neglect or misappropriation of patient/resident/client property.

(~~e~~c) The Department shall grant an exception to the nurse aide training requirements in 310:677-9-4 for home health aides, 310:677-11-4 for long term care aides, 310:677-13-4 for certified medication aides, 310:677-15-3 for developmentally disabled direct care aides, 310:677-17-3 for residential care aides and 310:677-19-3 for adult day care aides, and allow an individual to sit for the competency examination if the individual submits all information specified on the ~~Department's training exception request form~~Training Exception Application (ODH Form 832), which requires the following:

(1) Individual's full name and personal identifying information;

(2) Telephone number and address to include street, city, state, and zip code;

~~(3) Photocopy of Social Security card;~~

(~~4~~3) Copy of official transcript documenting classroom and clinical training equal to or greater than the classroom and clinical training as prescribed in 310:677-9-4, 310:677-11-4, 310:677-13-4, 310:677-15-3, 310:677-17-3 and 310:677-19-3; and

(~~5~~4) Type of nurse aide training to be excepted.

(~~f~~d) The Department shall grant to a graduate of an approved practical or registered nurse program located in the United States a waiver to be placed on the nurse aide registry if the following criteria are met:

(1) The individual submits all information specified on the Department's ~~training and competency testing waiver request form~~Nurse Aide Training and Competency Evaluation Program Waiver Application (ODH Form 844), which requires the following:

(A) Individual's full name and personal identifying information;

(B) Telephone number and address to include street, city, state, and zip code;

~~(C) Photocopy of Social Security card;~~

(~~D~~C) Photocopy of diploma from an approved practical or registered nurse program; ~~and~~

(~~E~~D) Type of nurse aide training and competency testing requesting to be waived; and

(E) Identification of all states, territories and districts of the United States and other countries where the individual has practiced or been licensed, certified or registered as a nurse; and

(2) The ~~Department verifies the following:~~

~~(A)~~ ~~The~~ individual ~~is in good standing with the~~ does not have a denied, revoked or suspended license or certificate or an administrative penalty or disciplinary action imposed by the Oklahoma Board of Nursing or ~~the individual does not have confirmation of abuse, neglect or misappropriation of patient/resident/client property;~~ similar agency in another state, territory or district of the United States or in another country, to be evidenced by the individual's attestation.

~~(B) The individual has not had cause for denial, revocation or suspension of a license by any State's Board of Nursing;~~

~~(C) The individual is not "habitually intemperate or addicted";~~

~~(D) The individual is not currently on probation, pending disciplinary action or has had confirmed disciplinary action by the Board of Nursing due to use/abuse or unlawful involvement with controlled substances or for any other cause identified under Subchapter 11 of the Oklahoma Board of Nursing Rules, Title 485;~~

~~(E) The individual is not a subject of a current on-going investigation by the Oklahoma Board of Nursing or the Oklahoma Attorney General or other known legal entity; and~~

~~(F) The individual's license has not been restricted or placed on temporary suspension by the Oklahoma Board of Nursing.~~

(~~g~~e) The Department shall allow a graduate of an approved practical or registered nurse program located outside the United States a training exception and shall be authorized to sit for a nurse aide competency examination if the following criteria are met:

(1) The individual submits the Foreign Graduate Training Exception ~~Request form~~Application (ODH Form 843), which requires the following:

(A) Individual's full name;

(B) Telephone number and address to include street, city, state, and zip code;

(C) The location outside of the United States where the individual received their nursing education and licensing examination if applicable;

(D) The type of nurse aide training requesting to be excepted~~.~~;

(~~2~~E) Documentation verifying legal entry and resident status in the United States including but not limited to a photocopy of a Social Security Card, Visa, Green Card or naturalization papers~~.~~; and

(~~3~~F) ~~The individual submits a~~A photocopy of a certified, translated diploma and transcript ~~that are~~ in English~~.~~; and

(2) The individual does not have a denied, revoked or suspended license or certificate or an administrative penalty or disciplinary action imposed by the Oklahoma Board of Nursing or similar agency in another state, territory or district of the United States, to be evidenced by the individual's attestation.

(~~h~~f) An individual who has not completed an approved Oklahoma Nurse Aide Training program and is submitting an application to be included on the Oklahoma Nurse Aide Registry as a certified nurse aide shall submit the following nonrefundable fee with the required completed application:

(1) Deeming Application, $10.00 fee applicable to each of the following deeming applications except (A) of this paragraph;

(A) Home Health Aide Deemed to Long Term Care Aide (ODH Form 755) with no fee required;

(B) Home Health Aide Deemed to Developmentally Disabled Direct Care Aide (ODH Form 836);

(C) Home Health Aide Deemed to residential Care Aide (ODH Form 837);

(D) Home Health Aide Deemed to Adult Day Care Aide (ODH Form 838);

(E) Long Term Care Aide Deemed to Developmentally Disabled Direct Care Aide (ODH Form 830);

(F) Long Term Care Aide Deemed to residential Care Aide, (ODH Form 831);

(G) Long Term Care Aide Deemed to Adult Day Care Aide, (ODH Form 839);

(H) Developmentally Disabled Direct Care Aide Deemed to Residential Care Aide (ODH Form 834); and

(I) Developmentally Disabled Direct Care Aide Deemed to Adult Day Care Aide (ODH Form 835);

(2) Reciprocity Application (ODH Form 735), $15.00 fee;

(3) Training Exception Application (ODH Form 832), or Foreign Graduate Training Exception Application (ODH Form 843), $15.00 fee; or

(4) Nurse Aide Training and Competency Evaluation Program Waiver Application (ODH Form 844), $15.00 fee.

(5) The fees specified in (1) through (4) of this subsection apply to applications for home health aides, certified medication aides, developmentally disabled direct care aides, residential care aides, and adult day care aides. A fee shall not be charged on an application requesting certification as a long term care aide only.

(~~g~~i) An individual who has previously completed a Department approved Nurse Aide Training and Competency Evaluation Program and is unable to renew ~~his or her~~ certification may ~~submit a Re-Testing~~ obtain approval to take a retest by filing a Certified Nurse Aide Retest Application (ODH Form 841) ~~with a $10.00 nonrefundable fee~~ if any of the following ~~applies~~criteria are met:

(1) The individual did not provide eight (8) hours of nursing or health related services for compensation during the twenty-four (24) months prior to expiration of the certification;

(2) The individual did not provide eight (8) hours of nursing or health related services for compensation up to twenty-four (24) months after expiration; or

(3) The individual's nurse aide certification has been expired for over two (2) years but less than three (3) years.

(4) A Certified Nurse Aide Retest Application (ODH Form 841) submitted by a home health aide, developmentally disabled direct care aide, residential care aide, or adult day care aide shall be accompanied by a $10.00 nonrefundable fee.

(5) An individual who fails the approved retest shall be required to retrain before taking any subsequent retests.

(j) An individual may request a duplicate or amended certification card by submitting a Duplicate or Amended Nurse Aide Card Application (ODH Form 738) with a nonrefundable $5.00 fee. A fee shall not be charged on an application requesting a duplicate or amended long term care aide certification card.

310:677-1-4. Reporting allegations of abuse

(a) An employer shall report to the Department any allegation of client or resident abuse, neglect, mistreatment or misappropriation of client's or resident's property against the employer's nurse aide.

(b) An employer shall report to the Department by telephone within ~~twelve (12)~~twenty-four (24) hours after receiving an allegation and in writing within five (5) working days after receiving an allegation.

(c) The written report filed by the employer shall include:

(1) The allegation;

(2) Name and identification number of the nurse aide;

(3) Date of the occurrence;

(4) Results of any internal investigation;

(5) Any corrective action taken by the employer; and

(6) Name and address of any person who may have witnessed the incident.

310:677-1-5. Cumulative training calculations [REVOKED]

~~(a) Until November 1, 2004 and for the purposes of assessing compliance with the training limitations of Title 63 O.S. Section 1-1950.3, the training days used by an individual in the successful completion of training and certification in one category of nurse aide certification under OAC 310:677 shall not be subtracted from the cumulative days available to that individual for training under a different category of nurse aide. The provisions of this paragraph shall not be construed to allow more than 120 cumulative days of training for an individual in one category of nurse aide certification.~~

~~(b) A nurse aide shall complete a nurse aide training and competency evaluation program within two (2) years after completing the training program. The competency evaluation or written/oral examination and skills examination shall be completed within the same two (2) years.~~

~~(c) Only those days when a trainee is utilized as a nurse aide in a facility on a full time basis or its equivalence, excluding unusual circumstances and illness, shall be counted against the 120 cumulative days training limit.~~

~~(d) No trainee shall have more than two admissions or re-admissions to a non-educational based training program within a six (6) month period. Re-admission to a training program does not reset the 120 cumulative days training limit.~~

~~(e) No trainee shall have more than six (6) months lapse of time between admission or re-admission to a non-educational based training program. If the lapse of time is greater than six (6) months the trainee shall be re-enrolled in the training program as a new trainee. Re-enrollment in a training program does not reset the 120 cumulative days training requirement.~~

~~(f) No trainee shall enroll in more than two different employer based training programs prior to certification. Training days in each training program shall be counted in the 120 cumulative days.~~

~~(g) A trainee may enroll and complete a nurse aide training and competency examination at an educational based program after withdrawing from a non educational based program. If the trainee is employed as a nurse aide by a facility while attending the educational based program, the 120 training days continues to accumulate. The trainee may complete the competency examinations at an educational based program after presenting a Training Verification Form.~~

SUBCHAPTER 3. NURSE AIDE TRAINING AND COMPETENCY EXAMINATION PROGRAM

310:677-3-2. Approved programs

(a) The Department shall approve a nurse aide training and/or competency examination program that meets the criteria for a State approved program.

(b) An entity seeking approval of a nurse aide training and/or competency examination program shall file the appropriate application form (ODH-743) and a non-refundable application fee of fifty dollars ($50.00).

~~(c) The Department shall review, approve or disapprove a complete nurse aide training and competency examination program application and notify the entity of its action within ninety (90) days of the date of the request or receipt of additional information from the requester.~~

~~(d) An entity seeking approval of a certified medication aide continuing education update program shall file the appropriate application form (ODH 736) and a nonrefundable application fee of twenty five dollars ($25.00) every twelve (12) months with the Department.~~

(c) The Department's approval of a program shall not be transferable or assignable.

310:677-3-3. Application

(a) An entity which desires to sponsor a nurse aide training and competency examination program shall file an application for approval on the forms prescribed by the Department.

(b) No nurse aide training and competency examination program shall be operated, and no trainee shall be solicited or enrolled, until the Department has approved the program.

(c) The application ~~shall include but is not limited to~~ requires the following information:

(1) ~~An instructor qualification record for each instructor.~~ Name and address for the entity sponsoring the program and for the contact person for the program;

(2) The location of the ~~classroom.~~administrative office of the program and the location where records are maintained;

(3) A program plan that follows the curriculum established by the Department including, but not limited to:

(A) Program objectives~~.~~;

(B) A breakdown of the curriculum into clock hours of classroom/lecture, laboratory and supervised clinical instruction~~.~~;

(4) A Skills Performance Checklist, documenting the date the nurse aide trainee successfully demonstrated all those basic nursing skills and personal care skills that are generally performed by nurse aides and the signature of the instructor that observed the successful demonstration of the skills. The skills must include ~~but are not limited to all of~~ the basic nursing skills and personal care skills listed in 42 ~~CFR~~Code of Federal Regulations (CFR) 483.152 (b)(2) and (3)~~.~~;

(5) A Training Verification Form~~.~~;

(6) A description of the program's standards for classroom and skills training ~~facility~~facilities including, but not limited to:

(A) Heat and cooling systems~~.~~;

(B) Clean and safe conditions~~.~~;

(C) Adequate space to accommodate all trainees~~.~~;

(D) Adequate lighting~~.~~;

(E) Proper equipment and furnishings~~.~~;

(F) The specific location of the classroom and lab~~.~~ if known at the time of the application; and

(7) Position descriptions and education and experience requirements for training supervisors and instructors, and the program's procedure for ensuring that supervisors and instructors satisfy such descriptions and requirements.

(d) ~~If an entity desires to sponsor more than one (1) program for which the information required by the Department differs from program to program, the~~The entity shall file ~~a separate~~an application for each program with a non-refundable application fee. ~~At a minimum, differences in the following information will require a separate nurse aide training and competency evaluation application:~~

~~(1) Location;~~

~~(2) Instructors; or~~

~~(3) Curriculum.~~

(e) ~~A non-employer based training program shall submit a list of clinical facilities and a copy of letters of agreement for use of the clinical facilities signed by the facility administrator and the program administrative official.~~

~~(1) A facility shall not be used as a clinical training site if the facility has had Substandard Quality of Care within the previous two (2) years. Substandard quality of care is defined as~~ A training and competency examination program shall not be offered by or in a facility which, within the previous two years:

(1) has operated under a registered nurse staffing waiver under Section 1819(b)(4)(C)(ii)(II) or Section 1919(b)(4)(C)(ii) of the Social Security Act; or

(2) has been assessed a penalty that has been determined, after opportunity for hearing, to be due and payable in an amount of not less than $5,000;

(3) had a license revoked, a Medicare or Medicaid certification terminated, a denial of payment for new admissions imposed, a temporary manager appointed, or was closed or had residents transferred pursuant to an emergency action by the Department; or

(4) was found to have provided substandard quality of care. For the purpose of this Section, "substandard quality of care" means one or more deficiencies related to participation requirements under 42 CFR 483.13, Resident Behavior and Facility Practices, 42 CFR 483.15, Quality of Life, or 42 CFR 483.25, Quality of Care. The deficient practice must constitute immediate jeopardy which has caused or is likely to cause serious injury, harm, impairment, or death to an individual resident or a very limited number of residents receiving care in a facility; or deficient practice that results in actual harm to residents' physical, mental and psychosocial well-being and occurs as a pattern affecting more than a very limited number of residents or widespread affecting a large number or all of the facility's residents; or deficient practice that results in potential for more than minimal physical, mental and /or psychosocial harm to residents' that is widespread and affects the entire facility population.

~~(2) Facilities in rural areas that are ineligible to be used as clinical training sites due to Substandard Quality of Care will be reviewed on an individual basis to determine if the facility is eligible to be waived from the two (2) year training exclusion.~~

~~(f) An approved nurse aide training program shall submit to the Department a new training application and application fee if a completely different curriculum is being submitted for approval.~~

(f) The Department may waive for a period not to exceed two years the imposition of (e) of this Section and allow the offering of a training and competency evaluation program in, but not by, a facility upon the written request of the facility if:

(1) The Department determines that no other such program is offered within a round-trip travel time of one hour from the facility;

(2) The facility has no deficiencies that constitute substandard quality of care at the time of the request and has no deterioration in care that results in substandard quality of care during the waiver period; and

(3) The Department provides notice of such determination and assurances to the Oklahoma Long Term Care Ombudsman.

(g) The Department may waive for a period not to exceed two years the imposition of (e)(2) and (e)(3) of this Section and allow the offering of a training and competency evaluation program in, but not by, a facility upon the written request of the facility if the penalty or remedy was not related to the quality of care provided to residents.

310:677-3-4. Program requirements

(a) Before the Department approves a nurse aide training and competency examination program or a competency examination program, the Department shall determine whether the nurse aide training and competency examination program or the competency examination program meets the minimum requirements.

(b) The Department shall not approve, or shall withdraw approval, of an employer based program when the employer has been assessed the following penalties or actions by the Department:

(1) License suspended or revoked or had a conditional license issued.

(2) An administrative money penalty of five thousand dollars ($5,000) or more for deficiencies cited under state licensure.

(3) Closed or had its residents or clients transferred pursuant to the Department's action.

(4) Enforcement actions based on the Department's authority under Medicare and Medicaid certification programs, except for facilities certified as Intermediate Care Facilities for the Mentally Retarded.

(5) For Intermediate Care Facilities for the Mentally Retarded, repeated enforcement actions based on the Department's authority.

(c) The Department may withdraw approval of a nurse aide training and competency examination program sponsored by an entity when the following occurs:

(1) The entity has been determined by the Department to have a competency examination failure rate greater than fifty (50) per cent during a calendar year.

(2) The entity no longer meets, at a minimum, the following requirements to be a certified program:

(A) The training program falls below the required clock hours of training;

(B) The curriculum does not include at least the subjects specified under 310:677-9-4 Home ~~Care~~Health Aides, 310:677-11-4 Long Term Care Aides, 310:677-13-4 Certified Medication Aides, 310:677-15-3 Developmentally Disabled Direct Care Aides, 310:677-17-3 Residential Care Aides, and or 310:677-19-3 Adult Day Care Aides;

(C) A minimum of 16 hours of specified training for Long Term Care Aides is not provided prior to direct contact with residents;

(D) At least sixteen (16) hours of supervised practical training under the direct supervision of a registered nurse or a licensed practical nurse. The sixteen (16) hours does not include the administration of the skills examination.

(3) The ~~employer~~entity uses an uncertified individual as a nurse aide for longer than ~~120 cumulative days who has not completed a nurse aide training and competency examination program~~four months. To use an uncertified individual as a nurse aide for four months or less, an entity must have a temporary emergency waiver approved pursuant to 63 O.S. Section 1-1950.3.

(4) The onsite review determines the training program is out of compliance with the requirements of 63 O.S. Section 1-1950.1, 1-1950.3 or 1-1951, or OAC 310:677.

(d) The Department shall withdraw approval of a nurse aide training and competency evaluation program if:

(1) The entity refuses to permit the Department to make unannounced visits; or

(2) The entity falsifies records of competency or training.

(e) Withdrawal of approval shall be for a period of two (2) years or until the Department is assured through review that the entity complies with the requirements.

(f) If the Department withdraws approval of a nurse aide training and competency examination program, the Department shall:

(1) Notify the entity in writing, indicating the reason for withdrawal of approval.

(2) Allow the trainees who have started a training and competency examination program to complete the program or allow the trainees who have started the program to transfer to another approved program.

(g) A program entity may request reconsideration of the Department's decision in accordance to Chapter 2 of this Title and appealed according to the Administrative Procedures Act.

(h) The entity shall notify the trainee in writing, that successful completion of the nurse aide training and competency examination program shall result in the individual being listed in the Department's nurse aide registry and shall retain a copy of such notice, signed by the trainee, in the trainee's file.

(i) A trainee shall not perform any services for which the trainee has not been trained and found proficient by an instructor.

~~(j) The entity shall ensure that each trainee *shall wear a badge which designates them as a nursing aide trainee. Such badge shall be furnished by the Department. The badge shall be nontransferable.* [§63-1-1951.E.]~~

310:677-3-5. Training program review and approval

(a) Within 30 days after receipt of an application for a program that is not currently approved, the Department shall determine if the application is complete and consistent. If the application is incomplete or inconsistent, the Department shall advise the applicant in writing and offer an opportunity to submit additional information. Within 30 days after completeness, the Department shall approve or disapprove the application. If the action is to disapprove, the Department shall advise the applicant in writing of the specific reasons for the disapproval, and shall offer the applicant an opportunity to demonstrate compliance.

(b) Each program is subject to site visits by the Department. Approved programs shall be evaluated by the Department every two years.

(c) An approved program shall notify the Department in writing before making substantive changes to the program. Substantive changes shall include~~,~~ but not be limited to:

(1) A change in location of the administrative offices of the training program~~.~~;

(2) A change in the requirements or procedures for selection of instructors~~.~~;

(3) A change in the curriculum~~.~~;

(4) A different legal entity sponsoring the program; or

(5) A change in location of the class, clinical training site, or laboratory.

SUBCHAPTER 5. NURSE AIDE REGISTRY

310:677-5-2. Registry operation

(a) The Department shall maintain overall operation of the registry.

(b) Only the Department may place in the registry findings of abuse, neglect, mistreatment or misappropriation of property.

(c) The nurse aide registry shall indicate which individuals:

(1) Successfully completed a nurse aide training and competency examination~~.~~;

(2) Were given a training exception to bypass training requirements and sit for the competency examination~~.~~;

(3) Had the nurse aide training and competency examination program requirements waived~~.~~; or

(4) Were placed on the Oklahoma Nurse Aide Registry via reciprocity from another state.

(d) A home ~~care~~health aide, long term care aide, developmentally disabled direct care aide, residential care aide, and adult day care aide shall renew individual certification once every two (2) years. ~~A~~The individual certified as a home health aide, developmentally disabled direct care aide, residential care aide, or adult day care aide shall file a Recertification Application (ODH Form 717). The individual certified as a long term care aide shall file a Recertification Application for Long Term Care Aide (ODH Form 840). Each recertification application requires:

(1) Personal identifying and contact information for the applicant;

(2) Documentation that the applicant has provided at least eight (8) hours of nursing or health related services for compensation during the preceding 24 months. On and after July 1, 2008, the documentation shall consist of one of the following:

(A) A statement signed by the administrator or the administrator's representative for the licensed nursing facility, specialized facility, residential care home, home health or home care agency, adult day care center, assisted living center, continuum of care facility, Oklahoma Department of Veterans Affairs nursing facility, or Oklahoma correctional facility where the applicant provided services;

(B) A statement signed by a physician or nurse under whose supervision the applicant provided services; or

(C) A check stub, IRS Form W-2 or similar proof of wages paid to the applicant by a licensed nursing facility, specialized facility, residential care home, home health or home care agency, adult day care center, assisted living center, continuum of care facility, Oklahoma Department of Veterans Affairs nursing facility, or Oklahoma correctional facility; and

(3) An oath of truthfulness and completeness to be signed by the applicant.

(e) A home health aide, developmentally disabled direct care aide, residential care aide, or adult day care aide shall pay a five dollar ($5.00) fee ~~shall be charged~~ for the processing and renewal of certifications and for replacement of a wallet card for change of name or other reason.

~~(e) A certified medication aide shall renew individual certification once every twelve (12) months after submitting documentation to the Department of completion of eight (8) hours of continuing education every twelve (12) months, excluding the first year of certification. A five dollar ($5.00) fee shall be charged for the processing and renewal of certifications and for replacement of a wallet card for change of name or other reason.~~

310:677-5-5. Denial, suspension, withdrawal, and nonrenewal of certification

(a) Grounds for certification action against a certified nurse aide may include:

(1) Intentionally providing false or misleading information to a training program, a facility, or the Department;

(2) Failing to provide care as ordered by a health care professional or required in the plan of care, with resulting actual harm that is either life threatening or has a negative outcome for the resident;

(3) Altering or falsifying medical records;

(4) Removing medical records or other documentation pertaining to resident care from the employment setting without authorization;

(5) Altering or falsifying certified nurse aide identification cards;

(6) Representing oneself as a certified nurse aide without supervision by a licensed health professional and providing services that are not included in a Department approved nurse aide training and competency evaluation program.

(b) The Department may deny, suspend, withdraw or not renew certification of a nurse aide based on the aide's noncompliance with 63 O.S. Section 1-1950.3, 1-1950.4a, 1-1950.5 or 1-1951, or OAC 310:677. The Department shall notify the aide of the intent to deny, suspend, withdraw or not renew certification. The notice shall cite the specific reasons for the action and offer the aide an opportunity to demonstrate compliance. Prior to the effectiveness of the denial, suspension, withdrawal, or nonrenewal of certification, the Department shall offer the aide an opportunity for a hearing.

(c) The suspension of a certificate shall be effective for not less than six months, and a denial, withdrawal or nonrenewal of a certification shall be effective for not less than one year. The Department shall specify the duration of the denial, suspension, withdrawal or nonrenewal of certification in excess of the minimums based on the seriousness of the underlying violation and the likelihood that the aide will maintain compliance in the future.

SUBCHAPTER 9. HOME ~~CARE~~HEALTH AIDES

310:677-9-3. Instructor qualifications

The training of home ~~care~~health aides and the supervision of home ~~care~~health aides during the supervised practical portion of the training shall be performed by, or under the general supervision of, a registered nurse who possesses at least two (2) years nursing experience with at least one (1) year ~~in the provision of home care~~ experience providing the following:

(1) Home care; or

(2) Instruction in a home health nurse aide training program under the supervision of a qualified registered nurse.

SUBCHAPTER 13. CERTIFIED MEDICATION AIDES

310:677-13-1. General requirements

(a) An individual shall be able to read, write, and speak English and be certified in good standing as a home ~~care~~health aide, a long term care aide, or a developmentally disabled direct care aide listed in the Department's Nurse Aide Registry, prior to admission to a State approved certified medication aide training program. The Department shall make available an attestation form that training programs may use for admission to certified medication aide training.

(b) A certified medication aide shall complete at least eight (8) hours of continuing education every twelve (12) months, excluding the first year of certification, from a State approved program. A record of successful completion shall be kept in the certified medication aide's personnel file.

(c) An employer shall not use as a certified medication aide any individual who does not comply with 63 O.S. Section 1-1950.3(E), OAC 310:677, and the employer's policies and procedures.

(d) A certified medication aide shall renew certification every 12 months. Recertification requires the following:

(1) Documentation of completion of at least eight (8) hours of continuing education ~~within the previous~~ every twelve (12) months, excluding the first year after certification as a medication aide. Classroom and supervised practical training hours completed by a CMA in a Department-approved advanced training program may count towards the eight required hours of continuing education;

(2) Current certification as a long term care aide, home health aide or developmentally disabled direct care aide. CMAs may also be certified in the other two (2) categories in addition to the required certification as a long term care aide, home health ~~care~~ aide and developmentally disabled direct care aide; and

(3) Current listing in the nurse aide registry.

(e) The Department shall approve certified medication aide training programs that meet the requirements of OAC 310:677-13-3 through 13-5, and 310:677-13-9.

(f) The Department shall review, approve or disapprove a Certified Medication Aide Continuing Education Program application and notify the entity of its action within thirty (30) days of the request or receipt of additional information from the applicant.

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

(1) "Stable diabetes" means diabetes associated with a blood glucose level consistently between 80 and 140 milligrams per deciliter (mg/dl) fasting and less than or equal to 180 mg/dl after a meal, and/or a Hemoglobin A1c (HbA1c) at or below 7.0 within the last three months.

(2) "Unstable diabetes" means:

(A) A non-acutely ill person with blood glucose levels more than three times over a six week period that are under 80 mg/dl or more than 140 mg/dl fasting, or more than 180 mg/dl two hours after a meal;

(B) A person with diabetes who has prescriptions for both insulin and glucagon;

(C) A person with Type I diabetes who experiences hypoglycemia unawareness;

(D) A person who is newly diagnosed with diabetes and for whom insulin is prescribed; or

(E) A person who has been previously diagnosed with diabetes and now requires insulin administration for management. They may be considered stable again when their glucose is maintained in the stable range specified in subsection (g)(1) of this section, which may include maintaining an HbA1c at or below 7.0.

(3) "Newly diagnosed" means a person who now has a diagnosis of either Type I or Type II diabetes, has a new prescription for insulin, has not been diagnosed with diabetes in the past and who does not have stable diabetes.

310:677-13-4. Curriculum

(a) The certified medication aide training program shall include a minimum of forty (40) hours of combined classroom and supervised practical training with a minimum of sixteen (16) hours of supervised practical training.

(b) The certified medication aide training shall include, but is not limited to each of the following subject areas:

(1) Preparation and administration of medication.

(A) Documentation of medication administration.

(B) Proper medication storage procedures.

(i) Scheduled controlled substances.

(ii) Internal and external medications.

(C) Purposes of medications.

(D) Oral medications.

(E) Topical medications.

(F) Eye, ear, and nose medications.
(G) Vaginal medications.
(H) Rectal medications.
(I) Oral inhalants.
(J) Transdermal medications.
(K) Medical terminology, symbols, and abbreviations.
(L) The rights of medication administration, including the right patient, drug, date, time, dosage, route and form.
(M) Controlled drug procedures.
(N) Recognizing appropriate situations requiring assistance of the charge nurse.
(O) Drug-reference sources.
(P) Vital sign measurement with drug administration.
(Q) Medication labeling.

(2) Observe, report, and document resident's status.
(A) Blood pressure measurement and documentation.
(B) Drug to drug interactions.
(C) Drug to food interactions, and medication timed to coincide with meals.

(3) Principles of safety.
(A)Infection control techniques.
(B) Principles of positioning for medication administration.

(4) Knowledge of measurement systems.
(A) Distinguish weight and volume measurements.
(B) Decimal and fraction concepts in medication administration.
(C) Appropriate measurement equipment.

(5) Body systems and common diseases.
(A) Digestive system and common diseases to medication administration.
(B) Respiratory system and common diseases to medication administration.
(C) Drug metabolism.
(D) Cardiovascular system and common diseases to medication administration.
(E) Endocrine system in relation to diabetes and hormone therapy.
(F) Elimination system and common diseases to medication administration.
(G) Skin system and common diseases to medication administration.
(H) Muscular-skeletal system and common diseases to medication administration.
(I) Nervous system and common diseases to medication administration.

(c) The advanced training program for care of diabetes and the administration of diabetic medications by CMAs shall include:

(1) A minimum of twelve hours of classroom training and a minimum of four hours of supervised practical training;

(2) Training in the following subject areas with curriculum standards as indicated:

(A) Pathophysiology of diabetes, with the successful learner able to:
(i) Define diabetes as a chronic metabolic disorder in which the body is unable to metabolize glucose properly;
(ii) Describe the action of insulin in the body; and
(iii) Explain the differences between the types of diabetes;

(B) Diabetes disease management, with the successful learner able to:
(i) Describe the relationship between insulin, diet, and physical activity in management of diabetes; and
(ii) Explain how diet relates to blood glucose control;

(C) Blood glucose testing and use of equipment, with the successful learner able to:
(i) Explain the purpose of blood glucose testing;
(ii) Demonstrate how to use blood glucose testing equipment, and demonstrate accuracy ~~with a minimum of 10 tests per type of testing glucometer used in the training program~~; and
(iii) Explain the quality control requirements for glucose monitoring equipment, demonstrate both high and low controls, and explain their purpose and frequency of control testing;

(D) Stable and unstable diabetes, with the successful learner able to:
(i) Identify appropriate blood glucose levels for persons with diabetes;
(ii) Define hypoglycemia and list three causes and three symptoms;
(iii) Define hyperglycemia and list three causes and three symptoms; and
(iv) Define and describe the difference between stable and unstable diabetes;

(E) Diabetes care by managing blood glucose levels, with the successful learner able to:
(i) List three carbohydrate choices used to treat hypoglycemia;
(ii) Describe measures to prevent hypoglycemia;
(iii) Describe the relationship between blood glucose levels and indications for glucagon use;
(iv) Describe measures to prevent hyperglycemia; and
(v) State when to contact and what to report to a licensed health care provider;

(F) Charting, graphing, and record-keeping, with the successful learner able to:
(i) Explain the reason for accurate documentation of all aspects of diabetes management and care, including blood glucose results, quality control testing, medication administration, and adverse reactions;

(ii) Identify correct forms for documentation; and

(iii) Demonstrate the ability to accurately document diabetes management and care;

(G) Diabetic medications and adverse reactions (Insulin), with the successful learner able to:

(i) Describe the purpose of insulin;

(ii) State the types of insulin and each onset, peak and duration of action;

(iii) Explain the difference between basal and bolus insulin; and

(iv) State common side effects, adverse reactions and precautions for insulins;

(H) Diabetic medications and adverse reactions (Oral agents), with the successful learner able to:

(i) Describe the purpose, action and recommended doses of each oral agent; and

(ii) State common side effects, adverse reactions and precautions for each oral agent;

(I) Administration of diabetic medications, with the successful learner able to:

(i) State the correct administration times for insulin and oral agents relevant to meals and mechanisms of action;

(ii) Identify the preferred sites for an insulin injection and describe site rotation patterns;

(iii) Discuss the proper storage of insulin;

(iv) Demonstrate ~~in a minimum of ten tests each~~ the accurate measurement and correct technique for preparation of a single and a mixed dose of insulin;

(v) Explain why it is required to check insulin type and dose drawn with another certified medication aide or licensed health care provider; and

(vi) Demonstrate administration of a dose of insulin (or saline) to self or another person and/or to a training mannequin appropriate for injections during classroom training; and

(vii) Demonstrate administration of a dose of insulin (or saline) to self or another person during supervised practical training;

(J) Infection control and universal precautions for blood borne pathogens, with the successful learner able to:

(i) Define the term "universal precautions";

(ii) Demonstrate safe handling of syringes, needles, pen devices, glucometer equipment and test strips, lancing devices and lancets; and

(iii) Explain proper disposal of used syringes, needles, test strips and lancets; and

(3) Return demonstrations of skill with a proficiency of 100% and didactic testing measuring curriculum knowledge at 90% or greater.

(d) The advanced training program for administration of medications and nutrition via nasogastric and gastrostomy tubes, and for administration of oral metered dose inhalers and nebulizers, shall include:

(1) A combined minimum of ~~6~~eight (8) hours of classroom and supervised practical training;

(2) Training in at least the following subject areas:

(A) Gastrointestinal system and alternative methods for providing medications and nourishment;

(B) Nasogastric and gastrostomy equipment and supplies;

(C) Procedures and techniques for insertion of nasogastric tube by a licensed nurse, and assessment of patient by registered nurse after placement of nasogastric or gastrostomy tube and before administration of medication or feedings;

(D) Procedures and techniques for checking stomach contents through a gastrostomy tube prior to the administration of medication and/or feedings per licensed nurse delegation, when assessment of gastrostomy tube placement and assessment of resident status by a licensed nurse is not indicated based on the resident's current assessment and care plan and/or status and condition;

(~~D~~E) Methods and techniques for administration of medications and nutrition via nasogastric and gastrostomy tubes; ~~and~~

(~~E~~F) Identification of and responses to potential problems associated with administration of medications and nutrition via nasogastric and gastrostomy tubes~~.~~;

(~~F~~G) Respiratory system and methods for delivery of medications;

(~~G~~H) Equipment and supplies for administration of medication via metered dose inhalers and nebulizers;

(~~H~~I) Methods and techniques for administering medications via metered dose inhalers and nebulizers; and

(~~I~~J) Identification of and responses to potential problems associated with administration of medications via metered dose inhalers and nebulizers; and

(3) Return demonstrations of skill with a proficiency of 100% and didactic testing measuring curriculum knowledge at 90% or greater.

(e) The advanced training program for care of diabetes and the monitoring of blood glucose only, with no administration of insulin by CMAs, shall include:

(1) A minimum of six (6) hours of classroom training and a minimum of two hours of supervised practical training;

(2) Training in the subject areas identified in subparagraphs (c)(2)(A), (B), (C), (D), (E), (F) and (J) of this section; and

(3) Return demonstrations of skill with a proficiency of 100% and didactic testing measuring curriculum knowledge at 90% or greater.

(f) The advanced training program for administration of medications and nutrition via nasogastric and gastrostomy tubes only, with no administration via oral metered dose inhalers and nebulizers, shall include:

(1) A combined minimum of four (4) hours of classroom training and two (2) hours of supervised practical training;

(2) Training in the subject areas identified in subparagraphs (d)(2)(A), (B), (C), (D) and (E) of this section; and

(3) Return demonstrations of skill with a proficiency of 100% and didactic testing measuring curriculum knowledge at 80% or greater.

(g) The advanced training program for administration of oral metered dose inhalers and nebulizers only, with no administration via nasogastric and gastrostomy tubes, shall include:

(1) A combined minimum of two (2) hours of classroom training and one (1) hour of supervised practical training;

(2) Training in the subject areas identified in subparagraphs (d)(2)(F), (G), (H) and (I) of this section; and

(3) Return demonstrations of skill with a proficiency of 100% and didactic testing measuring curriculum knowledge at 80% or greater.

310:677-13-5. Competency and skills examination

(a) The following shall apply to the written competency examination.

(1) The examination shall be drawn from a pool of test questions that address the course requirements.

(2) The examination shall be administered and scored by a Department approved entity.

(3) The examination shall comply with the examination administration requirements in OAC 310:677-3-9.

(4) A minimum score of seventy percent (70%) shall be required to pass the written competency examination for certification as a medication aide.

(5) A minimum score of eighty percent (80%) shall be required to pass the written competency examination for insulin administration.

(6) A candidate who fails to score at least the required minimum on three consecutive written competency examinations shall be required to retrain before retesting.

(b) The following shall apply to the skills demonstration.

(1) The skills demonstration shall be performed in a laboratory or a site comparable to the setting in which the certified medication aide will function.

(2) The skills demonstration shall be administered and scored by a physician, licensed nurse or registered pharmacist.

(3) The student shall achieve one hundred (100) percent accuracy on a medication pass on at least twenty (20) or more individuals under direct observation by an instructor.

(4) The successful completion of the medication pass shall be documented and retained in the certified medication aide's training file.

(5) The skills demonstration shall comply with the administration requirements in OAC 310:677-3-9 and the content requirements in OAC 310:677-3-10.

(c) The competency and skills examination program shall obtain a written attestation of compliance with OAC 310:677-13-8(a) from each candidate for medication aide certification before administering the examination to the candidate. The Department shall make available a form that examination entities may use to obtain attestations from testing candidates.

310:677-13-8. Certification and recertification

(a) Effective August 1, 2006, the following, to be evidenced by the aide's attestation, are prerequisites for certification as a medication aide:

(1) Minimum age: 18;

(2) Minimum education: high school or general equivalency diploma;

(3) Current Oklahoma nurse aide certification with no abuse notations;

(4) Experience working as a certified nurse aide for six months; and

(5) Physical and mental capability to safely perform duties.

(b) Application criteria and processing requirements for recertification are as follows:

(1) ~~The certified medication aide submits proof of work experience and continuing education for recertification; and~~ The certified medication aide shall submit a Recertification Application (ODH Form 717) that requires information to demonstrate compliance with 310:677-13-1(d).

(2) The Recertification Application (ODH Form 717) shall be accompanied by a five dollar ($5.00) fee.

(3) Each recertification shall be effective for twelve months from the expiration date of the medication aide's previous certification.

(~~2~~4) The medication aide ~~may~~ shall be required to retest if certification has expired by more than one year~~, and to~~. The individual may obtain approval to take a retest by filing a Certified Medication Aide Retest Application (ODH Form 842) with a $10 nonrefundable fee. The aide shall retrain and test if the ~~medication~~ aide fails the retest or if certification has expired by more than three years.

(5) The Recertification Application (ODH Form 717) for a medication aide shall include documentation of continuing education equivalent to eight hours for every twelve months of certification, excluding the first year of certification.

(c) A certified medication aide who completes a Department-approved advanced training program and demonstrates competence may request a Department-issued certificate that bears an endorsement for the advanced training. When an advanced-training certificate is issued by the Department to a certified medication aide, a notation reflecting the advanced training shall be placed on the aide's record in the Nurse Aide Registry. The request shall be accompanied by the $5.00 certification fee required in ~~OAC 310:677-5-2(e)~~this section and proof of training and competence on an application form that requires:

(1) The name and contact information for the certified medication aide; and

(2) The name of the training program, dates of attendance, details on the CMA's demonstration of competence, and copies of documents from the program confirming training and competence.

310:677-13-9. Training and Competency Evaluation Programs

(a) Department approval of the training and competency evaluation program is required prior to offering training.

(b) The program must submit information on a form provided by the Department to include:

(1) ~~An instructor qualification record for each instructor.~~ Name and address for the entity sponsoring the program and for the contact person for the program;

(2) The location of the administrative office of the program and the location where records are maintained;

(3) Position descriptions and education and experience requirements for training supervisors and instructors, and the program's procedure for ensuring that supervisors and instructors satisfy such descriptions and requirements.

(~~2~~4) ~~Classroom~~Standards for classroom and clinical facilities;

(~~3~~5) Program outline, with objectives, curriculum, and instruction methods, and demonstration that the program addresses skills and functions specified in OAC 310:677-13-7; and

(~~4~~6) Evaluation methods, including lab and clinical skills checklists, and examinations.

(c) Department approved training programs shall be evaluated every three years. Between evaluations, the training program shall send the Department advance notice of changes in previously approved program information.

(d) Each program is subject to site visits by the Department.

(e) Within 30 days after receipt of an application for a program that is not currently approved, the Department shall determine if the application is complete and consistent. If the application is incomplete or inconsistent, the Department shall advise the applicant in writing and offer an opportunity to submit additional information. Within 30 days after completeness, the Department shall approve or disapprove the application. If the action is to disapprove, the Department shall advise the applicant in writing of the specific reasons for the disapproval, and offer an opportunity to demonstrate compliance.

(f) The Department may withdraw approval or refuse to renew approval of a training program based on the program's noncompliance with 63 O.S. Section 1-1950.3 or 1-1951, or OAC 310:677. The Department shall notify the program of the intent to withdraw or not renew approval. The notice shall cite the specific reasons for the action and offer the applicant an opportunity to demonstrate compliance. Prior to the effectiveness of the withdrawal or non-renewal, the Department shall offer the program an opportunity for a hearing. After the withdrawal or non-renewal, the Department may oversee orderly closure of a program.

(g) Training modules in addition to the minimums for certified medication aide training shall be submitted for Department approval as training programs prior to offering training.

(h) For advanced training programs for care of diabetes, the Department shall deem as acceptable the use of training materials approved by the American Diabetes Educators Association, Oklahoma Chapters.

310:677-13-12. Medication aide continuing education

(a) An entity seeking approval of a certified medication aide continuing education program shall file a nonrefundable application fee of twenty-five dollars ($25.00) and a Certified Medication Aide Continuing Education Form, which requires the following:

(1) Name and address for the entity sponsoring the program and for the contact person for the program;

(2) The location of the administrative office of the program and the location where records are maintained;

(3) Position descriptions and education and experience requirements for training supervisors and instructors, and the program's procedure for ensuring that supervisors and instructors satisfy such descriptions and requirements.

(4) Standards for classroom and clinical facilities if applicable;

(5) Class outlines, with objectives and instruction methods, and demonstrations that each course addresses subject areas specified in OAC 310:677-13-4 and/or skills and functions specified in OAC 310:677-13-7d. A continuing education program may submit and receive approval for multiple continuing education class offerings.

(b) Within 30 days after receipt of an application for a continuing education program that is not currently approved, the Department shall determine if the application is complete and consistent. If the application is incomplete or inconsistent, the Department shall advise the applicant in writing and offer an opportunity to submit additional information. Within 30 days after completeness, the Department shall approve or disapprove the application. If the action is to disapprove, the Department shall advise the applicant in writing of the specific reasons for the disapproval, and offer an opportunity to demonstrate compliance.

(c) Department-approved continuing education programs shall be evaluated every three years. Between evaluations, the training program shall send the Department advance notice of changes in previously approved program information.

(d) An approved continuing education program shall submit to the Department within 30 days after the conclusion of a continuing education class the following information:

(1) The title of the class and number of hours offered;

(2) The name, certification number, and number of hours attended for each certified medication aide who satisfactorily completed the continuing education class.

[OAR Docket #07-1096A; filed 5-18-07]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 25. SOONERCARE CHOICE

[OAR Docket #07-1037]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. SoonerCare Choice
Part 1. General Provisions
317:25-7-2. [AMENDED]
317:25-7-5. [AMENDED]
Part 3. Enrollment Criteria
317:25-7-10. [AMENDED]
(Reference APA WF # 06-10 and 06-59)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 438.52
DATES:
Comment period:
February 1, 2007 through March 5,2007
Public hearing:
March 5, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 15, 2007
Submitted to House:
March 15, 2007
Submitted to Senate:
March 15, 2007
Gubernatorial approval:
April 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 10, 2007
Final adoption:
May 10,2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 7. SoonerCare Choice
Part 1. General Provisions
317:25-7-2. [AMENDED]
Part 3. Enrollment Criteria
317:25-7-10. [AMENDED]
Gubernatorial approval:
August 2, 2006
Register publication:
24 Ok Reg 74
Docket number:
06-1319
(Reference APA WF # 06-10)
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
SoonerCare rules are revised to allow female members direct access to women's healthcare specialists without a referral for covered routine and preventative care when their PCP/CM is not a women's healthcare specialist. Revisions include removing the guarantee of six month eligibility for SoonerCare members to comply with the 1115 waiver renewal. Revisions also include the deletion of language requiring a provider to be board eligible or certified to engage in the practice of family medicine. Further revisions are incorporated due to superseding emergency rules previously approved by the Governor in APA WF # 06-10 and allow all SoonerCare Choice members to self refer for family planning services. SoonerCare came under the Medicaid managed care regulations as a Prepaid Ambulatory Health Plan (PAHP) effective January 1, 2005. PAHPS are contractually required by OHCA to let members see any family planning provider. Currently policy limits the ability to self refer for family planning services to members under the age of 18. Revisions are needed to permit all SoonerCare Choice members this same choice. Other revisions clarify that vision for refraction services are only compensable for children.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 7. SOONERCARE

PART 1. GENERAL PROVISIONS

317:25-7-2. SoonerCare Choice: overview

(a) The Oklahoma Health Care Authority (OHCA) operates a Primary Care Case Management (PCCM) system for SoonerCare Choice eligible ~~individuals~~ members. The program enrolls ~~Medicaid~~ SoonerCare Choice ~~recipients~~ members with Primary Care Provider/Case Managers PCP/CMs who provide and/or authorize all primary care services and all necessary specialty services, with the exception of services described in subsection (c) of this Section for which authorization is not required.

(b) In exchange for a fixed, periodic rate, which is paid per member per month, the Primary Care Provider/Case Manager (PCP/CM) provides, or otherwise assures the delivery of medically-necessary primary care medical services, including referrals for specialty services for an enrolled group of eligible ~~individuals~~ members. The PCP/CM assists the ~~client~~ member in gaining access to the health care system and monitors the ~~client's~~ member's condition, health care needs and service delivery.

(c) Services which do not require a referral from the PCP/CM include behavioral health services, vision for refraction services for children, dental services, child abuse/sexual abuse examinations, prenatal and obstetrical services, family planning services ~~for clients under age 18~~, emergency physician and hospital services, disease management services, and services delivered to Native Americans at IHS, tribal, or urban Indian clinics. Female members may access a SoonerCare women's health specialist without a referral for covered routine and preventative health care services. This is in addition to the enrollee's PCP/CM if that source is not a woman's health specialist.

(d) Non-capitated ~~Medicaid~~ SoonerCare Choice covered services delivered by the PCP/CM are reimbursed at the ~~Medicaid~~ SoonerCare Traditional fee-for-service rate under the procedure code established for each individual service. To the extent services are provided or authorized by the Primary Care Provider/Case Manager, the OHCA does not make ~~Medicaid~~ SoonerCare Choice payments for services delivered outside the scope of coverage of the ~~Medicaid~~ SoonerCare Choice program, thus a referral by the Primary Care Provider/Case Manager does not guarantee payment.

317:25-7-5. Primary care provider/case managers

For provision of health care services, the OHCA contracts with qualified Primary Care Provider/Case Managers. All providers serving as PCP/CMs must have a valid Medicaid Fee-for Service contract as well as a SoonerCare contract. Additionally, all PCP/CMs, excluding Provider or Physician Groups, must agree to accept a minimum capacity of patients, however this does not guarantee PCP/CMs a minimum patient volume. Primary Care Provider/Case Managers are limited to:

(1) **Physicians.** Any physician licensed to practice medicine in the state in which he or she practices who is engaged in a general practice or ~~who is board eligible or certified~~ in family medicine, general internal medicine or general pediatrics may serve as a PCP/CM. In addition, physicians who meet all requirements for employment by the Federal Government as a physician, are employed by the Federal Government in an IHS facility, and practice in one of the four designated primary care specialties may serve as a PCP/CM. The Chief Executive Officer (CEO) of the OHCA may designate physicians to serve as PCP/CMs who are licensed to practice medicine in the state in which they practices who are specialized in areas other than those described above. In making this determination, the CEO may consider such factors as the percentage of primary care services delivered in the physician's practice, the availability of primary care providers in the geographic area of the state in which the physician's practice is located, the extent to which the physician has historically provided services to Medicaid clients, and the physician's medical education and training.

(A) For physicians serving as SoonerCare PCP/CMs, the State caps the number of members per physician at 2,500. However, the CEO in his/her discretion may increase this number in under served areas based on a determination that this higher cap is in conformance with usual and customary standards for the community. <u>If a physician practices at multiple sites, the capacity at each site is determined based on the number of hours per week the physician holds office hours, not to exceed one FTE. Thus, the physician cannot exceed a maximum total capacity of 2500 members.</u>

~~(i) Physicians may expand their capacity if they practice in conjunction with physician assistants or with advanced practice nurses. Physicians are eligible to serve an additional 875 members for each full-time equivalent physician assistant or advanced practice nurses with which he or she practices, up to a maximum of 1750 additional members.~~

~~(ii) If a physician practices at multiple sites, the capacity at each site is determined based on the number of hours per week the physician holds office hours, not to exceed 1 FTE, and the number of physician assistants or advanced practice nurses in practice at each site. Thus, the physician cannot exceed a maximum total capacity of 4250 members.~~

(B) In areas of the State where cross-state utilization patterns have developed because of limited provider capacity in the State, the CEO may authorize contracts with out-of-state providers for PCP/CM services. Out-of-State PCP/CMs are required to comply with all access standards imposed on Oklahoma physicians.

(2) **Advanced Practice Nurses.** Advanced Practice Nurses who have prescriptive authority may serve as PCP/CMs for the Primary Care Case Management system if licensed to practice in the state in which he or she practices. Additionally, Advanced Practice Nurses who meet all requirements for employment by the Federal Government as an advanced practice nurse, and is employed by the Federal Government in an Indian Health Service facility, may serve as a PCP/CM. Advanced Practice Nurses who have prescriptive authority may serve as primary care case managers for a maximum number of 1,250 members. However, the CEO in his/her discretion may increase this number.

(3) **Physician Assistants.** Physician Assistants may serve as PCP/CMs if licensed to practice in the state in which he or she practices. Additionally, Physician Assistants who meet all requirements for employment by the Federal Government as a Physician Assistant, and are employed by the Federal Government in an Indian Health Service facility, may serve as a PCP/CM. Physician Assistants may serve as primary care case managers for a maximum number of 1,250 members. However, the CEO in his/her discretion may increase this number.

(4) **Medical Residents.**

(A) Medical residents may serve as PCP/CMs when the following conditions are met:

(i) The resident is licensed to practice in the state in which he or she practices.

(ii) The resident is at least at the Post-Graduate 2 (PG-2) level.

(iii) The resident serves as a PCP/CM only within his or her continuity clinic setting (for example, Family Practice residents may only serve as the PCP/CM within the Family Practice Residency clinic setting).

(iv) The resident works under the supervision of a licensed attending physician.

(v) The resident specifies the residency program or clinic to which payment will be made.

(B) Medical residents practicing as a PCP/CM may not exceed a capacity of more than 875 members. However, the CEO in his/her discretion may increase this number.

(5) **Provider or physician group.**

~~(A)~~ Provider or physician groups must agree to accept a minimum enrollment capacity and may not exceed 2,500 members per provider participating in the provider group.

~~(B) Enrollment capacity may be increased if the participating group practices in conjunction with a licensed physician assistant or advanced practice nurse.~~

PART 3. ENROLLMENT CRITERIA

317:25-7-10. Enrollment with a Primary Care Provider/Case Manager

(a) All ~~Medicaid~~ SoonerCare Choice ~~clients~~ members described in OAC 317:25-7-12 are enrolled with a PCP/CM. ~~Medicaid~~ SoonerCare Choice applicants have the opportunity to select a PCP/CM during the application process. Enrollment with a PCP/CM for ~~clients~~ members determined to be eligible on or before the fifteenth day of the month are effective on the first day of the following month. Enrollment with a PCP/CM for ~~clients~~ members determined to be eligible after the fifteenth day of the month are effective on the first day of the second month following determination.

(1) The OHCA offers all ~~beneficiaries~~ members the opportunity to choose a PCP/CM from a directory which lists available PCP/CMs.

(2) If a SoonerCare Choice member moves more than the authorized distance/driving time from their current PCP/CM, that member will be disenrolled and assigned to an appropriate PCP/CM. When a notice of PCP/CM assignment is sent to a ~~client~~ member, the ~~client~~ member is advised of the right to change the PCP/CM, at any time, or after the effective date of enrollment with the PCP/CM pursuant to OAC 317:25-7-27.

(b) ~~Clients~~ Members are restricted to receive services from the PCP/CM or from a provider to which the ~~client~~ member has been referred by the PCP/CM. Notwithstanding this provision, subject to limitations which may be placed on services by the ~~Medicaid agency~~ OHCA, ~~clients~~ members may self refer for behavioral health services, vision for refraction services for children, dental services, child abuse/sexual abuse examinations, prenatal and obstetrical services, family planning services ~~for clients under age 18~~, services delivered to Native Americans at IHS, tribal, or urban Indian clinics, and emergency physician and hospital services.

~~(c) New SoonerCare members will receive a period of six months of continuous guaranteed Medicaid eligibility following completion of the eligibility and enrollment process. The guaranteed period of eligibility is retroactive to the first day of the month in which they were determined eligible for Medicaid. The guaranteed period of eligibility is linked to the member and not the PCP/CM. The guaranteed period of eligibility ends if any of the conditions listed in (1) (15) of this subsection occur:~~

~~(1) An individual receives services in a nursing facility, in an intermediate care facility for the mentally retarded (ICF-MR) or through a Home and Community Based Waiver.~~

~~(2) An individual becomes privately enrolled in an HMO.~~

~~(3) An individual would be required to travel more than 45 miles or an average of 45 minutes to obtain primary care services, or a greater or lesser distance/driving time as determined pursuant to OAC 317:25-7-10(a).~~

~~(4) An individual is in custody.~~

~~(5) A child is in a subsidized adoption.~~

~~(6) An individual is deceased.~~

~~(7) The State is unable to locate an individual.~~

~~(8) A determination is made that an individual has committed fraud related to the program.~~

~~(9) An error has been made in determining income or resources and the person is not eligible for Medicaid services.~~

~~(10) An individual's categorical relationship changes and he or she is no longer in a group eligible for SoonerCare.~~

~~(11) A woman has gained Medicaid eligibility solely due to a period of presumptive eligibility;~~

~~(12) An individual is an unqualified or ineligible alien.~~

~~(13) An individual's Medicaid case has been closed.~~

~~(14) An individual is excluded or terminated from SoonerCare for any reason.~~

~~(15) An individual becomes dually eligible for Medicare and Medicaid.~~

[OAR Docket #07-1037; filed 5-16-07]

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

[OAR Docket #07-1053]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-5.1. [NEW]
(Reference APA WF # 06-57)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
DATES:
Comment period:
February 1, 2007 through March 5,2007
Public hearing:
March 5, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 15, 2007
Submitted to House:
March 15, 2007
Submitted to Senate:
March 15, 2007
Gubernatorial approval:
April 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 10, 2007
Final adoption:
May 10,2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Agency rules are issued to instruct providers to bill their usual and customary charges when billing the SoonerCare program. Rules will allow

agency staff to compare providers usual and customary charges to existing SoonerCare fee schedules.

CONTACT PERSON:

Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-5.1. Usual and Customary fees

(a) Providers are required to indicate their usual and customary charge when submitting claims to SoonerCare. The usual and customary charge is the provider's charge for providing the same service to persons not entitled to SoonerCare benefits. For providers using a sliding fee scale, the usual and customary charge is the one that best represents the most frequently charged amount by the individual provider for the service when provided to non-SoonerCare members. Providers that do not have an established usual and customary charge should indicate an amount reasonably related to the provider's cost for providing the service.

(b) Providers may not charge SoonerCare a higher fee than they charge non-SoonerCare patients even if the SoonerCare allowable is greater than the provider's usual and customary fee. Unless otherwise permitted by SoonerCare reimbursement methodology, individual claim payments will be limited to the lesser of their ususal and customary charge or the SoonerCare allowable.

(c) Providers should indicate their usual and customary charge without deducting the co-payment for services that require a member co-payment. When applicable, the co-payment will be systematically deducted.

[OAR Docket #07-1053; filed 5-16-07]

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

[OAR Docket #07-1040]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. General Provider Policies
Part 3. General Medical Program Information
317:30-3-57. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-2. [AMENDED]
Part 3. Hospitals
317:30-5-41.2 [NEW]
(Reference APA WF # 06-30)

AUTHORITY:

Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes

DATES:

Comment period:
February 1, 2007 through March 5,2007
Public hearing:
March 5, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 15, 2007
Submitted to House:
March 15, 2007
Submitted to Senate:
March 15, 2007
Gubernatorial approval:
April 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 10, 2007
Final adoption:
May 10,2007
Effective:
June 25, 2007

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:
Subchapter 3. General Provider Policies
Part 63. General Medical Program Information
317:30-3-57. [AMENDED]
Docket Number:
07-323
(Reference APA WF# 06-39)

GUBERNATORIAL APPROVAL:

January 30, 2007

REGISTER PUBLICATION:

24 Ok Reg 655

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:
Subchapter 5. Individual Providers and Specialties
317:30-5-2. [AMENDED]
Gubernatorial approval:
January 30, 2007
Register publication:
24 Ok Reg 660
Docket number:
07-337
(Reference APA WF # 06-42)

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:
Subchapter 5. Individual Providers and Specialities
Part 3. Hospitals
317:30-5-41.2. [NEW]
Gubernatorial approval:
November 1, 2007
Register publication:
24 Ok Reg 317
Docket number:
06-1432
(Reference APA WF # 06-33)

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

Rule revisions are needed to allow coverage for organ donor expenses for SoonerCare member transplants. Currently the SoonerCare program only covers donor expenses if the donor is a SoonerCare member and donates the organ to a SoonerCare member. Without this change, some donors may refuse to donate needed organs or tissue. Transplant facilities may refuse to perform the transplant services for lack of reimbursement. This change is needed

to insure that SoonerCare members receive organ and tissue donations in a timely and efficient manner to prolong life expectancy and cure disease. Other revisions are included to incorporate changes due to superseding emergency rules previously approved by the Governor in APA WF # 06-33 that revises rules to reflect recent changes to outpatient hospital pricing and 06-38 and 06-42 that revises rules to (1) add a limited dental benefits for pregnant women; (2) expand coverage for dental sealants for children up to age 18 to guard against tooth decay; and (3) eliminate the age restriction on stainless steel crowns for children with 70 percent or more of root structure; and (4) clarify language on Smoking Cessation in dental policy to agree with other sections of policy by adding dentists as providers of this benefit.

CONTACT PERSON:

Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 3. GENERAL MEDICAL PROGRAM INFORMATION

317:30-3-57. General ~~Medicaid~~ SoonerCare coverage - categorically needy

The following are general ~~Medicaid~~ SoonerCare ~~coverage~~ coverages for the categorically needy:

(1) Inpatient hospital services other than those provided in an institution for mental diseases.

(A) Adult coverage ~~limited to the compensable~~ for inpatient hospital ~~days~~ stays as described at OAC 317:30-5-41.

(B) Coverage for ~~persons~~ members under 21 years of age is not limited. All admissions must be medically necessary. All psychiatric admissions require prior authorization for an approved length of stay.

(2) Emergency department services.

(3) Dialysis in an outpatient hospital or free standing dialysis facility.

(4) Outpatient therapeutic radiology or chemotherapy for proven malignancies or opportunistic infections.

(5) Outpatient surgical services - facility payment for selected outpatient surgical procedures to hospitals which have a contract with ~~the Authority~~ OHCA.

(6) Outpatient Mental Health Services for medical and remedial care including services provided on an outpatient basis by certified hospital based facilities that are also qualified mental health clinics.

(7) Rural health clinic services and other ambulatory services furnished by rural health clinic.

(8) Optometrists' services - only as listed in Subchapter 5, Part 45, Optometrist specific rules of this Chapter.

(9) Maternity Clinic Services ~~through the Oklahoma State Health Department~~.

(10) Outpatient diagnostic x-rays and lab services. Other outpatient services provided to adults, not specifically addressed, are covered only when prior authorized by the agency's Medical Authorization Unit.

(11) ~~One~~ Medically necessary screening ~~mammogram and one follow-up mammogram every year for women beginning at age 30~~ mammography. Additional follow-up mammograms are covered when medically necessary. ~~Additional follow-up mammograms require a prior authorization from the agency's Medical Authorization Unit.~~

(12) Nursing facility services (other than services in an institution for tuberculosis or mental diseases).

(13) Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT) are available for ~~each eligible individual~~ members under 21 years of age to provide access to regularly scheduled examinations and evaluations of the general physical and mental health, growth, development, and nutritional status of infants, children, and youth. Federal regulations also require that diagnosis and treatment be provided for conditions identified during a screening whether or not they are covered under the State Plan, as long as federal funds are available for these services. These services must be necessary to ameliorate or correct defects and physical or mental illnesses or conditions and ~~will~~ require prior authorization. EPSDT/OHCA Child Health services are outlined in OAC 317:30-3-65.2 through 317:30-3-65.4.

(A) Child health screening examinations for eligible children by a medical or osteopathic physician, physician assistant, or advanced practice nurse practitioner.

(B) Diagnostic x-rays, lab, and/or injections when prescribed by a ~~physician~~ provider.

(C) Immunizations.

(D) Outpatient care.

(E) Dental services as outlined in OAC 317:30-3-65.8.

(F) Optometrists' services. The EPSDT periodicity schedule provides for at least one visual screening and glasses each 12 months. In addition, payment is made for glasses for children with congenital aphakia or following cataract removal. Interperiodic screenings and glasses at intervals outside the periodicity schedule for optometrists are allowed when a visual condition is suspected.

(G) Hearing services as outlined in OAC 317:30-3-65.9.

(H) Prescribed drugs.

(I) Outpatient Psychological services as outlined in OAC 317:30-5-275 through OAC 317:30-5-278. ~~for eligible individuals under 21 years of age must be prior authorized. Payment is made to eligible psychologists who are duly licensed to practice. Outpatient testing and diagnosis is limited to one hour per patient each 12 months. Additional hours may be prior authorized.~~

(J) Inpatient Psychotherapy ~~Services~~ services and psychological testing as outlined in OAC 317:

30-5-95 through OAC 317:30-5-97. ~~Payment is made to eligible psychologists and psychiatrists. Inpatient psychotherapy by a psychologist must be prior authorized.~~

~~(K) Inpatient psychological testing for eligible individuals under 21 years of age. Services are limited to one hour per each 12 months. If medically necessary, additional hours must be prior authorized. Payment is made to eligible psychologists who are duly licensed to practice.~~

(~~L~~ K) Transportation. Provided when necessary in connection with examination or treatment when not otherwise available.

(~~M~~ L) Inpatient hospital services.

(~~N~~ M) Medical supplies, equipment, appliances and prosthetic devices beyond the normal scope of ~~Medicaid~~ SoonerCare.

(~~O~~ N) EPSDT services furnished in a qualified child health center.

(14) Family planning services and supplies for ~~individuals~~ members of child-bearing age, including counseling, insertion of intrauterine device, implantation of subdermal contraceptive device, and sterilization for ~~persons~~ members 21 years of age and ~~over~~ older who are legally competent, not institutionalized and have signed the "Consent Form" at least 30 days prior to procedure. Reversal of sterilization procedures for the purposes of conception is not covered. Reversal of sterilization procedures ~~may be~~ are covered when medically indicated and substantiating documentation is attached to the claim. ~~The Norplant System for birth control is covered; however, removal of the Norplant System prior to five years is covered only when documented as medically necessary. Reinsertion of Norplant contraceptive will be considered on a case by case basis.~~

(15) Family planning centers.

(16) Physicians' services whether furnished in the office, the ~~patient's~~ member's home, a hospital, a nursing facility, ICF/MR, or elsewhere. For adults, payment ~~will be~~ is made for up to the limited number of compensable hospital days described at OAC 317:30-5-41. These days will be maintained on the recipient record. Physician claims for hospital visits will be paid until the last compensable hospital day is captured. After the limited number of hospital days have been captured, inpatient physician services will not be paid beyond the last compensable hospital day. Office visits for adults are limited to four per month except when in connection with ~~emergency medical~~ conditions as specified in OAC 317:30-5-9(b).

(17) Medical care and any other type of remedial care recognized under State law, furnished by licensed practitioners within the scope of their practice as defined by State law. See applicable provider section for limitations to covered services for:

(A) Podiatrists' services

(B) Optometrists' services

(C) Psychologists' services

(D) Certified Registered Nurse Anesthetists

(E) Certified Nurse Midwives

(F) Advanced Practice Nurses

(18) Free-standing ambulatory surgery centers.

(19) Prescribed drugs not to exceed a total of six prescriptions with a limit of three brand name prescriptions per month. Exceptions to the six prescription limit are:

(A) unlimited medically necessary monthly prescriptions for:

(i) ~~individuals~~ members under the age of 21 years; and

(ii) residents of Nursing Facilities or Intermediate Care Facilities for the Mentally Retarded.

(B) seven ~~additional~~ medically necessary generic prescriptions ~~which are generic products~~ per month in addition to the six covered under the State Plan are allowed for adults receiving services under the '1915(c) Home and Community Based Services Waivers. These additional ~~Medically~~ medically necessary prescriptions beyond the three brand name or thirteen total prescriptions ~~will be~~ are covered with prior authorization.

(20) Rental and/or purchase of durable medical equipment.

(21) Adaptive equipment, when prior authorized, for ~~persons~~ members residing in private ICF/MR's.

(22) Dental services for ~~persons~~ members residing in private ICF/MR's in accordance with the scope of dental services for ~~persons~~ members under age 21.

(23) Prosthetic devices limited to catheters and catheter accessories, colostomy and urostomy bags and accessories, tracheostomy accessories, nerve stimulators, hyperalimentation and accessories, home dialysis equipment and supplies, external breast prostheses and support accessories, oxygen/oxygen concentrator equipment and supplies, respirator or ventilator equipment and supplies, and those devices inserted during the course of a surgical procedure.

(24) Standard medical supplies.

(25) Eyeglasses under EPSDT for ~~individuals~~ members under age 21. Payment is also made for glasses for children with congenital aphakia or following cataract removal.

(26) Blood and blood fractions for ~~eligible persons~~ members when administered on an outpatient basis.

(27) Inpatient services for ~~individuals~~ members age 65 or older in institutions for mental diseases, limited to those ~~persons~~ members whose Medicare, Part A benefits are exhausted for this particular service and/or those ~~persons~~ members who are not eligible for Medicare services.

(28) Nursing facility services, limited to ~~individuals~~ members preauthorized and approved by OHCA for such care.

(29) Inpatient psychiatric facility admissions for ~~individuals~~ members under 21 are limited to an approved length of stay effective July 1, 1992, with provision for requests for extensions.

(30) Transportation and subsistence (room and board) to and from providers of medical services to meet ~~patient's~~

member's needs (ambulance or bus, etc.), to obtain medical treatment.

(31) Extended services for pregnant women including all pregnancy-related and postpartum services to continue to be provided, as though the women were pregnant, for 60 days after the pregnancy ends, beginning on the last date of pregnancy.

(32) Nursing facility services for ~~patients~~ members under 21 years of age.

(33) Personal care in ~~recipient's~~ a member's home, prescribed in accordance with a plan of treatment and rendered by a qualified person under supervision of ~~an~~ a R.N.

(34) Part A deductible and Part B medicare Coinsurance and/or deductible.

(35) Home and Community Based Waiver Services for the mentally retarded.

(36) Home health services limited to 36 visits per year and standard supplies for 1 month in a 12-month period. The visits ~~may be~~ are limited to any combination of Registered Nurse and nurse aide visits, not to exceed 36 per year.

(37) Medically necessary ~~Organ~~ solid organ and ~~tissue~~ bone marrow/stem cell transplantation services for children and adults~~, limited to bone marrow, stem cells, cornea, heart, kidney, liver, lung, SPK (simultaneous pancreas kidney), PAK (pancreas after kidney), and heart-lung,~~ are covered services based upon the conditions listed in (A)-(D) of this paragraph:

(A) ~~All transplantation services~~ Transplant procedures, except kidney and cornea, must be prior authorized to be compensable.

(B) To be prior authorized all procedures are reviewed based on appropriate medical criteria.

(C) To be compensable under the ~~Medicaid~~ SoonerCare program, all ~~organ~~ transplants must be performed at a ~~Medicare approved transplantation center~~ facility which meets the requirements contained in Section 1138 of the Social Security Act.

(D) Donor search and procurement services are covered for transplants consistent with the methods used by the Medicare program for organ acquisition costs.

(E) Finally, procedures considered experimental or investigational are not covered.

(38) Home and community-based waiver services for mentally retarded ~~individuals~~ members who were determined to be inappropriately placed in a NF (Alternative Disposition Plan - ADP).

(39) Case Management services for the chronically and/or severely mentally ill.

(40) Emergency medical services including emergency labor and delivery for illegal or ineligible aliens.

(41) Services delivered in Federally Qualified Health Centers. Payment ~~will be~~ is made on an encounter basis.

(42) Early Intervention services for children ages 0-3.

(43) Residential Behavior Management in therapeutic foster care setting.

(44) Birthing center services.

(45) Case management services through the Oklahoma Department of Mental Health and Substance Abuse.

(46) Home and Community-Based Waiver services for aged or physically disabled ~~individuals~~ members.

(47) Outpatient ambulatory services for ~~persons~~ members infected with tuberculosis.

(48) Smoking and Tobacco Use Cessation Counseling for children and adults.

(49) Services delivered to American Indians/Alaskan Natives in I/T/Us. Payment ~~will be~~ is made on an encounter basis.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-2. General coverage by category

(a) **Adults.** Payment for adults is made to physicians for medical and surgical services within the scope of the Oklahoma Health Care Authority's (OHCA's) medical programs, provided the services are reasonable and necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Coverage of certain services ~~may~~ must be based on a determination made by the OHCA's medical consultant in individual circumstances.

(1) ~~Coverages~~ Coverage ~~include~~ includes the following medically necessary services:

(A) ~~Medically appropriate inpatient~~ Inpatient hospital visits ~~are covered~~ for all ~~Medicaid~~ SoonerCare covered stays. All inpatient services are subject to post-payment review by the OHCA, or its designated agent.

(B) Inpatient psychotherapy by a physician.

(C) Inpatient psychological testing by a physician.

(D) One inpatient visit per day, per physician.

(E) Certain surgical procedures performed in a Medicare certified free-standing ambulatory surgicenter or a Medicare certified hospital that offers outpatient surgical services. Refer to the List of Covered Surgical Procedures.

(F) Therapeutic radiology or chemotherapy on an outpatient basis without limitation to the number of treatments per month for ~~persons~~ members with proven malignancies or opportunistic infections.

(G) Direct ~~physicians'~~ physician services ~~are covered~~ on an outpatient basis. A maximum ~~payment~~ of four visits are ~~covered~~ allowed per month per ~~patient~~ member in office or home regardless of the number of physicians providing treatment. Additional visits per month are allowed for those services related to emergency medical conditions and for services in connection with Family Planning.

(H) Direct ~~physicians'~~ physician services in a nursing facility for those ~~patients~~ members ~~approved for~~

~~nursing care~~ residing in a long-term care facility. ~~Payment is made for a~~ A maximum of two nursing facility visits per month are allowed. To receive payment for a second nursing facility visit in a month denied by Medicare for a ~~Medicare/Medicaid patient~~ Medicare/SoonerCare patient, attach the EOMB from Medicare showing denial and mark "carrier denied coverage".

(I) ~~Payment is made for medically necessary diagnostic~~ Diagnostic x-ray and laboratory ~~work~~ services.

(J) ~~One screening mammogram and one follow-up mammogram every year for women beginning at age 30~~ Mammography screening and additional follow-up mammograms. ~~A prior authorization by the Medical Professional Services Division of the Oklahoma Health Care Authority is required for additional follow-up mammograms. This includes interpretation and technical component.~~

(K) Obstetrical care.

(L) Pacemakers and prostheses inserted during the course of a surgical procedure. ~~Payment is made based upon an invoice for the item.~~

(M) Prior authorized examinations for the purpose of determining medical eligibility for programs under the jurisdiction of the Authority. A copy of the authorization, ~~DHS~~ OKDHS form ABCDM-16, Authorization for Examination and Billing, must accompany the claim.

(N) If a physician ~~personally sees~~ renders direct care to a ~~patient~~ member on the same day as a dialysis treatment, payment ~~can be made~~ is allowed for a separately identifiable service unrelated to the dialysis.

(O) Family planning – ~~including~~ includes sterilization procedures for legally competent ~~persons~~ members 21 years of age and over who voluntarily request such a procedure and, ~~with their physician, execute~~ executes the ~~Federally~~ federally mandated consent form (ADM-71) with his/her physician . A copy of the consent form must be attached to the claim form. Separate payment is ~~made~~ allowed for ~~an~~ I.U.D. ~~inserted~~ insertion during an office visit. Certain family planning products may be obtained through the Vendor Drug Program. Reversal of sterilization procedures for the purposes of conception ~~are~~ is not ~~covered~~ allowed. Reversal of sterilization procedures ~~may be~~ are ~~covered~~ allowed when medically indicated and substantiating documentation is attached to the claim. ~~The Norplant System for birth control is covered; however, removal of the Norplant System prior to five years is covered only when documented as medically necessary. Reinsertion of Norplant contraceptive will be considered on a case by case basis.~~

(P) Genetic counseling (requires special medical review prior to approval).

(Q) ~~Blood count weekly~~ Weekly blood counts for ~~persons~~ members receiving the drug Clozaril.

(R) Complete blood count (CBC) and platelet count prior to receiving chemotherapeutic agents, ~~or~~ radiation therapy ~~and for persons receiving~~ or medication such as DPA-D-Penacillamine on a regular basis for treatment other than for ~~malignancies~~ malignancy.

(S) Payment ~~of~~ for ultrasounds for pregnant women as specified in OAC 317:30-5-22.

(T) Payment to the attending physician in a teaching medical facility for compensable services when the physician signs as claimant and renders personal and identifiable services to the ~~patient~~ member in conformity with ~~Federal~~ federal regulations.

(U) Payment to clinical fellow or chief resident in an outpatient academic setting when the following conditions are met:

(i) Recognition as clinical faculty with participation in such activities as faculty call, faculty meetings, and having hospital privileges;

(ii) Board certification or completion of an accredited residency program in the fellowship specialty area;

(iii) Hold unrestricted license to practice medicine in Oklahoma;

(iv) If Clinical Fellow, practicing during second or subsequent year of fellowship;

(v) Seeing ~~patients~~ members without supervision;

(vi) Services provided not for primary purpose of medical education for the clinical fellow or chief resident;

(vii) Submit billing in own name with appropriate Oklahoma ~~Medicaid~~ SoonerCare provider number.

(viii) Additionally if a clinical fellow practicing during the first year of fellowship, the clinical fellow must be practicing within their area of primary training. The services must be performed within the context of their primary specialty and only to the extent as allowed by their accrediting body.

(V) Payment to the attending physician for the services of a currently Oklahoma licensed physician in training when the following conditions are met.

(i) Attending physician performs chart review and sign off on the billed encounter;

(ii) Attending physician present in the clinic/or hospital setting and available for consultation;

(iii) Documentation of written policy and applicable training of physicians in the training program regarding when to seek the consultation of the attending physician.

(W) Payment to the attending physician for the outpatient services of an unlicensed physician in a training program when the following conditions are met:

(i) The ~~patient~~ member must be at least minimally examined ~~and reviewed~~ by the attending

physician or a licensed physician under the supervision of the attending physician;

(ii) ~~This~~ The contact must be documented in the medical record.

(X) Payment to a physician for supervision of CRNA services unless the CRNA bills directly.

(Y) One pap smear per year for women of child bearing age. Two follow-up pap smears are covered when medically indicated.

(Z) Medically necessary ~~Organ~~ solid organ and ~~tissue~~ bone marrow/stem cell transplantation services for children and adults~~, limited to bone marrow, stem cells, cornea, heart, kidney, liver, lung, SPK (simultaneous pancreas kidney), PAK (pancreas after kidney), and heart-lung,~~ are covered services based upon the conditions listed in (i)-(iv) of this subparagraph:

(i) ~~All transplantation services~~ Transplant procedures, except kidney and cornea, must be prior authorized to be compensable.

(ii) To be prior authorized all procedures are reviewed based on appropriate medical criteria.

(iii) To be compensable under the ~~Medicaid~~ SoonerCare program, all organ transplants must be performed at a ~~Medicare-approved transplantation center~~ facility which meets the requirements contained in Section 1138 of the Social Security Act.

(iv) ~~Finally, procedures~~ Procedures considered experimental or investigational are not covered.

(AA) Donor search and procurement services are covered for transplants consistent with the methods used by the Medicare program for organ acquisition costs.

(i) Donor expenses incurred for complications are covered only if they are directly and immediately attributable to the donation procedure.

(ii) Donor expenses that occur after the 90 day global reimbursement period must be submitted to the OHCA for review.

(~~AA~~ BB) Total parenteral nutritional therapy (TPN) for ~~certain~~ identified diagnoses and when prior authorized.

(~~BB~~ CC) Ventilator equipment.

(~~CC~~ DD) Home dialysis equipment and supplies.

(~~DD~~ EE) Ambulatory services for treatment of ~~persons~~ members with tuberculosis (TB). This includes, but is not limited to, physician visits, outpatient hospital services, rural health clinic visits and prescriptions. Drugs prescribed for the treatment of TB not listed in OAC 317:30-3-46 require prior authorization by the ~~University of Oklahoma~~ College of Pharmacy Help Desk using form "Petition for TB Related Therapy". Ambulatory services to ~~persons~~ members infected with TB are not limited to the scope of the ~~Medicaid~~ SoonerCare program, but require prior authorization when the scope is exceeded.

(~~EE~~ FF) Smoking and Tobacco Use Cessation Counseling for treatment of individuals using tobacco.

(i) Smoking and Tobacco Use Cessation Counseling consists of the 5As:

(I) Asking the ~~patient~~ member to describe their smoking use;

(II) Advising the ~~patient~~ member to quit;

(III) Assessing the willingness of the ~~patient~~ member to quit;

(IV) Assisting the ~~patient~~ member with referrals and plans to quit; and

(V) Arranging for follow-up.

(ii) Up to eight sessions are covered per year per individual.

(iii) Smoking and Tobacco Use Cessation Counseling is a covered service when performed by physicians, physician assistants, nurse practitioners, nurse midwives, dentists, and Oklahoma State Health Department and FQHC nursing staff. It is reimbursed in addition to any other appropriate global payments for obstetrical care, PCP capitation payments, evaluation and management codes, or other appropriate services rendered. It must be a significant, separately identifiable service, unique from any other service provided on the same day.

(iv) Chart documentation must include a separate note and signature along with the member specific information addressed in the five steps and the time spent by the practitioner performing the counseling. Anything under three minutes is considered part of a routine visit.

(GG) Immunizations as specified by the Advisory Committee on Immunization Practices (ACIP) guidelines.

(2) General coverage exclusions include the following:

(A) Inpatient diagnostic studies that could be performed on an outpatient basis.

(B) Services or any expense incurred for cosmetic surgery.

(C) Services of two physicians for the same type of service to the same ~~patient~~ member at the same time, except when warranted by the necessity of supplemental skills. When supplemental skills are warranted, the initial consultation is reported utilizing the appropriate CPT code for inpatient consultations. Follow-up consultations include monitoring progress, recommending management modifications or advising on a new plan of care in response to changes in the ~~patient's~~ member's status. If the consultant physician initiates treatment at the initial consultation and participates thereafter in the ~~patient's~~ member's care, the procedure codes for subsequent hospital care ~~should~~ must be used.

(D) Refractions and visual aids.

(E) ~~Separate~~ A separate payment for ~~pre~~ pre-operative care, if provided on the day before or the day of surgery, or for typical post-operative follow-up care ~~and post-operative care when payment is made for surgery~~.

(F) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.

(G) Sterilization of ~~persons~~ members who are under 21 years of age, mentally incompetent, or institutionalized~~.~~ or ~~Reversal~~ reversal of sterilization procedures for the purposes of conception.

(H) Non-therapeutic hysterectomy.

(I) Medical services considered to be experimental or investigational.

(J) Payment for more than four outpatient visits per month (home or office) per ~~patient~~ member except those visits in connection with family planning, or related to emergency medical conditions.

(K) Payment for more than two nursing facility visits per month.

(L) More than one inpatient visit per day per physician.

(M) Physician supervision of hemodialysis or peritoneal dialysis.

(N) Physician services which are administrative in nature and not a direct service to the ~~patient~~ member including such items as quality assurance, utilization review, treatment staffing, tumor board, dictation, and similar functions.

(O) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.

(P) Payment for the services of physicians' assistants, social workers, licensed family counselors, registered nurses or other ancillary staff, except as specifically set out in OHCA rules.

(Q) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury, or illness~~, including~~ related to a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or ~~that~~ when the pregnancy is the result of an act of rape or incest. (~~See~~ Refer to OAC 317:30-5-6 or 317:30-5-50.)

(R) Night calls or unusual hours.

(S) Speech and Hearing services.

~~(T) Treatment for obesity, including weight reduction surgery.~~

(~~U~~ T) Mileage.

(~~V~~ U) ~~Other than~~ A routine hospital visit on the date of discharge unless the ~~patient~~ member expired.

(~~W~~ V) Direct payment to perfusionist as this is considered part of the hospital ~~cost~~ reimbursement.

(~~X~~ W) Inpatient chemical dependency treatment.

(~~Y~~ X) Fertility treatment.

~~(Z) Routine immunizations.~~

(~~AA~~ Y) Payment for removal of benign skin lesions unless medically necessary.

(b) **Children.** Payment is made to physicians for medical and surgical services for ~~persons~~ members under the age of 21 within the scope of the Authority's medical programs, provided the services are medically necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Medical and surgical services for children are comparable to those listed for adults. In addition to those services listed for adults, the following services are covered for children.

(1) **Pre-authorization of inpatient psychiatric services.** All inpatient psychiatric services for ~~patients~~ members under 21 years of age must be prior authorized by an agency designated by the Oklahoma Health Care Authority. All psychiatric services ~~will be~~ are prior authorized for an approved length of stay. Non-authorized inpatient psychiatric services ~~will~~ are not be ~~Medicaid~~ SoonerCare compensable.

(A) Effective October 1, 1993, all residential and acute psychiatric services ~~will be~~ are authorized based on the medical necessity criteria as described in OAC ~~317:30-5-46~~ 317:30-5-95.25,317:30-5-95.27 and 317:30-5-95.29.

(B) Out of state placements will not be authorized unless it is determined that the needed medical services are more readily available in another state or it is a general practice for ~~recipients~~ members in a particular border locality to use resources in another state. If a medical emergency occurs while a ~~client~~ member is out of the ~~state~~ State, treatment for medical services ~~will be~~ is covered ~~in the same way as they would be covered~~ as if provided within the ~~state~~ State. A prime consideration for placements will be proximity to the family or guardian in order to involve the family or guardian in discharge and reintegration planning.

(2) **General acute care inpatient service limitations.** All general acute care inpatient hospital services for ~~persons~~ members under the age of 21 are not limited. All inpatient care must be medically necessary.

(3) **Procedures for requesting extensions for inpatient services.** The physician and/or facility must provide necessary justification to enable OHCA, or its designated agent, to make a determination of medical necessity and appropriateness of treatment options.

~~(A)~~ Extension requests for psychiatric admissions must be submitted to the OHCA or its designated agent. Extension requests must contain the appropriate documentation ~~which validates~~ validating the need for continued treatment in accordance with the medical necessity criteria described in OAC ~~317:30-5-46~~ 317:30-5-95.26, 317:30-5-95.28 and 317:30-5-95.30. Requests ~~shall~~ must be made prior to the expiration of the approved inpatient stay. All decisions of OHCA or its designated agent are final.

~~(B) If a denial decision is made, a reconsideration request may be made directly to the OHCA, or its designated agent and should occur within 3 days of the denial notification due to the timeliness of processing such a request with the patient still in the facility. The request for reconsideration shall include new and/or additional medical information to justify the need for continued care.~~

(4) **Utilization control requirements for psychiatric beds.** ~~Medicaid utilization~~ Utilization control requirements for inpatient psychiatric services for ~~persons~~ members under 21 years of age apply to all hospitals and residential psychiatric treatment facilities.

(5) **Early and periodic screening diagnosis and treatment program.** Payment is ~~also~~ made to eligible providers for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) of ~~individuals~~ members under age 21. These services include medical, dental, vision, hearing and other necessary health care. Refer to OAC 317:30-3-65.2 through 317:30-3-65.11 for specific guidelines.

(6) **Child abuse/neglect findings.** Instances of child abuse and/or neglect discovered through screenings and regular exams are to be reported in accordance with State Law. Title 21, Oklahoma Statutes, Section 846, as amended, states in part: *Every physician or surgeon, including doctors of medicine and dentistry, licensed osteopathic physicians, residents, and interns, examining, attending, or treating a child under the age of eighteen (18) years and every registered nurse examining, attending or treating such a child in the absence of a physician or surgeon, and every other person having reason to believe that a child under the age of eighteen (18) years has had physical injury or injuries inflicted upon him or her by other than accidental means where the injury appears to have been caused as a result of physical abuse or neglect, shall report the matter promptly to the county office of the Department of Human Services in the county wherein the suspected injury occurred. Providing it shall be a misdemeanor for any person to knowingly and willfully fail to promptly report an incident as provided above. Persons reporting such incidents of abuse and/or neglect in accordance with the law are exempt from prosecution in civil or criminal suits that might be brought as a result of the report.*

(7) **General exclusions.** The following are excluded from coverage for ~~persons~~ members under the age of 21:

(A) Inpatient diagnostic studies that could be performed on an outpatient basis.

(B) Services or any expense incurred for cosmetic surgery unless the physician certifies the procedure emotionally necessary.

(C) Services of two physicians for the same type of service to the same ~~patient~~ member at the same time, except when warranted by the necessity of supplemental skills. When supplemental skills are warranted, the initial consultation is reported utilizing the appropriate CPT code for inpatient consultations. Follow-up consultations include monitoring progress, recommending management modifications or advising on a new plan of care in response to changes in the ~~patient's~~ member's status. If the consultant physician initiates treatment at the initial consultation and participates thereafter in the ~~patient's~~ member's care, the codes for subsequent hospital care ~~should~~ must be used.

(D) ~~Separate~~ A separate payment for ~~pre~~ pre-operative care, if provided on the day before or the day of surgery, or for typical post-operative follow-up care ~~and post-operative care when payment is made for surgery~~.

(E) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.

(F) Sterilization of persons who are under 21 years of age.

(G) Non-therapeutic hysterectomy.

(H) Medical Services considered to be experimental or investigational.

(I) More than one inpatient visit per day per physician.

(J) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. (~~See~~ Refer to OAC 317:30-5-6 or 317:30-5-50.)

(K) Physician supervision of hemodialysis or peritoneal dialysis.

(L) Physician services which are administrative in nature and not a direct service to the ~~patient~~ member including such items as quality assurance, utilization review, treatment staffing, tumor board, dictation, and similar functions.

(M) Payment for the services of physicians' assistants except as specifically set out in OHCA rules.

(N) Direct payment to perfusionist as this is considered part of the hospital ~~cost~~ reimbursement.

~~(O) Treatment of obesity including weight reduction surgery.~~

(~~P~~ O) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.

(~~Q~~ P) Night calls or unusual hours.

(~~R~~ Q) Mileage.

(~~S~~ R) ~~Other than~~ A routine hospital visit on date of discharge unless ~~patient~~ the member expired.

(~~T~~ S) Tympanometry.

(c) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the ~~Medicaid~~ OHCA allowable for comparable services. For in-State physicians, claims filed with Medicare Part B should automatically cross over to OHCA. The explanation of Medicare Benefits (EOMB) ~~will reflect~~ reflects a message that the claim was referred to ~~Medicaid~~ SoonerCare. If such a message is not present, a claim for coinsurance and deductible must be filed with ~~Medicaid~~ the OHCA within 90 days of the date of Medicare payment in order to be considered timely filed. The Medicare EOMB must be attached to the claim. If payment was denied by Medicare Part B~~,~~ and the service is a ~~Medicaid~~ SoonerCare covered service, mark the claim "denied by Medicare".

(1) Out of state claims will not "cross over". Providers must file a claim for coinsurance and/or deductible within 90 days of the Medicare payment. The Medicare EOMB must be attached to the claim.

(2) Claims filed under ~~Medicaid~~ SoonerCare must be filed within one year from the date of service. For dually eligible ~~individuals~~ members, to be eligible for payment of coinsurance and/or deductible under ~~Medicaid~~ SoonerCare, a claim must be filed with Medicare within one year from the date of service.

PART 3. HOSPITALS

317:30-5-41.2. Organ transplants

Solid organ and bone marrow/stem cell transplants are covered when appropriate and medically necessary.

(1) Transplant procedures, except kidney and cornea, must be prior authorized to be compensable.

(2) To be prior authorized all procedures are reviewed based on appropriate medical criteria.

(3) To be compensable under the SoonerCare program all transplants must be performed at a facility which meets the requirements contained in Section 1138 of the Social Security Act.

(4) Procedures considered experimental or investigational are not covered.

(5) Donor search and procurement services are covered for transplants consistent with the methods used by the Medicare program for organ acquisition costs.

[OAR Docket #07-1040; filed 5-16-07]

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

[OAR Docket #07-1038]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. General Provider Policies
Part 5. Eligibility
317:30-3-85. [AMENDED]
(Reference APA WF # 06-15A)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 6036 of the Deficit Reduction Act of 2005
DATES:
Comment period:
February 1, 2007 through March 5,2007
Public hearing:
March 5, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 15, 2007
Submitted to House:
March 15, 2007
Submitted to Senate:
March 15, 2007
Gubernatorial approval:
April 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 10, 2007
Final adoption:
May 10,2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Eligibility rules regarding citizenship/alien status and identity verification requirements are revised to comply with the provisions of the Deficit Reduction Act (DRA) of 2005. Section 6036 of the DRA requires states to obtain satisfactory documentary evidence of citizenship in order to receive Federal Financial Participation. States are required to obtain satisfactory documentary evidence of citizenship from all applicants and recipients unless otherwise exempted in order to receive Federal Financial Participation. For applicants, the State must obtain such evidence of citizenship at the time of application. For recipients, the State must obtain such evidence of citizenship at the time redetermination. Individuals who have applied for and have been approved for SSI and Medicare will have had their citizenship status verified by the Social Security Administration and the OKDHS Social Workers will be able to use data exchange systems with Social Security for verification. Some of the most common documents that may be accepted as proof of citizenship will include: a United States birth certificate, a hospital record of birth made at the time of birth in one of the 50 states, a United States passport, a Certificate of U.S. Citizenship (DHS FORMS N-560 or N-561), a Certificate of Naturalization (DHS FORMS N-550 or N570), a religious record of birth recorded in the United States or its Territories within 3 months of birth, a Report of Birth Abroad of a U.S. Citizen (Form FRS-240), or a U.S. Citizen I.D. card (DHS Form I-197). Revisions to citizenship eligibility rules are in need of revision in order to comply with the Deficit Reduction Act of 2005.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 5. ELIGIBILITY

317:30-3-85. Citizenship and alienage

In order to be eligible for payment of the full range of medical services through ~~the Title XIX Program~~ SoonerCare, an individual must be either a citizen of the United States or an alien lawfully admitted for permanent residence for a period greater than five years from the date of entry or otherwise permanently residing in the United States under color of law. Legalized aliens may receive emergency medical services and pregnancy-related services. Illegal aliens ~~and ineligible aliens~~ may receive only emergency medical services, which includes emergency labor and delivery. Refer to OAC 317:35-5-25

regarding citizenship/alien status and identity verification requirements.

[OAR Docket #07-1038; filed 5-16-07]

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

[OAR Docket #07-1057]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-23. [AMENDED]
(Reference APA WF # 06-63)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
DATES:
Comment period:
February 1, 2007 through March 5,2007
Public hearing:
March 5, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 15, 2007
Submitted to House:
March 15, 2007
Submitted to Senate:
March 15, 2007
Gubernatorial approval:
April 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 10, 2007
Final adoption:
May 10,2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Physicians rules regarding billing for newborn care are revised to remove obsolete procedures language. Previously, physicians were instructed to claim for reimbursement using the mother's Medicaid number and the newborn's person code. However, procedures have been updated and now, each SoonerCare member has been assigned an individual, unique identification number which providers are to use when billing for services. Rule revisions are necessary to remove obsolete billing procedures language.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-23. Newborn care

~~Charges for newborn care and circumcision may be billed on the mother's Medicaid number and the newborn's person code.~~ Claims for newborn care ~~filed on the mother's person code will be denied~~ and circumcision are filed under the newborn's SoonerCare member ID number.

(1) ~~If a newborn child remains hospitalized after the mother is discharged from the hospital and the child is not eligible to be added to an active grant, a Medicaid application must be made. The mother's county DHS office must be notified by the hospital, in writing on Form FSS-NB-1, within five days of the child's birth to assure assignment of the newborn's person code.~~ When there is a newborn child and the mother is receiving SoonerCare benefits, an OKDHS form 08MA015E (FSS-NB-1) or other notification must be submitted to the county OKDHS office. If the mother is not already receiving SoonerCare benefits, an application will need to be completed. Services are billed using the appropriate codes contained in the Physician's Current Procedural Terminology (CPT).

(2) ~~Newborn intensive care unit visits are reported using the~~ Neonatal ~~Intensive Care~~ intensive care codes (contained in the ~~Physician's Current Procedural Terminology~~ CPT) are used to report neonatal intensive care services. Certain procedures are bundled into the relevant inpatient neonatal critical care evaluation and management codes and are not reimbursed separately. All other medically-necessary procedures provided are considered for reimbursement using recognized coding and/or editing logic. Additional payment is allowed for standby at Cesarean Section, attendance at delivery or newborn resuscitation. ~~NICU care includes management, monitoring and treatment of the patient including enteral and parenteral nutrition maintenance, metabolic and hematologic maintenance, pharmacologic control of the circulatory system, parent counseling, case management, and personal supervision of the care team in the performance of cognitive and procedural activities. Umbilical, central or peripheral vessel catheterization, oral or nasogastric tube placement, endotracheal intubation, lumbar puncture, suprapubic bladder aspiration, bladder catheterization, initiation and management of mechanical ventilation or continuous positive airway pressure (CPAP), surfactant administration, intravascular fluid administration, transfusion of blood components, vascular punctures, invasive or non-invasive electronic monitoring of vital signs, bedside pulmonary function testing and/or monitoring or interpretation of blood gases or oxygen saturation are included in the payment of NICU care. All other procedures should be reported separately.~~

~~(3) In hospital interpretations of chest x-rays by a physician other than the attending physician for neonates are compensable. In most instances multiple chest x-rays are medically necessary.~~

~~(4) Ancillary studies are covered for children regardless of place of service.~~

~~(5) Payment is made for an eye examination on a newborn by an ophthalmologist only when medically indicated.~~

(3) Payment may be made for an evaluation and management service and newborn circumcision provided by the same provider on the same date of service.

[OAR Docket #07-1057; filed 5-16-07]

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

[OAR Docket #07-1055]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers And Specialties
Part 11. Maternity Clinic Services [REVOKED]
317:30-5-175. through 317:30-5-176. [REVOKED]
317:30-5-178. [REVOKED]
Part 13. High Risk Pregnant Women Case Management Services [REVOKED]
317:30-5-185. through 317:30-5-188. [REVOKED]
Part 14. Targeted Case Management Services For First Time Mothers and Their Infants/Children [REVOKED]
317:30-5-190. through 317:30-5-193. [REVOKED]
Part 15. Child Health Centers [REVOKED]
317:30-5-195. through 317:30-5-199. [REVOKED]
317:30-5-201. [REVOKED]
Part 91. Tuberculosis Clinic Services [REVOKED]
317:30-5-910. through 317:30-5-911. [REVOKED]
317:30-5-913. [REVOKED]
Part 93. Case Management Services for Persons Infected With Tuberculosis [REVOKED]
317:30-5-920. through 317:30-5-921. [REVOKED]
317:30-5-923. through 317:30-5-924. [REVOKED]
Part 112. Public Health Clinic Services [NEW]
317:30-5-1150. through OAC 317:30-5-1161. [NEW]
(Reference APA WF # 06-60)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.90; 42 cfr 431.615
DATES:
Comment period:
February 1, 2007 through March 5,2007
Public hearing:
March 5, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 15, 2007
Submitted to House:
March 15, 2007
Submitted to Senate:
March 15, 2007
Gubernatorial approval:
April 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 10, 2007
Final adoption:
May 10,2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Rules are revised to define services that the Oklahoma State Department of Health (OSDH) as County Health Department's (CHD) and City-County Health Departments (CCHDs) provide and the manner that they provide these services. Currently rules do not address CHD's or CCHD's as individual providers; these revisions will consolidate all rules pertaining to CHD's and CCHD's. Rule revisions will define providers and the types of services that they can provide as a CHD and CCHD.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 11. MATERNITY CLINIC SERVICES [REVOKED]

317:30-5-175. Eligible providers [REVOKED]

~~Eligible providers are maternity clinics which meet the standards and criteria for Maternity Clinic Services in Oklahoma as established by the Oklahoma State Department of Health (OSDH). The Oklahoma State Department of Health will provide to the Oklahoma Health Care Authority the names of all qualified maternity clinics at the time of the initial qualification and at least annually thereafter. OSDH will notify OHCA when an existing center fails to meet OSHD standards and criteria. Upon notice of a newly qualified clinic, OHCA may enter into a Title XIX contractual arrangement with the clinic to provide maternity services.~~

317:30-5-176. Coverage by category [REVOKED]

~~(a) **Adults.** Payment is made for maternity clinic services for adults pursuant to the following:~~

~~(1) **Initial examination/laboratory services.** Initial examination/laboratory services will consist of a complete patient history to include socio-demographic data; family history of present and past illnesses; nutritional information and prenatal vitamins; psychosocial history; reproductive/obstetrical history including present pregnancy and previous pregnancy and outcomes. This procedure will also include a comprehensive physical examination by a physician or OB/GYN Advanced Practice Nurse or Certified Nurse Midwife, consisting of~~

~~weight, height, blood pressure as well as examination of head, neck, breast, heart, lungs, abdomen, pelvis, rectum and extremities. Evaluation of the progression of the pregnancy will be done by measurement of fundal height and fetal heart rate in order to correlate with other known information. The correct estimation of gestational age is an important outcome of the initial examination. A standard profile of routine lab services, e.g., hematocrit, rubella immunity, STS-RPR, blood glucose Rh, antibody screen, GC culture, PAP Smear, hepatitis B, and sickle cell will be completed during the initial exam. Some examples of nonroutine diagnostic tests to be performed if indicated are HIV HTLV3 PIH profile, torch screen, CHEM 26, CBC, platelet count, etc.~~

~~(2) **Maternity encounter.** Maternity encounter includes routine scheduled medical visits every four weeks up to 28 weeks; every two weeks at 28 weeks up to 36 weeks; every week at 36 weeks up to delivery and includes medical assessment, laboratory services and treatment of minor problems. If it is deemed medically necessary, visits may be scheduled more frequently. Each patient will be scheduled for postpartum visit which shall include a physical exam, hematocrit and urine dipstick, counseling, contraceptive services and referrals to WIC, child health and family planning services. At the 36th week visit a complete physical is done by the physician, OB/GYN Advanced Practice Nurse or Certified Nurse Midwife, as well as all routine procedures under the interim visits. The client is seen in the clinics as long as her condition remains low risk. Appropriate consultation and/or referral will be made at any time for a client at high risk.~~

~~(3) **Risk Assessment.** The following professional staff may assist/participate in the risk assessment - nurse, social worker, or nutritionist under the direction of a physician, OB/GYN advanced practice nurse, or certified nurse midwife. A pregnant woman is considered high risk if one or more risk factors are indicated on the form used for risk screening.~~

~~(A) A pregnant woman may be assessed (screened) for medical risk a maximum of two times per pregnancy. A second medical risk assessment (screening) would be necessary only if the woman changed the provider responsible for her obstetrical care, and the new provider was unable to obtain the prior records.~~

~~(B) For a risk assessment to be compensable, a Problem Oriented Perinatal Risk Assessment (POPRAS III) must be completed by a skilled medical professional.~~

~~(4) **Nutritional Assessment/Counseling.** Nutritional assessment/counseling is covered only for high risk pregnant women as identified in the risk assessment tool (POPRAS III). Counseling is appropriate for women whose complications require the services of a dietician/ nutritionist for treatment of a pregnancy related complication, e.g., diabetes, over/under weight. The services are provided by a registered dietician or licensed nutritionist. This service may be provided a maximum of six times during the pregnancy and postpartum. The nutritional assessment is done by the registered dietician or licensed nutritionist, and is considered as one unit of nutritional assessment/counseling. If the high risk pregnant woman is eligible for WIC, the nutritional assessment for this program will coordinate with the WIC assessment in order to prevent two programs from doing duplicate assessments.~~

~~(5) **Health Education.** Health education is covered only for high risk pregnant women as identified in the risk assessment tool (POPRAS III). It is designed to prevent the development of further complications during pregnancy and to provide educational information to the pregnant woman in caring for herself during pregnancy. This service may be provided by a registered nurse, advanced practice nurse, certified nurse midwife, nutritionist/ dietician, or social worker. This service may be provided a maximum of six times during the pregnancy and postpartum. Education may include, but is not limited to, prenatal care, danger signs in pregnancy; labor and delivery; nutrition, pregnancy risk reduction, postpartum care, reproductive health.~~

~~(6) **Psychosocial Assessment/Counseling.** Psychosocial assessment/counseling is covered only for high risk pregnant women as identified in the risk assessment tool (POPRAS III). Psychosocial assessment/counseling is appropriate in order to develop a social work care plan based upon the health risks due to psychosocial factors. Counseling is appropriate for women whose complications require psychosocial intervention as an essential element of treatment in dealing with the complication e.g., use/abuse of drugs/alcohol, significant psychological condition, etc. This service will be used to reduce the likelihood of a poor birth outcome. This service may be provided a maximum of six times during the pregnancy and postpartum. This service must be provided by a Masters of Social Worker (MSW) or a bachelor level social worker under the direct supervision of a MSW.~~

~~(7) **Genetics Assessment/Counseling.** Genetics assessment/counseling is covered only for high risk pregnant women as identified in the risk assessment tool (POPRAS III). It is designed to deliver information to a pregnant woman about inherited disorders or environmental exposures to toxic substances that may cause congenital defects in the fetus. This service is performed by a genetic counselor or a registered nurse in consultation with a genetic counselor. This service may be provided a maximum of one time during the pregnancy or postpartum.~~

~~(8) **Pregnancy Test.** Pregnancy test to verify pregnancy.~~

~~(b) **Children.** Maternity clinic services for children are the same as for adults.~~

~~(c) **Vocational Rehabilitation.** There is no coverage under Vocational Rehabilitation.~~

~~(d) **Individuals eligible for Part B of Medicare.** Maternity Clinic Services provided to Medicare eligible recipients should be billed directly to the fiscal agent.~~

317:30-5-178. Covered services [REVOKED]

~~(a) The following maternity clinic services are covered:~~

~~(1) Initial Examination/Laboratory services, Unit:Completed Comprehensive Examination, Limitation:Not more than one per pregnancy~~

~~(2) Maternity encounter, Unit: Day of Service, Limitation: Not more than 12 encounters per pregnancy.~~

~~(3) 36th week visit, Unit: Completed physical examination, Limitation: Not more than one per pregnancy.~~

~~(4) Risk Assessment, Unit: Completed Risk Assessment Form, Limitation: Not more than 2 per pregnancy.~~

~~(5) Nutritional Assessment/Counseling, Unit: Day of Service, Limitation: Not more than 6 per pregnancy.~~

~~(6) Health Education, Unit: Day of Service, Limitation: Not more than 6 per pregnancy.~~

~~(7) Psychosocial Assessment/Counseling, Unit: Day of Service, Limitation: Not more than 6 per pregnancy.~~

~~(8) Genetics Assessment/Counseling, Unit:Day of Service, Limitation: Not more than 1 per pregnancy.~~

~~(9)Pregnancy Test, Unit: One Service, Limitation: Not more than 1 per pregnancy.~~

~~(b) No more than a combination of 12 units will be covered per pregnancy for nutritional, health education, psychosocial and genetics counseling.~~

PART 13. HIGH RISK PREGNANT WOMEN CASE MANAGEMENT SERVICES [REVOKED]

317:30-5-185. Eligible providers and services [REVOKED]

~~(a) **Providers.** Services are provided by case management agencies established for the purpose of providing case management services. Such agency must be certified as a qualified provider by the Oklahoma State Health Department.~~

~~(1) Individuals providing case management services must have a degree in a related field and at least one year of experience in community health case management or perinatal care. In the case of Registered Nurses with an associate degree, the case managers must have two years of experience in community health case management or perinatal care.~~

~~(2) Case managers must work with an agency in which community based facility and institutional linkages affecting the target group exist. The agency must demonstrate that their staff has experience working with the target group. The agency must comply with governing and program management standards set by the State of Oklahoma Department of Health, the certification agency. The agency must have the capacity to perform the case management function identified above. The agency must demonstrate its capacity to deliver case management services in terms of the following items:~~

~~(A) Qualified case management staff to serve the target group.~~

~~(B) Adequate administrative capacity to fulfill state and federal requirements.~~

~~(C) Maintenance of programmatic and financial records. Program records should show that the agency is able to develop and maintain assessment records. The financial records should include development of a management system which tracks costs associated with worker activities.~~

~~(D) Rendering services without regard to the client's ability to pay.~~

~~(E) Compliance with applicable federal and state regulations, as set forth in the contractual agreement.~~

~~(F) Collection and submittal of data according to the Oklahoma Department of Health cost reporting process that is used to determine the average cost on which the fee is based.~~

~~(3) Provision of case management services will not restrict an individual's free choice of providers. Eligible recipients will have free choice of providers of case management as well as providers of other medical care under the plan.~~

~~(b) **Definition of case management services.** Case management services may not duplicate other services to public agencies or private entities under other program activities for this same purpose for which payment is made under Medicaid.~~

~~(1) **Other Medicaid services.** When assessment of an individual's need for services includes a physical or psychological examination or evaluation, the provider bills for the examination or evaluation under the appropriate medical service category. Referral for such services may be considered a component of case management services, but the actual provision of the service does not constitute case management.~~

~~(2) **Referral for treatment.** When an assessment indicates the need for medical treatment, referral or arrangements for such treatment may be included as case management services, but the actual treatment may not be so considered.~~

~~(3) **Administrative activities.** Case management administrative activities associated with the following items are necessary for the proper and efficient administration of the State Plan and cannot be included as components of case management services:~~

~~(A) Medicaid eligibility determinations and redeterminations;~~

~~(B) Medicaid intake processing;~~

~~(C) Medicaid preadmission screening;~~

~~(D) Prior authorization for Medicaid services;~~

~~(E) Required Medicaid utilization review;~~

~~(F) EPSDT administration; and~~

~~(G) Activities in connection with "lock in" provisions under '1915(a) of the federal Social Security Act.~~

~~(4) **Institutional discharge planning.** Discharge planning is required as a condition for payment of hospital, an NF and ICF/MR services. Therefore, discharge planning cannot be billed separately as targeted case management services.~~

~~(5). **Client Outreach.** Outreach activities in which a state agency or a provider attempts to contact potential recipients of a service do not constitute case management services. The statute defines case management services as, "services which will assist individuals eligible under the plan in gaining access to needed medical, social, educational and other services". The attempt to contact individuals who may or may not be eligible for case management services does not fall under this definition.~~

~~(c) **Application for certification by the Department of Health.** Certification as an eligible provider must be requested from the Oklahoma Department of Health. This process is in addition to any other certification that is received and application will be submitted to the Oklahoma Department of Health, 1000 N.E. 10th, Oklahoma City, Oklahoma 73117-1299. The application will be reviewed and the provider notified of the determination regarding certification. The Oklahoma State Department of Health will notify OHCA of all providers certified for the provision of case management services. Notification by OHCA will be provided when an agency no longer meets the requirements for certification.~~

317:30-5-186. Coverage [REVOKED]

~~(a) **Adults.** Coverage of case management services for adults is as set forth in this subsection.~~

~~(1) Services under case management are not comparable in amount, duration and scope. The target groups for case management services are high risk pregnant women. A standard medical risk assessment (POPRAS III) will be used to identify high risk pregnant women. To be eligible for case management services, the pregnant woman must be identified as high risk on at least two areas of the risk assessment.~~

~~(2) Case management is a set of interrelated activities under which responsibility for locating, coordinating, and monitoring appropriate services for an individual rests with a specific person within the case management agency. The purpose of case management services for high risk pregnant women is to:~~

~~(A) assist high risk pregnant women eligible for Medicaid to gain access to needed medical, social, educational and other services;~~

~~(B) reduce low birth weight infants and infant mortality or morbidity;~~

~~(C) encourage the use of cost effective medical care by referrals to appropriate providers; and~~

~~(D) discourage over utilization or duplication of costly services.~~

~~(3) Case management services will provide necessary coordination with providers of non-medical services, such as nutrition, psychosocial or health education programs, when services provided by these entities are needed. The case manager will coordinate these services with needed medical services.~~

~~(4) The set of interrelated activities are as follows:~~

~~(A) Evaluation of the client's individual situation to determine the need for case management due to known medical or other medically related risk factors. The case manager must:~~

~~(i) establish that the pregnant woman is at risk;~~

~~(ii) explain case management services to the woman;~~

~~(iii) determine whether case management service is wanted;~~

~~(iv) whether the particular case management agency is wanted; and~~

~~(v) discontinue case management services when the woman is no longer at risk.~~

~~(B) Completion of a needs assessment which is the process by which the case manager identifies the service needs of the pregnant woman in order to assist in gaining access to needed services, such as psychosocial, nutritional, medical and educational.~~

~~(C) Development and implementation of an individualized plan of care to meet the service needs of the client. A plan of care is needed by the case manager to:~~

~~(i) Determine how to assist in gaining access to needed services;~~

~~(ii) Keep track of important activities over the course of time; and,~~

~~(iii) Know if the events that did occur met the goals as stated in the plan of care.~~

~~(D) Coordination of delivery of services when multiple providers and/or programs are involved to reduce travel and multiple appointments as much as possible by careful scheduling.~~

~~(E) Plan with client to assure that transportation to needed medical services is available.~~

~~(F) Assistance in locating providers and/or programs and making referrals to the providers and/or programs that can meet the service needs.~~

~~(G) Follow up to ensure that services are received and are adequate to meet the client's needs.~~

~~(b) **Children.** Coverage of case management services for children are the same as for adults as set forth in subsection (a) of this Section.~~

~~(c) **Individuals Eligible for Part B of Medicare.** Case management services provided to Medicare eligible recipients should be filed directly with the fiscal agent.~~

317:30-5-187. Payment rates [REVOKED]

~~Reimbursement will be made for one case management service per day provided during the pre and postnatal period. Case management services are limited to seven services per pregnancy.~~

317:30-5-188. Documentation of records [REVOKED]

~~All services rendered must be reflected by documentation in the records to include:~~

~~(1) date of service;~~

~~(2) name of recipient;~~

~~(3) name of provider agency and person providing the services;~~

~~(4) units of service or increments of a unit with the beginning and ending times; and~~

~~(5) place of service.~~

PART 14. TARGETED CASE MANAGEMENT SERVICES FOR FIRST TIME MOTHERS AND THEIR INFANTS/CHILDREN [REVOKED]

317:30-5-190. Eligible providers and services [REVOKED]

~~(a) **Providers.** Services are provided by case management agencies established for the purpose of providing case management services. Such agency must be certified as a qualified provider by the Oklahoma State Department of Health (OSDH).~~

~~(1) Individuals providing case management services must be licensed Registered Nurses, be certified by the OSDH as having completed the initial phase of training for case management services for first time mothers and their infants/children, and be enrolled for any subsequent phases of required training. Targeted case managers for first time mothers and their infants/children must possess knowledge of:~~

~~(A) case management methods, principles and techniques;~~

~~(B) types of providers and services available for this population;~~

~~(C) interviewing principles and techniques;~~

~~(D) counseling principles and techniques;~~

~~(E) child development;~~

~~(F) the pregnancy cycle, including the pre-natal and post-partum periods; and~~

~~(G) cultural differences which impact pregnancy and child care.~~

~~(2) Targeted case managers for first time mothers and their infants/children must possess skills in:~~

~~(A) managing a caseload;~~

~~(B) making decisions relating services provided to the target group;~~

~~(C) communicating effectively;~~

~~(D) problem-solving; and~~

~~(E) coordinating with providers and agencies.~~

~~(3) Case managers must work with an agency in which community based facility and institutional linkages affecting the target group exist. The agency must demonstrate that their staff has experience working with the target group. The agency must comply with governing and program management standards set by the OSDH, the certification agency. The agency must have the capacity to perform the case management function identified in this paragraph. The agency must demonstrate its capacity to deliver case management services in terms of:~~

~~(A) qualified case management staff to serve the target group.~~

~~(B) adequate administrative capacity to fulfill state and federal requirements.~~

~~(C) maintenance of programmatic and financial records. Program records must show that the agency is able to develop and maintain assessment records. The financial records must include development of a management system which tracks costs associated with worker activities in a capacity which will fulfill State and federal requirements.~~

~~(D) rendering services without regard to the client's ability to pay.~~

~~(E) compliance with applicable federal and state regulations, as set forth in interagency contractual agreements.~~

~~(F) collection and submittal of data according to the OSDH cost reporting process that is used to determine the average cost on which the fee is based.~~

~~(4) Provision of case management services must not restrict an individual's free choice of providers. Eligible recipients must have free choice of providers of case management as well as providers of other medical care under the plan.~~

~~(b) **Case management services.** Case management services can not duplicate other services to public agencies or private entities under other program activities for this same purpose for which payment is made under Medicaid.~~

~~(1) **Other Medicaid services.** When assessment of an individual's need for services includes a physical or psychological examination or evaluation, the provider bills for the examination or evaluation under the appropriate medical service category. Referral for such services may be considered a component of case management services, but the actual provision of the service does not constitute case management.~~

~~(2) **Referral for treatment.** When an assessment indicates the need for medical treatment, referral or arrangements for such treatment may be included as case management services, but the actual treatment may not be so considered.~~

~~(3) **Administrative activities.** Case management administrative activities associated with the items listed in (A) through (G) of this paragraph are necessary for the proper and efficient administration of the State Plan and cannot be included as components of case management services:~~

~~(A) Medicaid eligibility determinations and re-determinations;~~

~~(B) Medicaid intake processing;~~

~~(C) Medicaid preadmission screening;~~

~~(D) Prior authorization for Medicaid services;~~

~~(E) Required Medicaid utilization review;~~

~~(F) EPSDT administration; and~~

~~(G) Activities in connection with "lock-in" provisions under '1915(a) of the federal Social Security Act.~~

~~(4) **Institutional discharge planning.** Discharge planning is required as a condition for payment of hospital, NF and ICF/MR services. Therefore, discharge~~

~~planning cannot be billed separately as targeted case management services.~~

~~(5) **Client outreach.** Outreach activities in which a state agency or a provider attempts to contact potential recipients of a service do not constitute case management services. Section 1915(g)(2) of the Social Security Act defines case management services as, "services which will assist individuals eligible under the plan in gaining access to needed medical, social, educational and other services". The attempt to contact individuals who may or may not be eligible for case management services does not fall under this definition.~~

~~(c) **Application for certification by the OSDH.** Certification as an eligible provider must be requested from the OSDH. This process is in addition to any other certification that is received. The application is submitted to the Maternal and Child Health Service, Oklahoma State Department of Health, 1000 N.E. 10th, Oklahoma City, Oklahoma 73117-1299. The application is reviewed and the provider notified of the determination regarding certification. The OSDH notifies OHCA of all providers certified for the provision of case management services. Notification by OHCA is provided when an agency no longer meets the requirements for certification.~~

317:30-5-191. Coverage [REVOKED]

~~(a) **Adults.** Coverage of case management services for adults is as set forth in this subsection.~~

~~(1) Services under case management are not comparable in amount, duration and scope. The target groups for case management services are first time mothers and their infants/children. A first time mother is:~~

~~(A) a woman who is expecting her first live birth, has never parented and plans on parenting this child;~~

~~(B) a woman who is expecting her first live birth, has never parented and is contemplating placing the child for adoption;~~

~~(C) a woman who has been pregnant, but has not delivered a child due to abortion or miscarriage;~~

~~(D) a woman who is expecting her first live birth, but has parented stepchildren or younger siblings;~~

~~(E) a woman who has delivered a child, but her parental rights were legally terminated within the first few months of that child's life; or~~

~~(F) a woman who has delivered a child, but the child died within the first few months of life.~~

~~(2) The pregnant woman must enter the program prior to the 28th week of gestation. Services may be provided until the infant's/child's second birthday.~~

~~(3) Case management is a set of interrelated activities under which responsibility for locating, coordinating, and monitoring appropriate services for an individual rests with a specific person within the case management agency. The purpose of case management services for first time mothers and their infants/children is to:~~

~~(A) assist first time mothers and their infants/children in gaining access to needed medical, social, educational and other services;~~

~~(B) encourage the use of appropriate medical providers; and~~

~~(C) discourage over utilization or duplication of services.~~

~~(4) Case management services must provide necessary coordination with providers of non-medical services, such as nutrition, psycho-social or health education programs, when services provided by these entities are needed. The case manager coordinates these services with needed medical services.~~

~~(5) Targeted case management does not include:~~

~~(A) Medicaid eligibility determinations and re-determinations;~~

~~(B) Medicaid intake processing;~~

~~(C) Medicaid preadmission screening for inpatient care;~~

~~(D) Prior Authorization for Medicaid services and utilization review;~~

~~(E) Medicaid outreach;~~

~~(F) Physically escorting or transporting a client to scheduled appointments or staying with a client during an appointment;~~

~~(G) Monitoring financial goals;~~

~~(H) Providing specific services such as shopping or payment of bills; or~~

~~(I) Delivering bus tickets, food stamps, money, etc.~~

~~(b) **Children.** Coverage of case management services for infants/children between the ages of birth and two years of age who are born to first time mothers is the same as for adults as set forth in subsection (a) of this Section.~~

~~(c) **Individuals eligible for Part B of Medicare.** Case management services provided to Medicare eligible recipients is filed directly with the intermediary agent.~~

317:30-5-192. Payment rates [REVOKED]

~~Reimbursement is made for one case management service per day provided during the pre and postnatal period and first two years of the infant's/child's life. Case management services are limited to five services per month.~~

317:30-5-193. Documentation of records [REVOKED]

~~All services rendered must be reflected by documentation in the records to include:~~

~~(1) date of service;~~

~~(2) name of recipient;~~

~~(3) name of provider agency and person providing the services;~~

~~(4) units of service or increments of a unit with the beginning and ending times; and~~

~~(5) place of service.~~

PART 15. CHILD HEALTH CENTERS [REVOKED]

317:30-5-195. General provisions [REVOKED]

~~Payment is made to eligible providers for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services on behalf of eligible individuals under the age of 21. Specific guidelines for the EPSDT program including the periodicity schedule are found in OAC 317:30-3-65 through 317:30-3-65.11.~~

317:30-5-196. Eligible providers [REVOKED]

~~Eligible providers are child health centers which meet the standards and criteria for Child Health Centers in Oklahoma as established by the Oklahoma State Department of Health (OSDH). The Oklahoma State Department of Health will provide to the OHCA the names of all qualified child health centers at the time of the initial qualification and at least annually thereafter. OSDH will notify OHCA when an existing center fails to meet OSHD standards and criteria. Upon notice of a newly qualified center, OHCA may enter into a Title XIX contractual arrangement with the center to provide EPSDT services.~~

317:30-5-197. Periodicity schedule [REVOKED]

~~A complete description of services to be provided at each screening interval is outlined in the periodicity schedule found at OAC 317:30-3-65.2.~~

317:30-5-198. Coverage by category [REVOKED]

~~(a) **Adults.** There is no coverage for services rendered to adults.~~

~~(b) **Individuals eligible for Part B of Medicare.** EPSDT Center services provided to Medicare eligible recipients should be billed directly to the fiscal agent.~~

~~(c) **Children.** Payment is made for compensable services rendered in eligible child health centers for the following services:~~

~~(1) **Child health screening examination.** Child health screening examination must meet guidelines found at OAC 317:30-3-65.4.~~

~~(2) **Vision and hearing screens.** Vision and hearing services are subject to their own periodicity schedules. However, age appropriate vision and hearing assessments must be performed as a part of the screening (refer to OAC 317:30-3-65.7 and 317:30-3-65.9 for specific guidelines).~~

~~(3) **Diagnosis and treatment.** When a screening indicates the need for further evaluation of an individual's health, a referral for diagnostic services are defined as those services necessary to fully evaluate defects, physical or mental illnesses or conditions discovered by the screening (refer to OAC 317:30-3-65.5 for specific guidelines).~~

~~(4) **Dental screening examination and treatment services.** The dental screening examination must meet guidelines found at OAC 317:30-3-65.4(7).~~

~~(5) **Child health encounter.** The child health encounter may include a diagnosis and treatment encounter, a follow up health encounter, or a home visit. A Child Health Encounter may include a child health history, physical examination, developmental assessment, nutrition assessment and counseling, social assessment and counseling, genetic evaluation and counseling, indicated laboratory and screening tests, screening for appropriate immunizations, health counseling and treatment of childhood illness and conditions.~~

~~(6) **Child health diagnosis encounter.** The child health diagnosis encounter consists of the following procedures:~~

~~(A) an intake process and diagnosis interview which reviews the relevant developmental, medical, genetic, psychosocial, educational, and behavioral history;~~

~~(B) clinical observations and standardized assessment procedures regarding the client's overall development including emotional, speech, language, or hearing abilities;~~

~~(C) feedback regarding evaluation results which is provided to appropriate family and/or collaterals; and~~

~~(D) development of a treatment plan.~~

~~(7) **Treatment encounter.** A treatment encounter may occur through the provision of individual, family, or group treatment services to children who are identified as having specific disorders or delays in development, emotional, or behavioral problems, or disorders of speech, language or hearing. These types of encounters are initiated following the completion of a diagnostic encounter and subsequent development of a treatment plan.~~

~~(8) **Immunization.** Immunizations will include all appropriate immunizations given in connection with a Child Health Screening Examination or Child Health Encounter.~~

~~(9) **Multidisciplinary review.** Multidisciplinary review of the treatment plan in order to determine if services should be continued, modified or terminated as evidenced by services rendered in child health and child guidance programs.~~

~~(10) **Hearing evaluation.** Hearing evaluations must meet guidelines found at OAC 317:5-675 and 317:30-5-676.~~

~~(11) **Audiometry test.** Audiometric test (Immittance [Impedance] audiometry or tympanometry) includes bilateral assessment of middle ear status and reflex studies (when appropriate) provided by a state licensed speech pathologist or audiologist who:~~

~~(A) holds a certificate of clinical competence from the American Speech and Hearing Association; or~~

~~(B) has completed the equivalent educational requirements and work experience necessary for the certificate; or~~

~~(C) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.~~

~~(12) **Ear impression (for earmold).** Ear impression (for earmold) includes taking impression of a client's ear and providing a finished earmold which is used with the client's hearing aid provided by a state licensed speech pathologist or audiologist who:~~

~~(A) holds a certificate of clinical competence from the American Speech and Hearing Association; or~~

~~(B) has completed the equivalent educational requirements and work experience necessary for the certificate; or~~

~~(C) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.~~

317:30-5-199. Periodic screening examination [REVOKED]

~~Periodic screening examinations must be provided in accordance with the periodicity schedule as described in OAC 317:30-3-65.2 following the initial screening.~~

317:30-5-201. Reporting of suspected child abuse/neglect [REVOKED]

~~Instances of child abuse and/or neglect discovered through screenings and regular examinations are to be reported in accordance with state law [refer to OAC 317:30-5-2(b)(6)].~~

PART 91. TUBERCULOSIS CLINIC SERVICES [REVOKED]

317:30-5-910. Eligible providers [REVOKED]

~~Eligible providers are qualified tuberculosis (TB) clinics certified by the Oklahoma State Department of Health (OSDH) and enrolled under a Title XIX contractual arrangement to provide Tuberculosis Clinic Services. The OSDH will furnish OHCA a list of certified clinics eligible to provide TB services.~~

317:30-5-911. Coverage by category [REVOKED]

~~(a) **Adults.** Payment is made for tuberculosis clinic services for adults pursuant to (1) - (7) of this subsection.~~

~~(1) **Nursing encounter - regular with disease.** Nursing encounter - regular with disease requires an initial intensive interview by health department personnel for gathering clinical and epidemiologic data and administration of a tuberculosis skin test.~~

~~(A) The nursing encounter in this paragraph includes:~~

~~(i) one x-ray every two months;~~

~~(ii) a monthly blood test;~~

~~(iii) one series (3 samples) of sputum tests every two months;~~

~~(iv) monitoring of side effects; and~~

~~(v) provision of medication.~~

~~(B) Notification and consultation with the Tuberculosis Control Officer must be established and maintained during the treatment regimen as required by State law.~~

~~(C) The nursing encounter in this paragraph is appropriate for a patient with the disease of tuberculosis that is drug susceptible and a treatment regimen of six to 12 months is prescribed.~~

~~(2) **Nursing encounter - multi-drug resistant with disease.** A nursing encounter - multi-drug resistant with disease requires an initial intensive interview by health department personnel for gathering clinical and epidemiologic data and administration of a tuberculosis skin test.~~

~~(A) This nursing encounter in this paragraph includes:~~

~~(i) one x-ray every two months;~~

~~(ii) a monthly blood test;~~

~~(iii) one series (3 samples) of sputum tests each month;~~

~~(iv) monitoring of side effects; and~~

~~(v) provision of medication.~~

~~(B) Notification and consultation with the Tuberculosis Control Officer must be established and maintained during the treatment regimen as required by State law.~~

~~(C) The nursing encounter in this paragraph is appropriate for a patient with the disease of tuberculosis that is multi-drug resistant and a treatment regimen of 18 to 24 months has been prescribed.~~

~~(3) **Nursing encounter - regular preventive therapy with infection.** A nursing encounter - regular preventive therapy with infection requires an initial intensive interview by health department personnel for gathering clinical and epidemiologic data and administration of a tuberculin skin test.~~

~~(A) The nursing encounter in this paragraph includes:~~

~~(i) one x-ray every three months;~~

~~(ii) four blood tests in six months;~~

~~(iii) one series (3 samples) of sputum tests;~~

~~(iv) monitoring of side effects; and~~

~~(v) provision of medication.~~

~~(B) Notification and consultation with the Tuberculosis Control Officer must be established and maintained during the treatment regimen as required by State law.~~

~~(C) The nursing encounter in this paragraph is appropriate for a patient with an infection of drug susceptible tuberculosis and a treatment regimen of 12 months has been prescribed.~~

~~(4) **Nursing encounter - multi-drug resistant preventive therapy with infection.** A nursing encounter - multi-drug resistant preventive therapy with infection requires an initial intensive interview by health department personnel for gathering clinical and epidemiologic data and administration of a tuberculin skin test.~~

~~(A) The nursing encounter in this paragraph includes:~~

~~(i) one x-ray every two months;~~

~~(ii) eight blood tests each 12 months;~~

~~(iii) two series (6 samples) of sputum tests each 12 months;~~

~~(iv) monitoring of side effects; and~~

~~(v) provision of medication.~~

~~(B) Notification and consultation with Tuberculosis Control Officer must be established and maintained during the treatment regimen as required by State law.~~

~~(C) The nursing encounter in this paragraph is appropriate for a patient with a multi-drug resistant tuberculosis infection and a treatment regimen of 12 months has been prescribed.~~

~~(5) **Nursing encounter - other.** **A nursing encounter - other requires an interview by health department personnel for gathering clinical data.** This nursing encounter may include an x-ray, blood test, sputum sample and monitoring of side effects. It does not include medication. Consultation with the Tuberculosis Control Officer may be required. This encounter may be appropriate for either a patient with a tuberculosis infection or disease if the patient is continuing to experience symptoms or on orders of a physician.~~

~~(6) **Screening encounter.** In a TB screening encounter, Health Department personnel perform tuberculin skin testing of contacts to all TB cases and suspects, high risk population groups and nursing home residents. Tuberculin skin testing is always done at least one time. For negative skin tests, a two step boosted skin test one to two weeks later will be performed and repeated three months later for contact individuals with a negative boosted skin test.~~

~~(7) **Direct Observed Therapy (DOT).** The DOT provider delivers medication to the patient and observes and records the patient's ingestion of medication. Encounters may be as frequent as three times a day, seven days a week. The DOT provider is responsible for monitoring side effects of medication and the collection of sputum samples.~~

~~(b) **Children.** Tuberculosis clinic services for children are the same as for adults.~~

~~(c) **Individuals eligible for Part B Medicare.** Tuberculosis clinic services provided to Medicare eligible recipients should be directly billed to the fiscal agent.~~

317:30-5-913. Billing [REVOKED]

~~Billing for tuberculosis clinic services is on HCFA-1500. Under Medicaid, claims must be received by OHCA within 12 months of the date of service to be eligible for payment. If the eligibility of the individual has not been determined after ten months from the date of service, a claim should be submitted in order to assure that the claim is timely filed and reimbursement can be made should the individual be determined eligible at a later date.~~

PART 93. CASE MAAGEMENT SERVICES FOR PERSONS INFECTED WITH TUBERCULOSIS [REVOKED]

317:30-5-920. Eligible providers [REVOKED]

~~Services are provided by case managers or agencies established for the purpose of providing targeted case management services for persons infected with tuberculosis (TB).~~

~~(1) Certification requirements. Targeted case managers are certified by the Oklahoma State Department of Health.~~

~~(2) Provision of case management services. Provision of case management services will not restrict an individual's free choice of providers. Eligible recipients will have free choice of providers of case management as well as providers of other medical care under the plan.~~

~~(3) Memorandum of agreement. A Memorandum of Agreement between the Oklahoma Health Care Authority and the Oklahoma Department of Health for Medicaid reimbursement for case management services must be in effect before reimbursement can be made for compensable services. The agreement outlines the contractual and subcontractual requirements for reimbursement.~~

317:30-5-921. Coverage by category [REVOKED]

~~Payment is made for case management services as set forth in this Section.~~

~~(1) **Adults.** Payment is made for services to adults as given in this paragraph.~~

~~(A) Services under case management are not comparable in amount, duration and scope. The target group for case management services are persons diagnosed as infected with TB.~~

~~(B) Services provided to assist a client's gaining access to needed medical, social, educational and other services essential to meeting basic human needs. Major components of the services include working with the client in the use of basic community resources, referral, linkage and advocacy. Case management is designed to assist individuals in accessing services and is not restrictive in nature. However, in referring a client for medical services, the case manager should be aware that the Medicaid Program is limited in scope.~~

~~(C) In order to ensure that case management services are not duplicated by other staff, case management activities will be provided in accordance with a comprehensive individualized treatment/service plan. The development of this plan includes clinical staff participation, thus ensuring that staff knows a client has a case manager.~~

~~(2) **Children.** Coverage for children is the same as for adults, with expanded coverage as provided under EPSDT.~~

~~(3) **Individuals eligible for Part B of Medicare.** Case management services provided to Medicare eligible recipients should be filed directly with the fiscal agent.~~

317:30-5-923. Reimbursement [REVOKED]

~~Reimbursement is made for case management services to TB infected persons based on 30 minute increments.~~

317:30-5-924. Documentation of records [REVOKED]

~~All case management services rendered must be reflected by documentation in the records. When billing for procedures which are reimbursed on a time frame basis, documentation should be placed in the patient's chart as to the beginning and ending times for the services claimed.~~

PART 112. PUBLIC HEALTH CLINIC SERVICES

317:30-5-1150. General

Public Health Clinic services consist of primary and preventive health care, related diagnostic services, and/or dental services. County health departments (CHDs) and City-County Health Departments (CCHDs) may participate as providers in the SoonerCare program as Public Health Clinics. The Statutory basis for their participation is pursuant to 42 CFR 431.615 (Relations with State Health and Vocational Rehabilitation Agencies and Title V Grantees), thereby implementing Sec. 1902(a)(11) and (22)(C) of the Social Security Act. The CHD Clinics are administered by the Oklahoma State Department of Health (OSDH) for the purpose of providing public health services.

317:30-5-1151. Eligible providers

To be eligible for reimbursement, a CHD or the OSDH (on behalf of the CHDs) or CCHD, must complete a provider contract with the Oklahoma Health Care Authority (OHCA). The CHD or CCHD clinic must have a licensed physician on staff or physician supervising the services. The supervising physician must be available at all times in person or by direct telecommunication for advice and assistance on patient referrals or emergencies. Clinic services must be provided in accordance with 42 CFR 440.90.

317:30-5-1152. Provider participation requirements

(a) OSDH and or/ CHD or CCHD must employ or contract the services of professional staff that are authorized within their scope of practice under state law to provide the services for which claims are submitted to the OHCA.

(b) The OSDH and CCHDs are required to submit a list of names of all practitioners who are working within the CHD and not individually enrolled with the OHCA when requested by the OHCA or it's designated agent.

317:30-5-1153. Physician

Physicians who perform services in Oklahoma, but who are not licensed in Oklahoma may provide services for the CHD/CCHD if they are commissioned medical officers of the Public Health Service or Armed Services of the United States, on active duty, and acting within the scope of their Public Health Service or military responsibilities.

317:30-5-1154. CHD/CCHD services/limitations

CHD/CCHD service limitations are:

(1) Child Guidance services (see OAC 317:30-3-65 through OAC 317:30-3-5-65.11 for specifics regarding program requirements).

(2) Dental services [OAC 317:30-3-65.4(7)].

(3) Early Periodic Screening, Diagnosis, and Treatment services (including blood lead testing and follow-up services) (see OAC 317:30-3-65 through OAC 30-3-65.11 for specific coverage).

(4) Environmental investigations.

(5) Family Planning services and Family Planning Waiver Services (see OAC 317:30-5-465 through OAC 317:30-5-467 for specific coverage and limitations).

(6) Immunizations (adult and child).

(7) Blood lead testing (see OAC 317:30-3-65.4 for specific coverage).

(8) Newborn hearing screening.

(9) Newborn metabolic screening.

(10) Maternity services (see OAC 317:30-5-22 for specific coverage).

(11) Public health nursing services.

(12) Tuberculosis case management and directly observed therapy.

(13) Laboratory services.

(14) Targeted case management.

317:30-5-1155. Immunizations

(a) Immunizations are administered in accordance with Centers for Disease Control, Advisory Committee on Immunization Practices.

(b) The Vaccines for Children (VFC) program offers free vaccines to qualified health care providers for children 18 years of age and under who are Soonercare members, American Indian or Alaska Native, uninsured, or under insured. The Oklahoma State Department of Health administers this program.

317:30-5-1156. Environmental lead investigations

Environmental inspections are provided through the Oklahoma State Department of Health (OSDH) upon notification from laboratories or providers and reimbursed through the Oklahoma SoonerCare program. The OCLPPP schedules an environmental inspection to identify the source of the lead for children who have a persistent blood lead level 15 ug/dL or greater. After the results of the environmental inspection have been received, the OHCA and OCLPPP continue case management activities until two consecutive blood lead measurements equal to or below 10 ug/dL have been achieved. A qualified investigator must be certified, accredited or granted approval by the Oklahoma Department of Environmental Quality to perform environmental lead testing.

317:30-5-1157. Newborn screening

(a) The newborn hearing screening is for the purpose of testing all newborns for hearing impairments to alleviate the adverse effects of hearing loss or speech and language development. The screening is a test or battery of tests administered

to determine the need for an in-depth hearing diagnostic evaluation. Payment for the initial screening is included in the inpatient facility payment. Follow-up screening is covered if the child has not been seen by his/her PCP/CM.

(b) The newborn metabolic screening is for the purpose of testing all newborns born in Oklahoma for disorders as determined by the OSDH Board of Health. Short-term and long-term follow-up services are provided in conjunction with the laboratory testing.

317:30-5-1158. Public health nursing services

(a) Public health nursing services must be performed at a main clinic site, satellite clinic or mobile clinic site that is open to the public, or a member's home.

(b) Clinic visits may include but are not limited to services in the following areas:

(1) health promotion and counseling;
(2) medication management;
(3) nursing assessment, treatment and diagnostic testing;
(4) home visits;
(5) nursing treatments;
(6) immunizations;
(7) administration of injectable medications;
(8) medication management and the direct observation of the intake of prescribed drugs to treat tuberculosis (TB); and
(9) case management for TB, first time mothers and their infant children, and high risk pregnant women.

317:30-5-1159. Tuberculosis

The purpose of the Tuberculosis program is to identify and treat clients with tuberculosis, insure appropriate measures are taken to prevent the occurrence and transmission of tuberculosis, analyze tuberculosis related data for program planning and evaluation, and ultimately eliminate tuberculosis in Oklahoma. Payment is made for tuberculosis clinic services pursuant to (1) - (7) of this Section.

(1) **Nursing visit - regular with disease.** Nursing visit - regular with disease requires an initial intensive interview by Health Department personnel for gathering clinical and epidemiologic data and administration of a tuberculosis skin test.

(A) The nursing visit in this paragraph includes:
(i) one x-ray every two months;
(ii) a monthly blood test;
(iii) one series (3 samples) of sputum tests every two months;
(iv) monitoring of side effects; and
(v) provision of medication.

(B) Notification and consultation with the Tuberculosis Control Officer must be established and maintained during the treatment regimen as required by State law.

(C) The nursing visit in this paragraph is appropriate for a patient with the disease of tuberculosis that is drug susceptible and a treatment regimen of six to 12 months is prescribed.

(2) **Nursing visit - multi-drug resistant with disease.** A nursing visit - multi-drug resistant with disease requires an initial intensive interview by Health Department personnel for gathering clinical and epidemiologic data and administration of a tuberculosis skin test.

(A) This nursing visit in this paragraph includes:
(i) one x-ray every two months;
(ii) a monthly blood test;
(iii) one series (3 samples) of sputum tests each month;
(iv) monitoring of side effects; and
(v) provision of medication.

(B) Notification and consultation with the Tuberculosis Control Officer must be established and maintained during the treatment regimen as required by State law.

(C) The nursing visit in this paragraph is appropriate for a patient with the disease of tuberculosis that is multi-drug resistant and a treatment regimen of 18 to 24 months has been prescribed.

(3) **Nursing visit - regular preventive therapy with infection.** A nursing visit - regular preventive therapy with infection requires an initial intensive interview by Health Department personnel for gathering clinical and epidemiologic data and administration of a tuberculin skin test.

(A) The nursing encounter in this paragraph includes:
(i) one x-ray every three months;
(ii) four blood tests in six months;
(iii) one series (3 samples) of sputum tests;
(iv) monitoring of side effects; and
(v) provision of medication.

(B) Notification and consultation with the Tuberculosis Control Officer must be established and maintained during the treatment regimen as required by State law.

(C) The nursing visit in this paragraph is appropriate for a patient with an infection of drug susceptible tuberculosis and a treatment regimen of 12 months has been prescribed.

(4) **Nursing visit - multi-drug resistant preventive therapy with infection.** A nursing visit - multi-drug resistant preventive therapy with infection requires an initial intensive interview by Health Department personnel for gathering clinical and epidemiologic data and administration of a tuberculin skin test.

(A) The nursing visit in this paragraph includes:
(i) one x-ray every two months;
(ii) eight blood tests in 12 months;
(iii) two series (6 samples) of sputum tests each 12 months;
(iv) monitoring of side effects; and
(v) provision of medication.

(B) Notification and consultation with Tuberculosis Control Officer must be established and maintained during the treatment regimen as required by State law.

(C) The nursing visit in this paragraph is appropriate for a patient with a multi-drug resistant tuberculosis infection and a treatment regimen of 12 months has been prescribed.

(5) **Nursing visit - other.** A nursing visit - other - requires an interview by Health Department personnel for gathering clinical data. This nursing visit may include an x-ray, blood test, sputum sample and monitoring of side effects. It does not include medication. Consultation with the Tuberculosis Control Officer may be required. This visit may be appropriate for either a patient with a tuberculosis infection or disease if the patient is continuing to experience symptoms or on orders of a physician.

(6) **Screening.** In a TB screening, Health Department personnel perform tuberculin skin testing of contacts to all TB cases and suspects, high risk population groups and nursing home residents. Tuberculin skin testing is always done at least one time. For negative skin tests, a two-step boosted skin test one to two weeks later will be performed and repeated three months later for contact individuals with a negative boosted skin test.

(7) **Direct Observed Therapy (DOT).** The DOT provider delivers medication to the patient and observes and records the patient's ingestion of medication. Visits may be as frequent as three times a day, seven days a week. The DOT provider is responsible for monitoring side effects of medication and the collection of sputum samples.

317:30-5-1160. Public health nursing services for first time mothers and their infants/children (Children's First program)

(a) The purpose of the Children's First program is to make home visits to low income, first time parents teaching them about pregnancy, nutrition, fetal development and how to care for themselves and their baby after delivery. A first time mother is:

(1) a woman who is expecting her first live birth, has never parented and plans on parenting this child;

(2) a woman who is expecting her first live birth, has never parented and is contemplating placing the child for adoption;

(3) a woman who has been pregnant, but has not delivered a child due to abortion or miscarriage;

(4) a woman who is expecting her first live birth, but has parented stepchildren or younger siblings;

(5) a woman who has delivered a child, but her parental rights were legally terminated within the first few months of that child's life; or

(6) a woman who has delivered a child, but the child died within the first few months of life.

(b) The pregnant woman must enter the program prior to the 28th week of gestation. Services may be provided until the infant's/child's second birthday.

(c) Reimbursement is limited to one nursing service per day provided during the pre and postnatal period of the first time mother and for the first two years of the infant's/child's life. Public health nurse clinic services are limited to five services per month per eligible member/child.

317:30-5-1161. Targeted case management

(a) Case management is a set of interrelated activities under which responsibility for locating, coordinating and monitoring appropriate services for an individual rests with a specific person within the case management agency. Services under case management are not comparable in amount duration and scope.

(b) Case management is designed to assist a individual in gaining access to needed medical, social, educational and other services essential to meeting basic human needs, and is not restrictive in nature.

(c) Major components of the services include working with the individual in the use of basic community resources, referral, linkage and advocacy.

(d) In order to ensure that case management services are not duplicated by other staff, case management activities will be provided in accordance with a comprehensive individualized treatment/service plan. The development of this plan includes clinical staff participation, thus ensuring that staff knows a client has a case manager.

(e) Case management services for first time mothers must provide necessary coordination with providers of non-medical services, such as nutrition, psycho social or health education programs, when services provided by these entities are needed. The case manager coordinates these services with needed medical services. The purpose of case management services for first time mothers and their infants/children is to:

(1) assist first time mothers and their infants/children in gaining access to needed medical, social, educational and other services;

(2) encourage the use of appropriate medical providers; and

(3) discourage over utilization or duplication of services.

(f) Targeted case management does not include:

(1) SoonerCare eligibility determinations and re-determinations;

(2) SoonerCare intake processing;

(3) SoonerCare preadmission screening for inpatient care;

(4) Prior Authorization for SoonerCare services and utilization review;

(5) SoonerCare outreach;

(6) physically escorting or transporting a member to scheduled appointments or staying with a member during an appointment;

(7) monitoring financial goals;

(8) providing specific services such as shopping or payment of bills; or

(9) delivering bus tickets, food stamps, money, etc.

[OAR Docket #07-1055; filed 5-16-07]

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

[OAR Docket #07-1042]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 12. The Oklahoma Prescription Drug Discount Program [NEW]
317:30-5-180. through 317:30-5-180.5. [NEW]
(Reference APA WF # 06-41)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Title 59 O.S., Section 353.5 et seq
DATES:
Comment period:
February 1, 2007 through March 5,2007
Public hearing:
March 5, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 15, 2007
Submitted to House:
March 15, 2007
Submitted to Senate:
March 15, 2007
Gubernatorial approval:
April 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 10, 2007
Final adoption:
May 10,2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 5. Individual Providers and Specialties
Part 12. The Oklahoma Prescription Drug Discount Program [NEW]
317:30-5-180. through 317:30-5-180.5. [NEW]
Gubernatorial approval:
January 30, 2007
Register publication:
24 Ok Reg 676
Docket number:
07-319
(Reference APA WF # 06-41
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Agency rules are issued to establish the Oklahoma Prescription Discount Drug Program under Title 59, O.S., Section 353.5, which enables Oklahomans needing medicines for which they have no coverage, to purchase prescription drugs at the lowest possible out-of-pocket cost through the OPDDP's pharmacy network. The agency has contracted with a provider to administer the program by: (1) establishing agreements with prescription drug manufacturers; (2)providing the means testing for their programs; (3) negotiating prescription drug discounts with manufacturers; (4) assisting program members in accessing appropriate manufacturer-sponsored prescription drugs; (4) utilizing Medicaid reimbursement for pharmacy networks; and (5) implementing a "one-stop" Oklahoma Prescription Drug Discount Program for uninsured Oklahomans and their families.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 12. THE OKLAHOMA PRESCRIPTION DRUG DISCOUNT PROGRAM

317:30-5-180. Purpose and general provisions

The purpose of this Part is to establish guidelines for the Oklahoma Prescription Drug Discount Program (OPDDP) under Title 59, O.S., Section 353.5 et seq. The Oklahoma Prescription Drug Discount Program (OPDDP) enables Oklahomans without prescription drug coverage to purchase prescription drugs at the lowest possible out-of-pocket cost through the OPDDP's pharmacy network. The Oklahoma Health Care Authority (OHCA) contracts with a Pharmacy Benefit Manager (PBM) to administer the program. The OPDDP does not purchase drugs.

317:30-5-180.1. Definitions

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

"Enrollment Fee" means the amount charged per individual to enroll in the OPDDP.

"Network" means a group of individual retail pharmacies that contract with the designated Pharmacy Benefit Manager to participate in the OPDDP and honor the discount offered through this program.

"Patient Assistance Programs (PAP)" means a program that some pharmaceutical companies use to offer medication assistance to low-income individuals and families. These programs typically require a doctor's consent and proof of financial status. They may also require the individual applying for their program either have no health insurance, or no prescription drug benefit through their health insurance. Each pharmaceutical company has specific eligibility requirements and application information. Neither OHCA nor the contracted PBM have any authority or responsibility for the structure of these private programs.

"Pharmacy Benefit Manager (PBM)" means the company contracted by OHCA to manage pharmacy networks, formularies, drug utilization reviews, pharmacotherapeutic outcomes, claims and/or other features of a pharmacy benefit.

"Prescription Drug" means a drug which can be dispensed only upon prescription by a health care professional authorized by his or her licensing authority and which is approved for safety and effectiveness as a prescription drug under Section 505 or 507 of the Federal Food, Drug and Cosmetic Act (52 Stat. 1040 (1938), 21 U.S.C.A., Section 301).

"Prescription Drug Coverage" means a payment or discount applied toward prescription drugs purchased by or for a consumer as part of a health insurance benefit.

317:30-5-180.2. Eligibility

In order to be eligible for the OPDDP, an individual must:

(1) be an Oklahoma resident;

(2) apply with the Pharmacy Benefit Manager (PBM);

(3) not have insurance to cover all or part of prescriptions;

(4) pay an enrollment fee when income is above 150% Federal Poverty Level (FPL); and

(5) provide verification of income to determine enrollment fee, co-pay, and eligibility for the manufacturer's PAP.

317:30-5-180.3. Services

(a) Services provided through the OPDDP include a discount negotiated by the PBM for prescription drugs. The member purchases these discounted drugs with their OPDDP drug card at a Network pharmacy.

(b) The Patient Assistance Program (PAP) Application Assistance service provides a point of contact and applications to assist qualified members in applying for free or substantially reduced prices on prescription drugs through the manufacturer's Patient Assistance Programs.

317:30-5-180.4. Fraud

Applicants should be advised that the knowing misrepresentation of income or other information constitutes fraud and could lead to prosecution and recoupment of funds expended on their behalf.

317:30-5-180.5. Pharmacy Benefit Manager

(a) The Oklahoma Health Care Authority (OHCA) will designate a PBM utilizing a competitive bidding process under state law.

(b) The designated PBM administers the OPDDP subject to administrative rules regulating the program and contract requirements placed upon the PBM.

(c) Per state law, all discounts must be passed through 100% to the member. No portion of any negotiated discount, rebate, or any other discount may be retained by the PBM to fund the OPDDP or for any other use.

[OAR Docket #07-1042; filed 5-16-07]

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

[OAR Docket #07-1060]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. Individual Providers and Specialties
Part 17. Medical Suppliers
317:30-5-211. [AMENDED]
(Reference APA WF# 06-39)

AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes

DATES:
Comment period:
February 1, 2007 through March 5,2007
Public hearing:
March 5, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 15, 2007
Submitted to House:
March 15, 2007
Submitted to Senate:
March 15, 2007
Gubernatorial approval:
April 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 10, 2007
Final adoption:
May 10,2007
Effective:
June 25, 2007

SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 5. Individual Providers and Specialties
Part 17. Medical Suppliers
317:30-5-211. [AMENDED]
Gubernatorial approval:
January 30, 2007
Register publication:
24 Ok Reg 655
Docket number:
07-323
(Reference APA WF # 06-39)

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
Rules are revised to add external breast prosthesis and support garments as benefits to women who have had a mastectomy. Women who choose not to have the more costly reconstructive surgery after a mastectomy, need external breast prosthesis and support garments to balance their body and to anchor the bra on the side of the mastectomy from riding up, which helps prevent back and neck pain and a sagging shoulder. There are also psychological benefits to having an external breast prosthesis which can restore a sense of attractiveness to a woman who might otherwise be severely depressed. Rule revisions are needed to expand coverage benefits to include external breast prosthesis and support garments to women who have had mastectomies.

CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 17. MEDICAL SUPPLIERS

317:30-5-211. Coverage for adults

(a) **Durable medical equipment, adaptive equipment, medical supplies and prosthetic devices.** Durable medical equipment, adaptive equipment, medical supplies and prosthetic devices for adults are covered as set forth in this Section.

(1) **Durable medical equipment.** The Oklahoma Health Care Authority provides coverage for durable medical equipment that meets the definition below, is prescribed by the appropriate medical provider, is medically necessary and meets the special requirements noted below.

(A) **Definition of DME.** Durable medical equipment (DME) is equipment which can withstand repeated use, is used to serve a medical purpose, is not useful to a person in the absence of an illness or injury, and is used in the most appropriate setting including the home or workplace.

(B) **Purchase of DME.** All durable medical equipment purchased with Oklahoma Medicaid funds becomes the property of the Oklahoma Health Care Authority to be used by the recipient until no longer needed.

(C) **Provision of DME.**

(i) **Rental.** Rental is the preferred method of providing medical equipment if the anticipated length of usage is less than 10 months. Except for oxygen and other respiratory equipment, rental of durable medical equipment is limited to 10 consecutive months. After rental has been paid for 10 months, the equipment becomes the property of the Oklahoma Health Care Authority to be used by the recipient until no longer needed.

(ii) **Purchase.** The purchase of durable medical equipment, not otherwise addressed in the section, is covered when the anticipated length of usage exceeds 10 months.

(D) **Prior authorization.**

(i) **Rental.** Rental of hospital beds, support surfaces, wheelchairs, continuous positive airway pressure devices and lifts require prior authorization initially and again before extending beyond five months of rental.

(ii) **Purchase.** DME with a fee schedule price of $500 or more requires prior authorization. DME with a fee schedule price less than $500 does not require prior authorization. An invoice or manufacturers quote may be required for pricing.

(iii) **Bath and toilet aids.** Bath and toilet aids, including commode chairs, sitz baths, and handrails require prior authorization. For bath and toilet aids to be medically necessary, patients must be confined to the bed or room, without indoor bathroom facilities, or unable to climb or descend the stairs necessary to reach the bathrooms of their homes. For a sitz bath to be medically necessary, the patient must have an infection or injury of the perineal area.

(E) **Requirement for Certificate of Medical Necessity.** For certain items of DME, a Certificate of Medical Necessity is required and should be submitted along with the request for prior authorization. These items are:

(i) hospital beds,
(ii) support surfaces,
(iii) wheelchairs,
(iv) continuous positive airway pressure devices, (BIPAP & CPAP)
(v) lift devices,
(vi) lymphedema pumps,
(vii) external infusion pumps, and
(viii) osteogensis stimulators.

(2) **Adaptive equipment for ICF/MR residents.** Payment is made for certain adaptive equipment, for persons residing in private Intermediate Care Facilities for the Mentally Retarded (ICF/MR). Adaptive equipment is defined as medically necessary equipment (equipment, appliances and prosthetic devices) required because of physical disabilities. To be covered, adaptive equipment must be unique, individualized or personalized to a specific individual resident. This would include modified equipment or devices to assist in ambulation. Standard wheelchairs, walkers, eyeglasses, etc. would not be considered adaptive equipment. All adaptive equipment must be prescribed by a physician, and prior authorization is required.

(3) **Supplies.** The Oklahoma Health Care Authority provides coverage for supplies that meet the definition below, are prescribed by the appropriate medical provider, are medically necessary and meet the special requirements noted below. Coverage is excluded for the items listed below:

(A) **Definition of supplies.** Medical supplies are defined as those disposable items which are used for the care and treatment of a medical condition.

(B) **Items not covered.** Items not covered include but are not limited to:

(i) diapers,
(ii) underpads,
(iii) medicine cups,
(iv) eating utensils, and
(v) personal comfort items.

(C) **Medical supplies for nursing facility patients.** For patients residing in nursing facilities, separate payment is not made for supplies which are normally considered to be furnished as part of nursing care. Payment can be made separately to a supplier, however, for the following items for patients who reside in nursing facilities:

(i) oxygen
(ii) catheters and catheter accessories
(iii) intravenous feeding supplies (see prosthetic devices/hyperalimentation for coverage of food supplements)
(iv) colostomy and urostomy bags and accessories
(v) tracheotomy supplies~~.~~

(vi) external breast prostheses and support accessories.

(D) **Special requirements.**

(i) **Intravenous therapy.** Supplies for intravenous therapy are covered. Drugs for IV therapy are covered only as specified on the Vendor Drug program.

(ii) **Diabetic supplies.** Payment is made for the purchase of one glucometer, one spring loaded lancet device, and three replacement batteries per year. In addition, payment will be made for a maximum of 100 glucose test strips and 100 lancets per month. Diabetic supplies in excess of these parameters must be prior authorized.

(4) **Prosthetic devices.** Coverage is provided for prosthetic devices prescribed by an appropriate medical provider as conditioned in this paragraph.

(A) **Catheters.** Payment is made for permanent indwelling catheters, male external catheters, drain bags and irrigation trays. Payment is also made for single use self catheters when the patient has a history of urinary tract infections. The prescription from the attending physician indicates that such documentation is available in the patient's medical record.

(B) **Nerve stimulators.** Payment is made for rental, not to exceed the purchase price, for transcutaneous nerve stimulators, implanted peripheral nerve stimulators, and neuromuscular stimulators. After rental has been paid for 10 months, the equipment becomes the property of the Oklahoma Health Care Authority to be used by the recipient until no longer needed.

(C) **Tracheotomy supplies.** Tracheotomy supplies are covered.

(D) **Home dialysis.** Equipment and supplies are covered for patients receiving home dialysis treatments.

(E) **Colostomy and urostomy supplies.** Payment is made for colostomy and urostomy bags and accessories.

(F) **Prosthetic devices inserted during surgery.** Payment is made for prosthetic devices inserted during the course of surgery when the prosthetic devices are not covered as a part of the inpatient hospital level of care per diem payment.

(G) **Breast Prosthesis, bras, and prosthetic garments.**

(i) Payment is made for:

(I) one prosthetic garment with mastectomy form every 12 months for use in the post-operative period prior to a permanent breast prosthesis or as an alternative to a mastectomy bra and breast prosthesis;

(II) two mastectomy bras per year; and

(III) one silicone or equal breast prosthetic per side every 24 months; or

(IV) one foam prosthetic per side every six months.

(ii) Payment is not made for both a silicone and a foam prosthetic in the same 12 month period.

(iii) Breast prostheses, bras, and prosthetic garments must be purchased from a Board Certified Mastectomy Fitter.

(iv) A breast prosthesis can be replaced if:

(I) it is lost;

(II) it is irreparably damaged (other than ordinary wear and tear); or

(III) the member's medical condition necessitates a different type of item and the physician provides a new prescription explaining the need for a different type of prosthesis.

(v) External breast prostheses are not covered once breast reconstruction is performed.

(~~G~~H) **Parenteral therapy.** Payment is made for hyperalimentation, including supplements, supplies and equipment rental, in behalf of persons having permanently inoperative internal body organ or function. Payment can also be made for the infusion pump in cases where a patient is on therapy for a paralyzed esophagus.

(~~H~~I) **Oxygen.** Coverage is provided for oxygen and oxygen supplies. Medical necessity will be determined from the results of blood gas analysis tests or oximetry tests. The PO_2 level can not exceed 59mm Hg and the arterial blood saturation can not exceed 89% at rest on room air. The tests results to document medical necessity must be within 30 days of the date of the physician's prescription.

(i) **Oxygen rental.** A monthly rental payment will be made for rental of liquid oxygen systems, gaseous oxygen systems and oxygen concentrators. The rental payment includes all contents and supplies, i.e., regulators, tubing, masks, a back-up oxygen system, etc. An additional monthly payment may be made for a portable liquid or gaseous oxygen system for ambulatory patients only. When six or more liters are required, an additional amount will be paid up to 150% of the allowable.

(ii) **Oxygen concentrators in nursing facility.** Oxygen concentrators are covered for patients residing in their home or in a nursing facility. It is expected that patients in nursing facilities requiring oxygen PRN will be serviced by oxygen kept on hand.

(iii) **Prescription for oxygen.** Prescription for oxygen services must be updated annually or any time a change in prescription occurs. All DME suppliers will be responsible for maintaining the prescription(s) of oxygen services (HCFA-484, Certificate of Medical Necessity for Oxygen) in each Medicaid recipient file. If any change in prescription occurs, the physician must complete a new HCFA-484 and this must be maintained in the recipient files by the DME supplier. The Surveillance and Utilization Review System (SURS) will conduct on going monitoring of prescriptions for

oxygen services to ensure Medicaid guidelines are followed. Recoupment will be made on any cases not meeting the requirements.

(iv) **Oxygen for Medicare eligible nursing home patients.** Oxygen supplied to Medicare eligible nursing home patients may be billed directly to the fiscal agent. It is not necessary to obtain a rejection from Medicare prior to filing.

(b) **Miscellaneous non covered items.** Miscellaneous non covered durable medical equipment, adaptive equipment, medical supplies and prosthetic devices for adults are:

(1) Sales taxes,

(2) Enteral therapy and nutritional supplies and other food supplements, and

(3) Electro-spinal orthosis system (ESO).

(c) **Prior authorization.**

(1) Prosthetic devices, except for cataract lenses, require prior authorization.

(2) Total parenteral therapy is considered a prosthetic device and requires prior authorization. The request for prior authorization must include a fully completed Certificate of Medical Necessity, Form HCFA-852, including information from the attending physician regarding the patient's medical condition that necessitates the hyperalimentation and the expected length of treatment.

(3) The purchase of any oxygen delivery system requires prior authorization.

(d) **Requirement for Certificate of Medical Necessity.**

(1) The medical supplier must have a fully completed Certificate of Medical Necessity, Form ~~HCFA 848~~ HCFA 484, on file for certain prosthetic items including Parenteral Therapy and Transcutaneous Electric Nerve Stimulators (TENS).

(2) The medical supplier must have a fully completed current Certificate of Medical Necessity, Form HCFA 484, on file to support the claims for oxygen or oxygen supplies to establish whether coverage criteria are met and to ensure that the oxygen services provided are consistent with the physician's prescription (refer to instructions from Palmetto Government Benefits Administration, the Oklahoma Medicare Carrier, for further requirements for completion of the HCFA-484).

(3) The HCFA-484 must be completed and signed by the physician prior to submitting the initial claim. When a physician prescription for oxygen expires, a HCFA-484, including retesting, must be completed by the physician prior to the submission of claims. The medical and prescription information on HCFA-484 can be completed only by the attending physician or entered on the form from information in this patient's records by an employee of the physician for the physician's review and signature. In situations where the physician has prescribed oxygen over the phone, it is acceptable to have a cover letter containing the same information as the HCFA-484, stating the physician's orders, as long as the HCFA-484 has been signed by the physician or as set out above.

[OAR Docket #07-1060; filed 5-16-07]

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

[OAR Docket #07-1054]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 31. Room and Board Providers
317:30-5-321. [AMENDED]
317:30-5-322. [REVOKED]
317:30-5-323. [REVOKED]
(Reference APA WF # 06-58)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.170
DATES:
Comment period:
February 1, 2007 through March 5,2007
Public hearing:
March 5, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 15, 2007
Submitted to House:
March 15, 2007
Submitted to Senate:
March 15, 2007
Gubernatorial approval:
April 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 10, 2007
Final adoption:
May 10,2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Room and Board Providers rules are revised to delete procedure codes, allowable amounts and obsolete form numbers. The deletions of procedure codes and allowable amounts will allow future rate adjustments without revisions to rules. Revisions are needed to remove procedure codes and allowable amounts for escort and lodging expenses.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 31. ROOM AND BOARD PROVIDERS

317:30-5-321. Coverage by category

Payment is made to Room and Board Providers as set forth in this Section.

(1) **Adults.** Payment is made to Room and Board Providers for room and board ~~for~~ of an eligible adult ~~individuals~~ and an escort, if necessary, when authorized by OHCA. Room and Board is authorized by ~~ABCDM-CC-DI-52~~, Room and Board Order form, for Adults~~,~~ and Children~~, and Individuals eligible for Vocational Rehabilitation~~. A copy of the authorization must be attached to each claim along with the dates of stay and signature of authorized escort.

(2) **Children.** Coverage for children is the same as for adults ~~and as authorized on ABCDM-CC-DI-52~~.

(A) Services, deemed medically necessary and allowable under Federal Medicaid regulations, may be covered by the EPSDT/OHCA Child Health program even though the services may not be part of the OHCA SoonerCare program. Such services must be prior authorized.

(B) Federal Medicaid regulations also require the State to make the determination as to whether the service is medically necessary and do not require the provision of any items or services that the State determines are not safe and effective or which are considered experimental.

317:30-5-322. Procedure codes and allowable amounts [REVOKED]

~~The following codes should be used on all claims by Room and Board Providers:~~

~~(1) Procedure Code: A0180, Description: Room/Recipient, Allowable: $20.00.~~

~~(2) Procedure Code: A0200, Description: Room/Escort, Allowable: $20.00.~~

~~(3) Procedure Code: A0190, Description: Meals/Recipient, Allowable: $ 9.75.~~

~~(4) Procedure Code: A0210, Description: Meals/Escort, Allowable: $9.75.~~

317:30-5-323. Claim form [REVOKED]

~~The claim form for Room and Board providers is HCFA-1500.~~

[OAR Docket #07-1054; filed 5-16-07]

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

[OAR Docket #07-1056]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 37. Advanced Practice Nurse
317:30-5-375. [AMENDED]
(Reference APA WF # 06-62)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
DATES:
Comment period:
February 1, 2007 through March 5,2007
Public hearing:
March 5, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 15, 2007
Submitted to House:
March 15, 2007
Submitted to Senate:
March 15, 2007
Gubernatorial approval:
April 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 10, 2007
Final adoption:
May 10,2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Advanced Practice Nurse rules are revised to correct an inaccurate reference citation to Oklahoma Board of Nursing rules. Currently, rules state that Advanced Practice Nurse services are limited to the scope of their practice as defined in 59 O.S. 567.3a and a nonsensical reference. The revision will correctly cite the proper Oklahoma Administrative Code reference for the Oklahoma Board of Nursing.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 37. ADVANCED PRACTICE NURSE

317:30-5-375. Eligible providers

The Advanced Practice Nurse must be a registered nurse in good standing with the Oklahoma Board of Nursing, and have acquired knowledge and clinical skills through the completion of a formal program of study approved by the Oklahoma Board of Nursing Registration and have obtained professional certification through the appropriate National Board recognized by the Oklahoma Board of Nursing. Advanced Practice Nurse services are limited to the scope of their practice as defined in 59 O.S. 567.3a and corresponding rules and regulations ~~subchapter 15,485; 10-15-1 thru 485-10-16-9 of Oklahoma Nursing Practice Act~~ at OAC 485:10-5-1 through 10-16-9. Rules regarding Nurse Midwives are referenced in OAC 317:30-5-225. Advanced Practice Nurses who practice in states other than Oklahoma must be appropriately licensed in the state in which they practice. In addition, all providers must have a current contract on file with the Oklahoma Health Care Authority.

[OAR Docket #07-1056; filed 5-16-07]

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

[OAR Docket #07-1043]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 79. Dentists
317:30-5-695. [AMENDED]
317:30-5-696. [AMENDED]
317:30-5-696.1. [NEW]
317:30-5-698. [AMENDED]
(Reference APA WF # 06-42)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.50
DATES:
Comment period:
February 1, 2007 through March 5,2007
Public hearing:
March 5, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 15, 2007
Submitted to House:
March 15, 2007
Submitted to Senate:
March 15, 2007
Gubernatorial approval:
April 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 10, 2007
Final adoption:
May 10,2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 5. Individual Providers and Specialties
Part 79. Dentists
317:30-5-695. [AMENDED]
317:30-5-696. [AMENDED]
317:30-5-696.1. [NEW]
317:30-5-698. [AMENDED]
Gubernatorial approval:
January 30, 2007
Register publication:
24 Ok Reg 660
Docket number:
07-337
(Reference APA WF # 06-42)
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Dental rules are revised to: (1) to add a limited dental benefits for pregnant women; (2) expand coverage for dental sealants for children up to age 18 to guard against tooth decay; (3) eliminate the age restriction on stainless steel crowns for children with 70 percent or more of root structure; (4) to clarify language on Smoking Cessation in dental policy to agree with other sections of policy by adding dentists as providers of this benefit; (5) separate rules regarding conscious sedation into their own Section; and (6) clarify general language. Revisions add a limited dental benefit package for pregnant women as studies have indicated that treating periodontal disease during pregnancy has a positive effect on birth outcomes. Currently, the age limit for dental sealants is 14. The age limits on sealant applications is being removed as this population may not come into the program at an early age and the application of sealant is limited to teeth without any pathology. Research has confirmed that the timely application of sealants can eliminate the need for cutting into a tooth for restorative treatment. The fee for one surface restoration is more than double the fee for one surface sealant so in the long-term, the use of sealants should result in a cost savings. A sealant should last approximately 5 years which will last through most member's cavity prone years. Current policy regarding coverage for stainless steel crowns states that the child has to be age 5 **and** have 70 percent of the root structure. The revision will correct the language to read "the child has to be age 5 **or** have 70 percent of the root structure". Other revisions clarify language in dental policy regarding Smoking Cessation to comply with other areas of policy. Rules regarding conscious sedation are moved from general coverage to a unique section describing dentists requirements for providing the service. With the permanent rule, revisions regarding payment for stainless steel crowns are added as they were inadvertently omitted in the emergency rule.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 79. DENTISTS

317:30-5-695. Eligible dental providers

(a) Eligible dental providers in Oklahoma's ~~Medicaid~~ SoonerCare program are:

(1) individuals licensed as dentists under 59 Oklahoma Statutes §§ 328.21, 328.22, and 328.23 (licensed dentists, specialty dentists and out of state dentists);

(2) individuals issued permits as dental interns under 59 Oklahoma Statute § 328.26;

(3) individuals who are third and fourth year dental students at an accredited Oklahoma dental college; and

(4) any individual issued a license in another state as a dentist.

(b) All eligible providers must be in good standing with regard to their license. Any revocation or suspension status of a provider referenced in subsection (a) above renders the provider ineligible for payment or subject to recoupment under ~~Medicaid~~ SoonerCare.

(c) Eligible providers must document and sign records of services rendered in accordance with guidelines found at OAC 317:30-3-15.

317:30-5-696. Coverage by category

Payment is made for dental services as set forth in this Section.

(1) Adults.

(A) Dental coverage for adults is limited to:

(i) emergency extractions; ~~and~~

(ii) Smoking and Tobacco Use Cessation Counseling~~.~~ ; and

~~Payment is made for dental care for adults residing in private Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and who have been approved for ICF/MR level of care, similar to the scope of services available to individuals under age 21.~~

(iii) ~~Payment is also made for~~ medical and surgical services performed by a dentist, to the extent such services may be performed under State law either by a doctor of dental surgery or dental medicine, when those services would be covered if performed by a physician.

(B) Payment is made for dental care for adults residing in private Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and who have been approved for ICF/MR level of care, similar to the scope of services available to individuals under age 21.

(C) Pregnant women are covered under a limited dental benefit plan (Refer to (a)(4) of this Section).~~Payment is made to Dentists who have received appropriate formal education in conscious (moderate) sedation, deep sedation, and general anesthesia and are qualified to use these modalities in practice. Training to competency in conscious (moderate) sedation techniques may be acquired at the predoctoral, postgraduate, graduate, or continuing education level. Dentists who wish to utilize conscious (moderate) sedation are expected to successfully complete formal training which is structured in accordance with the American Dental Association's educational guidelines as well as the board of Dentistry for the State in which they practice. The knowledge and skills required for the administration of deep sedation and general anesthesia are beyond the scope of pre-doctoral and continuing education. Only dentists who have successfully completed an accredited/approved residency program in anesthesiology, for the administration of anesthetic agents will be permitted to provide and bill for this service. All anesthesia services must be provided in accordance with OAC 317:30-5-7.~~

(2) Home and community based waiver services for the mentally retarded (HCBWS). All providers participating in the HCBWS must have a separate contract with the OHCA to provide services under the HCBWS. ~~All services~~ Dental services are defined in each waiver and must be prior authorized.

(3) Children. The OHCA Dental Program provides the basic medically necessary treatment. The services listed below are compensable for ~~eligible individuals~~ members under 21 years of age without prior authorization. ALL OTHER DENTAL SERVICES MUST BE PRIOR AUTHORIZED. Anesthesia services are covered for children in the same manner as adults.

(A) Comprehensive oral evaluation. Comprehensive oral evaluation must be performed and recorded for each new patient, or established patient not seen for more than 18 months. This procedure is allowed once each 18 month period.

(B) Periodic oral evaluation. This procedure may be provided for a client of record if she or he has not been seen for more than six months.

(C) Emergency examination/limited oral evaluation. This procedure is not compensable within two months of a periodic oral examination or if the ~~client~~ member is involved in active treatment unless trauma or acute infection is the presenting complaint.

(D) Emergency extractions. This procedure is only for the relief of pain or treatment of acute infection.

(E) Oral hygiene instructions. The dentist or designated qualified dental staff shall instruct the ~~client~~ member or the responsible adult, if the child is under five years of age, in proper tooth brushing and flossing by actual demonstration. Verbal and/or written proper diet information should be discussed. This service includes a new tooth brush, disclosing tablets if available, and a small container of six or more yards of dental floss dispensed to the patient when appropriate. This service is limited to once per 12 months.

(F) Radiographs (x-rays). To be ~~Medicaid~~ SoonerCare compensable, x-rays must be determined as medically necessary by the dentist, of diagnostic quality and taken within the allowable limits of the program. The referring dentist is responsible for providing properly identified x-rays of acceptable quality with a referral, if that provider chooses to expose and submit for reimbursement prior to referral.

(G) Dental sealants. Tooth numbers 2 ~~through 5, 12 through~~ 3,14, 15, 18,19,30 and ~~through 21, and 28 through~~ 31 must be caries free on all surfaces to be eligible for this service. This service is available through 18 and is compensable only once per lifetime. Replacement of lost sealants will be at no cost

to the OHCA. ~~Tooth numbers 03, 14, 19, and 30 are eligible for sealants from eruptions through eight years of age. Tooth numbers 02, 15, 18 and 31 are eligible for sealants from eruptions through 13 years of age. Tooth numbers 04, 05, 12, 13, 20, 21, 28, and 29 from eruptions through 14 years of age.~~

(H) Dental prophylaxis. This procedure is provided once every 184 days including topical application of fluoride.

(I) Composite restorations.

(i) This procedure is compensable for primary incisors as follows:

(I) tooth numbers O and P to age 4.0 years;

(II) tooth numbers E and F to age 6.0 years;

(III) tooth numbers N and Q to 5.0 years; and

(IV) tooth numbers D and G to 6.0 years.

(ii) The procedure is also allowed for use in all vital and successfully treated non-vital permanent anterior teeth.

(iii) Class I and II composite restorations are allowed in posterior teeth; however, the OHCA has certain restrictions for the use of this restorative material. (See OAC 317:30-5-699).

(J) Amalgam. Amalgam restorations are allowed in:

(i) posterior primary teeth when:

(I) 50 percent or more root structure is remaining;

(II) the teeth have no mobility; or

(III) the procedure is provided more than 12 months prior to normal exfoliation.

(ii) any permanent tooth, determined as medically necessary by the treating dentist.

(K) Stainless steel crowns. The use of stainless steel crowns is allowed as follows:

(i) Stainless steel crowns are allowed if~~;~~ :

(I) the child is five years of age or under; ~~and~~

(II) 70 percent or more of the root structure remains; or ~~when the tooth would not exfoliate within the next 12 months~~

(III) the procedure is provided more than 12 months prior to normal exfoliation.

(ii) Stainless steel crowns are treatment of choice for primary teeth with pulpotomies or pulpectomies, if the above conditions exist, and for primary teeth where three surfaces of extensive decay exist or where cuspal occlusion is lost due to decay or accident.

(iii) Stainless steel crowns are the treatment of choice on posterior permanent teeth that have completed endodontic therapy, if more than three surfaces or cuspal occlusion are lost due to decay prior to age 16.0 years.

(iv) Preoperative periapical x-rays must be available for review, if requested.

(L) Pulpotomies and pulpectomies.

(i) Therapeutic pulpotomies are allowable for molars and teeth numbers listed below. Pre and post operative periapical x-rays must be available for review, if requested.

(I) Primary molars having at least 70 percent or more of their root structure remaining or more than 12 months prior to normal exfoliation;

(II) Tooth numbers O and P before age 5.0 years;

(III) Tooth numbers E and F before 6.0 years;

(IV) Tooth numbers N and Q before 5.0 years; and

(V) Tooth numbers D and G before 6.0 years.

(ii) Pulpectomies are allowed for primary teeth if exfoliation of the teeth is not expected to occur for at least one year or if 70 percent or more of root structure is remaining.

(M) Anterior root canals. Payment is made for the services provided in accordance with the following:

(i) This procedure is done for permanent teeth when there are not other missing anterior teeth in the same arch requiring replacement.

(ii) Acceptable ADA filling materials must be used.

(iii) Preauthorization is required if the ~~patient's~~ member's treatment plan involves more than four anterior root canals.

(iv) Teeth with less than 50 percent of clinical crown should not be treatment-planned for root canal therapy.

(v) Pre and post operative periapical x-rays must be available for review.

(vi) Pulpotomy may be performed for the relief of pain while waiting for the decision from the OHCA.

(vii) Providers are responsible for any follow-up treatment required due to a failed root canal therapy for 24 month post completion.

(viii) Endodontic treated teeth should be restored to limited occlusal function and all contours should be replaced. These teeth are not automatically approved for any type of crown.

(ix) If there are three or more missing teeth in the arch that requires replacement, root therapy will not be allowed.

(N) Space maintainers. Certain limitations apply with regard to this procedure. Providers are responsible for recementation of any maintainer placed by them for six months post insertion.

(i) Band and loop type space maintenance. This procedure must be provided in accordance with the following guidelines:

(I) Procedure. This procedure is compensable for all primary molars where permanent successor is missing or where succedaneous tooth is more than 5mm below the crest of the alveolar ridge or where the successor tooth would not normally erupt in the next 12 months.

(II) First primary molars are not allowed space maintenance ~~after age eight years~~ if the second primary and first permanent molars are present and in cuspal interlocking occlusion regardless of the presence or absence of normal relationship.

(III) If there are missing teeth bilaterally in the same arch, under the above guidelines, bilateral space maintainer is the treatment of choice.

(IV) The teeth numbers shown on the claim should be those of the missing teeth.

(V) Post operative bitewing x-rays must be available for review.

(ii) Lingual arch bar. Payment is made for the services provided in accordance with the following:

(I) Lingual arch bar is used where multiple missing teeth exist in the same arch.

(II) The requirements are the same as for band and loop space maintainer.

(III) Multiple missing upper anterior primary incisors may be replaced with the appliance to age 6.0 years to prevent abnormal swallowing habits.

(IV) Pre and post operative x-rays must be available.

(iii) Interim partial dentures. These dentures are used for ~~single or multiple~~ an anterior permanent tooth replacement or if the member is missing three or more posterior teeth to age 16.0 years.

(O) Analgesia. Use of nitrous oxide is compensable for four occurrences per year.

(P) Pulp caps (direct). ADA accepted CAOH containing material must be used.

(Q) Sedative treatment. ADA acceptable materials must be used for temporary restoration. This restoration is used for very deep cavities to allow the tooth an adequate chance to heal itself or an attempt to prevent the need for root canal therapy. This restoration, when properly used, is intended to relieve pain and may include a direct or indirect pulp cap. The combination of a pulp cap and sedative fill is the only restorative procedure allowed per tooth per day. Subsequent restoration of the tooth is allowed after a minimum of 30 days.

(R) History and physical. Payment is made for services for the purpose of admitting a patient to a hospital for dental treatment.

(S) Local anesthesia. This procedure is included in the fee for all services.

(T) Smoking and Tobacco Use Cessation Counseling. Smoking and Tobacco Use Cessation Counseling is covered when performed utilizing the five intervention steps of asking the patient to describe his/her smoking, advising the patient to quit, assessing the willingness of the patient to quit, assisting with referrals and ~~plant~~ plans to quit, and arranging for follow-up. Up to eight sessions are covered per year per individual who has documented tobacco use. It is a covered service when provided by ~~a Dentist~~ physicians, physician assistants, advanced practice nurses, nurse midwives, and Oklahoma State Health Department and FQHC nursing staff in addition to other appropriate services rendered. Chart documentation must include a separate note, separate signature, and the patient specific information addressed in the five steps and the time spent by the practitioner performing the counseling. Anything under three minutes is considered part of a routine visit.

(4) Pregnant Women. Dental coverage for this special population is provided regardless of age.

(A) Proof of pregnancy is required (Refer to OAC 317:35-5-6).

(B) Coverage is limited to a time period beginning at the diagnosis of pregnancy and ending upon 60 days post partum.

(C) In addition to dental services for adults, other services available include:

(i) Comprehensive oral evaluation must be performed and recorded for each new client, or established client not seen for more than 24 months;

(ii) Periodic oral evaluation as in OAC 317:30-5-696 (a)(3)(B);

(iii) Emergency examinations/limited oral evaluation. This procedure is not allowed within two months of an oral examination by the same provider for the same patient, or if the patient is under active treatment;

(iv) Oral hygiene instructions as in OAC 317:30-5-696 (a)(3)(E);

(v) Radiographs as in OAC 317:30-5-696 (a)(3)(F);

(vi) Dental prophylaxis as in OAC 317:30-5-696 (a)(3)(H);

(vii) Composite restorations:

(I) Any permanent tooth that has an opened lesion that is a food trap will be deemed medically necessary for this program and will be allowed for all anterior teeth.

(II) Class I posterior composite resin restorations are allowed in posterior teeth that qualify;

(viii) Amalgam. Any permanent tooth that has an opened lesion that is a food trap will be deemed as medically necessary and will be allowed; and

(ix) Analgesia. Use of nitrous oxide is compensable for four occurrences.

(D) Services requiring prior authorization (Refer to OAC 317:30-5-698).

(E) Periodontal scaling and root planing. Required that 50% or more of six point measurements be 4 millimeters or greater. This procedure is designed for the removal of cementum and dentin that is rough, and/or permeated by calculus or contaminated with toxins and microorganism and requires anesthesia and some soft tissue removal.

(~~4~~5) Individuals eligible for Part B of Medicare.

(A) Payment is made utilizing the Medicaid allowable for comparable services. This is an all inclusive payment on assigned claims.

(B) Services which have been denied by Medicare as noncompensable should be filed directly with this Authority with a copy of the Medicare EOB attached.

317:30-5-696.1. Conscious Sedation

Payment is made for medical and surgical services performed by a dentist to the extent such services may be performed under State law either by a doctor of dental surgery or dental medicine, when those services would be covered if performed by a physician. Payment is made to Dentists who have received appropriate formal education in conscious (moderate) sedation, deep sedation, and general anesthesia and are qualified to use these modalities in practice.

(1) Training to competency in conscious (moderate) sedation techniques may be acquired at the predoctoral, postgraduate, graduate, or continuing education level. Dentists who wish to utilize conscious (moderate) sedation are expected to successfully complete formal training which is structured in accordance with the American Dental Association's educational guidelines as well as the board of Dentistry for the State in which they practice.

(2) The knowledge and skills required for the administration of deep sedation and general anesthesia are beyond the scope of pre-doctoral and continuing education. Only dentists who have successfully completed an accredited/approved residency program in anesthesiology, for the administration of anesthetic agents will be permitted to provide and bill for this service.

(3) All anesthesia services must be provided in accordance with OAC 317:30-5-7.

317:30-5-698. Services requiring prior authorization

(a) Providers must have prior authorization for certain specified services before delivery of that service, unless the service is provided on an emergency basis. Emergency dental care is immediate service that must be provided to relieve the recipient from pain due to an acute infection, swelling, trismus or trauma. Requests for dental services requiring prior authorization must be accompanied by sufficient documentation. Study models (where indicated), x-rays, six point periodontal charting, comprehensive treatment plan and narrative may be requested. If the quality of the supporting material is such that a determination of authorization cannot be made, the material is returned to the provider. Any new documentation must be provided at the provider's expense.

(b) Requests for prior authorization are filed on the currently approved ADA form. OHCA notifies the provider on the determination of prior authorization using OHCA Prior Authorization Request Decision form. Prior authorized services must be billed exactly as they appear on the prior authorization. Payment is not made for any services provided prior to receiving authorization except for the relief of pain.

(c) Prosthodontic services provided to ~~patients~~ members who have become ineligible mid-treatment are covered if the ~~client~~ member was eligible for ~~Medicaid~~ SoonerCare on the date the final impressions were made.

(d) Listed below are examples of services requiring prior authorization for ~~individuals~~ members under 21 and eligible ICF/MR residents. Minimum required records to be submitted with each request are right and left mounted bitewing x-rays and periapical films of tooth/teeth involved or the edentulous areas if not visible in the bitewings. X-rays must be mounted so that they are viewed from the front of the ~~patient~~ member. If required x-rays sent are copies, each film or print must be of good, readable quality and identified as to left and right sides. The film must clearly show the requested service area of interest. X-rays must be identified with ~~client~~ member name, date, recipient ID number, provider name, and provider number. X-rays must be placed together in an envelope and stapled to the submission form. If radiographs are not taken, provider must include in narrative sufficient information to confirm diagnosis and treatment plan.

(1) **Endodontics.** Pulpotomy may be performed for the relief of pain while waiting for the decision from the OHCA on request for endodontics.

(A) **Anterior root canals.** This procedure is for ~~patients~~ members whom, by the provider's documentation, have a treatment plan requiring more than four anterior root canals and/or posterior endodontics. Payment is made for services provided in accordance with the following:

(i) Permanent teeth numbered 6, 7, 8, 9, 10, 11, 22, 23, 24, 25, 26 and 27 are eligible for therapy if there are not other missing teeth in the same arch requiring replacement, unless numbers 6. 11. 22, or 27 are abutments for prosthesis.

(ii) Accepted ADA filling must be used.

(iii) Pre and post operative periapical x-rays must be available for review.

(iv) Providers are responsible for any follow-up treatment required by a failed endodontically treated tooth within 24 months post completion.

(v) A tooth will not be approved if it appears there is not adequate natural tooth structure remaining to establish good tooth/restorative margins or if crown to root ratio is poor.

(vi) An endodontic procedure may not be approved if the tooth requires a post and core in order to present adequate structure to retain a crown.

(vii) If there are three or more missing teeth in the arch that requires replacement, root therapy will not be allowed.

(B) **Posterior endodontics.** The guidelines for this procedure are as follows:

(i) The provider should document that the client has improved oral hygiene and flossing ability in this ~~client's~~ member's records.

(ii) Teeth that would require pre-fabricated post and cores to minimally retain a crown due to lack of natural tooth structure should not be treatment planned for root canal therapy.

(iii) Pre and post operative periapical x-rays must be available for review.

(iv) Providers are responsible for any follow-up treatment required by a failed endodontically treated tooth within 24 months post completion.

(v) A tooth will not be approved if it appears there is not adequate natural tooth structure remaining to establish good tooth/restorative margins or if there is a poor crown to root ratio or weakened root furcation area.

(vi) Only ADA accepted filling materials are acceptable under the OHCA policy.

(vii) Posterior endodontic procedure is limited to a maximum of five teeth. A request may not be approved if the tooth requires a post and core in order to present adequate structure to retain a crown.

(viii) Endodontics will not be considered if:

(I) there are missing teeth in the same arch requiring replacement;

(II) an opposing tooth has super erupted;

(III) loss of tooth space is one third or greater;

(IV) opposing second molars are involved; or

(V) ~~a tooth is~~ the member has multiple teeth failing due to previous inadequate root canal therapy.

(ix) Endodontically treated teeth must be restored to limited occlusal function and all contours must be replaced. These teeth will not be approved for a crown if it appears the apex is not adequately sealed.

(x) a single failing root canal is determined not medically necessary for re-treatment.

(2) **Cast metal crowns or ceramic-based crowns.** This procedure is compensable for ~~patients~~ members who are 16 years of age or older and adults residing in private Intermediate Care Facilities for the Mentally Retarded (IF/MR) and who have been approved for IF/MR level of care. Certain criteria and limitations apply.

(A) The following conditions must exist for approval of this procedure.

(i) The tooth must be fractured or decayed to such an extent to prevent proper cuspal or incisa function.

(ii) The clinical crown is destroyed by the above elements by one-half or more.

(iii) Endodontically treated teeth must have three or more surfaces restored or lost due to carious activity to be considered.

(B) The conditions listed in (A)(I) through (A)(iii) of this paragraph should be clearly visible on the submitted x-rays when a request is made for any type of crown.

(C) Routine build-up(s) for authorized crowns are included in the fee for the crown.

(D) A crown will not be approved if adequate tooth structure does not remain to establish cleansable margins, poor crown to root ratio, or the tooth appears to retain insufficient amounts of natural tooth structure. Cast ~~down~~ dowel cores are not allowed.

(E) Preformed post(s) and core build-up(s) are not routinely provided with crowns for endodontically treated teeth.

(F) Ceramic-metal based crowns will be considered only for tooth numbers 4 through 13 and 21 through 28.

(G) Full cast metal crowns are treatment of choice for all posterior teeth.

(H) Provider is responsible for replacement or repair of cast crowns for 48 months post insertion.

(3) **Cast frame partial dentures.** This appliance is the treatment of choice for replacement of three or more missing permanent teeth in the same arch for ~~individuals~~ members 16 through 20 years of age. Provider must indicate tooth number to be replaced and teeth to be clasped.

(4) **Acrylic partial.** This appliance is the treatment of choice for replacement of missing anterior permanent teeth or three or more missing teeth in the same arch for ~~children~~ members 12 through 16 years of age and adults residing in private Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and who have been approved for ICF/MR level of care. Provider must indicate tooth numbers to be replaced and teeth to be clasped. This appliance includes all necessary clasps and rests.

(5) **Fixed cast non-precious metal or porcelain/metal bridges.** Only ~~patients~~ members 17 through 20 years of age where the bite relationship precludes the use of an acrylic or cast frame partial denture are considered. Study models with narrative are required to substantiate need for fixed bridge(s). ~~Client~~ Members must have excellent oral hygiene documented in the requesting provider's records.

(6) Periodontal scaling and root planing. This procedure requires that 50% or more of six point measurements be four millimeters or greater. This procedure is allowed on ~~patients~~ members 12 to 20 and requires anesthesia and some soft tissue removal occurs. Tooth planing is designed for the removal of cementum and dentin that is rough, and/or permeated by calculus or contaminated with toxins and microorganism.

(7) **Additional prophylaxis.** The OHCA recognizes that certain physical conditions require more than two prophylaxes. The following conditions may qualify a ~~patient~~ member for one additional prophylaxis per year:

(A) dilantin hyperplasia;
(B) cerebral palsy;
(C) mental retardation;
(D) juvenile periodontitis.

[OAR Docket #07-1043; filed 5-16-07]

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

[OAR Docket #07-1051]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 108. Nutrition Services
317:30-5-1076. [AMENDED]
(Reference APA WF # 06-54)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.60; 42 CFR 440.130(c)
DATES:
Comment period:
February 1, 2007 through March 5,2007
Public hearing:
March 5, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 15, 2007
Submitted to House:
March 15, 2007
Submitted to Senate:
March 15, 2007
Gubernatorial approval:
April 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 10, 2007
Final adoption:
May 10,2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 5. Individual Providers and Specialties
Part 108. Nutrition Services
317:30-5-1076. [AMENDED]
Gubernatorial approval:
January 30, 2007
Register publication:
24 Ok Reg 678
Docket number:
07-336
(Reference APA WF # 06-54)
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Nutrition Services rules are revised to increase the maximum hours of medically necessary nutritional counseling by a licensed registered dietician to six hours per year. Current rules provide up to two hours of nutritional counseling to individuals needing the services expressly for diagnosing, treating, preventing, or minimizing the effect of illness. However, in some circumstances such as diabetes, hyperlipidemia, artheroschlerotic vascular disease, or obesity, two hours of nutritional counseling may not provide a sufficient amount of counseling and follow-up. Increasing the maximum number of hours to six hours will allow more adequate dietary follow-up that is vital to treatment. The permanent rule is further revised to correct a reference to who may prescribe services and add a policy reference to EPSDT services for children. A sentence stipulating that services for the treatment of obesity are compensable only in instances where the obesity is a contributing factor to another illness is being restored.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 108. NUTRITION SERVICES

317:30-5-1076. Coverage by category

Payment is made for Nutritional Services as set forth in this section.

(1) **Adults.** Payment is made for ~~two~~ six hours of medically necessary nutritional counseling per year by a licensed registered dietician. All services must be prescribed by a physician, physician assistant, advanced practice nurse, or nurse midwife and be face to face encounters between ~~the~~ a licensed registered dietitian and the ~~client~~ member. Services must be expressly for diagnosing, treating or preventing, or minimizing the effects of illness. Nutritional services for the treatment of obesity is not covered unless there is documentation that the obesity is a contributing factor in another illness.

(2) **Children.** Coverage for children is ~~the same as adults~~ in accordance with OAC 317:30-3-47.

(3) **Home and Community Based Waiver Services for the Mentally Retarded.** All providers participating in the Home and Community Based Waiver Services for the Mentally Retarded program must have a separate contract with OHCA to provide Nutrition Services under this program. All services are specified in the individual's plan of care.

(4) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the Medicaid allowable for comparable services. Services which are not covered under Medicare should be billed directly to ~~the Medicaid Agency~~ OHCA.

[OAR Docket #07-1051; filed 5-16-07]

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

[OAR Docket #07-1046]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 9. Long Term Care Facilities
317:30-5-133.1. [AMENDED]
Part 32. SoonerRide Non-Emergency Transportation
317:30-5-326. [NEW]
317:30-5-326.1. [NEW]
317:30-5-327. [AMENDED]
317:30-5-327.1. through 317:30-5-327.9. [NEW]
(Reference APA WF # 06-45B)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
DATES:
Comment period:
February 1, 2007 through March 5,2007
Public hearing:
March 5, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 15, 2007
Submitted to House:
March 15, 2007
Submitted to Senate:
March 15, 2007
Gubernatorial approval:
April 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 10, 2007
Final adoption:
May 10,2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Rules for SoonerCare transportation and subsistence are revised to define member eligible for non-emergency transportation (NET) and the availability and access for utilization of the SoonerRide program for all NET qualified members. Rules are reorganized to be more user friendly for providers and members by adding definitions and grouping like services together.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 9. LONG TERM CARE FACILITIES

317:30-5-133.1. Routine services

(a) Nursing facility care includes routine items and services that must be provided directly or through appropriate arrangement by the facility when required by ~~Medicaid~~ SoonerCare residents. Charges for routine services may not be made to resident's personal funds or to resident family members, guardians or other parties who have responsibility for the resident. If reimbursement is available from Medicare or another public or private insurance or benefit program, those programs are billed by the facility. In the absence of other available reimbursement, the facility must provide routine services from the funds received from the regular ~~Medicaid~~ SoonerCare vendor payment and ~~Medicaid~~ SoonerCare resident's applied income, or spend down amount.

(b) The Oklahoma Health Care Authority will review the listing periodically for additions or deletions, as indicated. Routine services are patient specific and in accordance with standard medical care. Routine Services include, but are not limited to:

(l) Regular room;

(2) Dietary Services:

(A) regular diets,

(B) special diets,

(C) salt and sugar substitutes,

(D) supplemental feedings,

(E) special dietary preparations,

(F) equipment required for preparing and dispensing tube and oral feedings, and

(G) special feeding devices (furnished or arranged for);

(3) Medically related social services to attain or maintain the highest practicable physical, mental and psycho social well-being of each resident, nursing care, and activities programs (costs for a private duty nurse or sitter are not allowed);

(4) Personal services - personal laundry services for residents (does not include dry cleaning);

(5) Personal hygiene items (personal care items required to be provided does not include electrical appliances such as shavers and hair dryers, or individual personal batteries) include:

(A) shampoo, comb and brush;

(B) bath soap;

(C) disinfecting soaps or specialized cleansing agents when indicated to treat or prevent special skin problems or to fight infection;

(D) razor and/or shaving cream;

(E) nail hygiene services; and

(F) sanitary napkins, douche supplies, perineal irrigation equipment, solutions and disposable douches;

(6) Routine oral hygiene items including:

(A) toothbrushes~~,~~ ;

(B) toothpaste~~,~~ ;

(C) dental floss~~,~~ ;

(D) lemon glycerin swabs or equivalent products~~,~~ ; and

(E) denture cleaners, denture adhesives, and containers for dental prosthetic appliances such as dentures and partial dentures~~;~~.

(7) Necessary items furnished routinely as needed to all patients, e.g., water pitcher, cup and tray, towels, wash cloths, hospital gowns, emesis basin, bedpan, and urinal.

(8) The facility will furnish as needed items such as alcohol, applicators, cotton balls, tongue depressors. Also, first aid supplies including small bandages, ointments and preparations for minor cuts and abrasions, enema supplies, including disposable enemas, gauze, 4 x 4's ABD pads, surgical and micropore tape, telfa gauze, ace bandages, etc.

(9) Over the counter drugs (non-legend) not covered by the prescription drug program (PRN or routine). In general, nursing facilities are not required to provide any particular brand of non-legend drugs, only those items necessary to ensure appropriate care.

(A) If the physician orders a brand specific non-legend drug with no generic equivalent, the facility must provide the drug at no cost to the patient. If the physician orders a brand specific non-legend drug that has a generic equivalent, the facility may choose a generic equivalent, upon approval of the ordering physician;

(B) If the physician does not order a specific type or brand of non-legend drug, the facility may choose the type or brand;

(C) If the ~~recipient~~ member, family, or other responsible party (excluding nursing facility) prefers a specific type or brand of non-legend drug rather than the ones furnished by the facility, the ~~recipient~~ member, family or responsible party may be charged the difference between the cost of the brand the resident requests and the cost of the brand generally provided by the facility. (Facilities are not required to provide an unlimited variety of brands of these items and services. It is the required assessment of resident needs, not resident preferences, that will dictate the variety of products facilities need to provide);

(D) Before purchasing or charging for the preferred items, the facility must secure written authorization from the ~~recipient~~ member, family member, or responsible party indicating his or her desired preference, the date and signature of the person requesting the preferred item. The signature may not be that of an employee of the facility. The authorization is valid until rescinded by the maker of the instrument;

(10) The facility will furnish or obtain any necessary equipment to meet the needs of the patient upon physician order. Examples include: trapeze bars and overhead frames, foot and arm boards, bed rails, cradles, wheelchairs and/or geriatric chairs, foot stools, adjustable crutches, canes, walkers, bedside commode chairs, hot water bottles or heating pad, ice bags, sand bags, traction equipment, IV stands, etc.;

(11) Physician prescribed lotions, ointments, powders, medications and special dressings for the prevention and treatment of decubitus ulcers, skin tears and related conditions, when medications are not covered under the Vendor Drug Program or other third party payer;

(12) Supplies required for dispensing medications, including needles, syringes including insulin syringes, tubing for IVs, paper cups, medicine containers, etc.;

(13) Equipment and supplies required for simple tests and examinations, including scales, sphygmomanometers, stethoscopes, clinitest, acetest, dextrostix, pulse oximeters, blood glucose meters and test strips, etc.;

(14) Underpads and diapers, waterproof sheeting and pants, etc., as required for incontinence or other care.

(A) If the assessment and care planning process determines that it is medically necessary for the resident to use diapers as part of a plan to achieve proper management of incontinence, and if the resident has a current physician order for adult diapers, then the facility must provide the diapers without charge;

(B) If the resident or the family requests the use of disposable diapers and they are not prescribed or consistent with the facility's methods for incontinent care, the resident/family would be responsible for the expense;

(15) Oxygen for emergency use, or intermittent use as prescribed by the physician for medical necessity;

(16) Other physician ordered equipment to adequately care for the patient and in accordance with standard patient care, including infusion pumps and supplies, and nebulizers and supplies, etc.

(17) Dentures and Related Services. Payment for the cost of dentures and related services is included in the daily rate for routine services. The projected schedule for routine denture services must be documented on the Admission Plan of Care and on the Annual Plan of Care. The medical records must also contain documentation of steps taken to obtain the service. When the provision of denture services is medically appropriate, the nursing facility must make timely arrangements for the provision of these services by licensed dentists. In the event dentures services are not medically appropriate, the treatment plan must reflect the reason the service is not considered appropriate, i.e., the patient is unable to ingest solid nutrition, comatose, etc. When the need for dentures is identified, one set of complete dentures or partial dentures and one dental examination is considered medically appropriate every three years. One rebase and/or one reline is considered appropriate each three years. It is the responsibility of the nursing facility to ensure that the ~~client~~ member has adequate assistance in the proper care, maintenance, identification and replacement of these items. The nursing facility cannot set up payment limits which result in barriers to obtaining denture services. However, the nursing facility may restrict the providers of denture services to providers who have entered into payment arrangements with the facility. The facility may also ~~chose~~ choose to purchase a private insurance dental coverage product for each ~~Medicaid client~~ SoonerCare member. The policy must cover at a minimum all denture services included in

routine services. The ~~client~~ member cannot be expected to pay any co-payments and/or deductibles. If a difference of opinion occurs between the nursing facility, ~~client~~ member, and/or family regarding the provision of dentures services, the OHCA will be the final authority. All ~~clients~~ members and/or families must be informed of their right to appeal at the time of admission and yearly thereafter. The ~~client~~ member cannot be denied admission to a facility because of the need for denture services.

(18) Vision Services. Routine eye examinations for the purpose of medical screening or prescribing or changing glasses and the cost of glasses are included in the daily rate for routine services. This does not include follow-up or treatment of known eye disease such as diabetic retinopathy, glaucoma, conjunctivitis, corneal ulcers, iritis, etc. Treatment of known eye disease is a benefit of the patient's medical plan. The projected schedule for routine vision care must be documented on the Admission Plan of Care and on the Annual Plan of Care. The medical record must contain documentation of the steps that have been taken to access the service. When vision services are not appropriate, documentation of why vision services are not medically appropriate must be included in the treatment plan. For example, patient is comatose, unresponsive, blind, etc. Nursing Home providers may contract with individual eye care providers, providers groups or a vision plan to provide routine vision services to their ~~recipients~~ members. The ~~client~~ member cannot be expected to pay any co-payments and/or deductibles.

(A) The following minimum level of services must be included:

(i) Individuals 21 to 40 years of age are eligible for one routine eye examination and one pair of glasses every 36 months (three years).

(ii) Individuals 41 to 64 years of age are eligible for one routine eye examination and one pair of glasses every 24 months (2 years).

(iii)Individuals 65 years of age or older are eligible for one routine eye examination and one pair of glasses each 12 months (yearly).

(B) It is the responsibility of the nursing facility to ensure that the ~~client~~ member has adequate assistance in the proper care, maintenance, identification and replacement of these items. When vision services have been identified as a needed service, nursing facility staff will make timely arrangements for provision of these services by licensed ophthalmologists or optometrists. If a difference of opinion occurs between the nursing facility, ~~client~~ member, and/or family regarding the provision of vision services, the OHCA will be the final authority. All ~~clients~~ members and/or families must be informed of their right to appeal at admission and yearly thereafter. The ~~client~~ member cannot be denied admission to the facility because of the need for vision services.

(19) An attendant to accompany ~~Medicaid~~ SoonerCare eligible ~~recipients~~ members during SoonerRide Non-Emergency Transportation (NET). Please refer to OAC 317:30-5-326 through OAC 317:30-5-327.9 for SoonerRide rules regarding members residing in a nursing facility.

~~(A) The nursing facility must provide an Attendant to accompany recipients receiving NET services. An Attendant is defined as an employee of the nursing facility who is provided by and trained by the nursing facility at the nursing facility's expense.~~

~~(B) An Attendant must be at least at the level of a Nurse's Aide, and must have the appropriate training necessary to provide any and all assistance to the recipient, including physical assistance needed to seat the recipient in the vehicle. The Attendant must have the ability to interface with health care providers as appropriate. An Attendant must be of an age of legal majority recognized under State law.~~

~~(C) The Attendant will be responsible for any care needed by the recipient(s) during transport and any assistance needed by the recipient(s) to assure the safety of all passengers and the driver of the vehicle. An Attendant leaves the vehicle at its destination and remains with the recipient(s).~~

~~(D) When multiple eligible recipients residing in the same nursing facility are being transported to the same provider for health care services, the nursing facility may provide one qualified Attendant for each three recipients unless other circumstances indicate the need for additional Attendants. Such circumstances might include but are not limited to:~~

~~(i) the physical and/or mental status of the recipients,~~

~~(ii) difficulty in getting the recipients in and out of the vehicle,~~

~~(iii) the amount of time that a recipient would have to wait unattended, etc.~~

~~(E) SoonerRide is not responsible for arranging for an Attendant. The services of the Attendant are not directly reimbursable by the SoonerRide program or the Medicaid program. The cost for the Attendant is included in the Medicaid nursing facility per diem rate.~~

~~(F) In certain instances, a family member or legal guardian may wish to accompany the recipient for health care services. In such instances, the family member or legal guardian may accompany the recipient in place of the Attendant.~~

~~(i) An Escort is defined as a family member or legal guardian whose presence is required to assist a recipient during transport and while at the place of treatment. An Escort replaces the Attendant who would normally be employed by the nursing facility. An Escort voluntarily accompanies the recipient during transport and leaves the vehicle at its destination and remains with the recipient. An Escort must be of an age of legal majority recognized under State law. Only one Escort may accompany a recipient. The Escort must be able to provide~~

~~any services and assistance necessary to assure the safety of all passengers in the vehicle.~~

~~(ii) When an Escort wishes to accompany the recipient in place of an Attendant provided by the nursing facility, the Escort and the nursing facility must sign a release form stating that an Escort will be traveling with the recipient and performing the services which would normally be performed by the Attendant. This release must be faxed to the SoonerRide broker's business office prior to the date of the transport.~~

~~(iii) If an Escort is used in place of an Attendant provided by the nursing facility, that Escort cannot be counted as an Escort for any other Medicaid recipients who are traveling in the same vehicle.~~

~~(iv) SoonerRide is not required to transport any additional family members other than the one family member providing Escort Services. In the event that additional family members request transportation, the SoonerRide broker may charge those family members according to the SoonerRide broker's policies which have been approved by OHCA.~~

~~(v) An Escort is not eligible for direct compensation by the SoonerRide broker or Medicaid program.~~

~~(G) For Medicaid recipients who require non-emergency transportation for dialysis, one Attendant is required to accompany a group of up to three dialysis patients when they are being transported for dialysis services. The Attendant must remain with the patient(s) unless the provider of the dialysis treatment and the nursing facility sign a release form stating that the presence of the Attendant is not necessary during the dialysis treatment. This release must be faxed to the SoonerRide broker's business office prior to the date of the dialysis service.~~

~~(i) In instances when an Attendant does not remain with the recipient(s) during dialysis treatment, SoonerRide is not responsible for transporting the Attendant back to the nursing facility.~~

~~(ii) In instances when an Attendant does not remain with the recipient(s) during dialysis treatment, the nursing facility is responsible for providing an Attendant to accompany the recipient(s) on the return trip from the dialysis center. The nursing facility is also responsible for transporting that Attendant to the dialysis center in order to accompany the recipient(s) on their return trip.~~

PART 32. SOONERRIDE NON-EMERGENCY TRANSPORTATION

317:30-5-326. Provider eligibility

The Oklahoma Health Care Authority (OHCA) is responsible for assuring that necessary transportation is available to all eligible SoonerCare members who are in need of SoonerCare medical services in accordance with 42 CFR 431.53. The agency contracts with a broker to provide statewide curb to curb coverage for non-emergency transportation under the SoonerRide program. The broker provides the most appropriate and least costly mode of transportation necessary to meet the individual needs of SoonerCare members. Payment for covered services to the broker is reimbursed under capitated methodology based on per member per month. The agency contracts directly with ambulance and air providers for all other transportation needs for eligible members not approved by SoonerRide.

317:30-5-326.1. Definitions

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

"Attendant" means an employee of the nursing facility who is provided by and trained by the nursing facility at the nursing facility's expense.

"Escort" means a family member or legal guardian whose presence is required to assist a member during transport and while at the place of treatment. An escort voluntarily accompanies the member during transport and leaves the vehicle at its destination and remains with the member. An escort must be of an age of legal majority recognized under State law.

"Member/eligible member" means any person eligible for SoonerCare with the exception of those individuals who are categorized as Qualified Medicare Beneficiaries Plus (QMBP), Specified Low Income Medicare Beneficiaries (SLMB), Qualifying Individuals-1, individuals who are in an institution for mental disease (IMD), inpatient, institutionalized, Home and Community Based Waiver members, with the exception of the In-home Supports Waiver for Children and the Advantage Waiver.

317:30-5-327. SoonerRide non-emergency non-ambulance transportation ~~services for eligible medicaid recipients residing in nursing facilities~~ eligibility

Transportation must be for medically necessary treatment in accordance with 42 CFR 441.170. SoonerRide excludes those individuals who are categorized as:

(1) Qualified Medicare Beneficiaries Plus (QMBP);

(2) Specified Low Income Medicare Beneficiaries (SLMB);

(3) Qualifying Individuals-1 and individuals who are in an institution for mental disease (IMD);

(4) inpatient;

(5) institutionalized;

(6) Home and Community Based Waiver members, with the exception of the In-home Supports Waiver for Children and the Advantage Waiver.

~~(a) **Access to non-emergency non-ambulance transportation through SoonerRide.**~~

~~(1) Non-emergency, non-ambulance transportation services are available through the State's SoonerRide~~

~~Non-Emergency Transportation (NET) program. SoonerRide NET is available on a statewide basis to all eligible Medicaid recipients who reside in nursing facilities.~~

~~(2) SoonerRide NET includes non-emergency, non-ambulance transportation for eligible Medicaid recipients residing in nursing facilities to and from eligible Medicaid providers of health care services. Eligible Medicaid providers are providers who have valid Oklahoma Medicaid contracts. The NET must be necessary to access medically necessary Medicaid covered services for which a recipient has available benefits. Additionally, SoonerRide NET may also be provided for eligible Medicaid recipients to providers other than Medicaid providers if the transportation is to access medically necessary services which are Medicaid coverable services.~~

~~(3) The use of Medicaid funded transportation for any other purpose is fraudulent activity and subject to criminal prosecution and civil and administrative sanctions.~~

~~(4) The SoonerRide broker assures that NET transportation services are provided:~~

~~(A) in a manner consistent with the best interest of the Medicaid recipient;~~

~~(B) similar in scope and duration state wide, although there will be some variation based on available resources in a particular geographical area of the state;~~

~~(C) appropriate to available services; and~~

~~(D) appropriate for the limitations of the recipient.~~

~~(b) **Service availability.**~~

~~(1) SoonerRide NET is available for covered inpatient hospital care, outpatient hospital care, services from physicians, diagnostic devices, clinic services, eye care and dental care.~~

~~(2) SoonerRide NET is available if an eligible Medicaid recipient is being discharged from a hospital to a nursing facility. The nursing facility that the recipient is moving to will be responsible for scheduling the transportation and providing an Attendant for the recipient.~~

~~(3) In the event that an eligible Medicaid recipient is voluntarily moving from one nursing facility to another, SoonerRide will provide NET to the new facility. The nursing facility that the recipient is moving from will be responsible for scheduling the transportation and providing an Attendant for the recipient.~~

~~(4) In the event that a nursing facility's license is terminated, SoonerRide will provide NET to a new nursing facility. The nursing facility that the recipient is moving from will be responsible for scheduling the NET through SoonerRide and providing an Attendant to accompany the eligible Medicaid recipient.~~

~~(c) **Exclusions from SoonerRide NET.** SoonerRide NET excludes:~~

~~(1) Transportation of eligible Medicaid recipients residing in nursing facilities to access emergency services.~~

~~(2) Transportation of eligible Medicaid recipients residing in nursing facilities by ambulance for any reason.~~

~~(3) Transportation of eligible Medicaid recipients residing in nursing facilities whose medical condition requires transport by stretcher.~~

~~(4) Transportation of eligible Medicaid recipients residing in nursing facilities to services that are not Medicaid covered or coverable services.~~

~~(5) Transportation of eligible Medicaid recipients residing in nursing facilities to services that are not medially necessary.~~

~~(d) **Denial of SoonerRide NET services by the SoonerRide broker.**~~

~~(1) In addition to the exclusions listed subsection (d) of this Section, the SoonerRide broker may deny NET services if:~~

~~(A) The nursing facility refuses to cooperate in determining the recipient's Medicaid eligibility.~~

~~(B) The nursing facility refuses to provide the documentation required to determine the medical necessity for NET services.~~

~~(C) The recipient or Attendant exhibits uncooperative behavior or misuses/abuses NET services.~~

~~(D) The recipient is not ready to board NET transport at the scheduled time or within 10 minutes after the scheduled pick-up time.~~

~~(E) The nursing facility fails to request a reservation at least three days in advance of a health care appointment without good cause. Good cause is created by factors such as, but not limit to any of the following:~~

~~(i) Urgent care.~~

~~(ii) Post-surgical and/or medical follow-up care specified by a health care provider to occur in fewer than three days.~~

~~(iii) Imminent availability of an appointment with a specialist when the next available appointment would require a delay of two weeks or more.~~

~~(iv) The result of administrative or technical delay caused by SoonerRide and requiring that an appointment be rescheduled.~~

~~(2) Pursuant to Federal law, SoonerRide will provide notification in writing to nursing facilities whose recipients have been denied services. This notification must include the specific reason for the denial and the recipient's right to appeal.~~

~~(e) **SoonerRide provider network.**~~

~~(1) The SoonerRide broker will maintain an adequate number of appropriate network providers to provide non-emergency, non-ambulance transportation services for eligible Medicaid recipients residing in nursing facilities.~~

~~(2) If a nursing facility has the capability to provide non-emergency, non-ambulance transportation, the SoonerRide broker may contract with the nursing facility as a NET network provider. The nursing facility must meet the same standards as any other SoonerRide contracted provider for vehicle and driver licensing, safety, training, liability, and ADA regulations. Additionally, when a nursing facility is contracted as a NET provider, the nursing facility cannot limit transportation services to recipients of a~~

~~specific nursing facility, but must have the same availability as any other contracted network provider except for the transportation of recipients for dialysis services.~~

~~(3) SoonerRide may contract with a nursing facility or other transportation provider solely for the non-emergency, non-ambulance transportation of recipients for dialysis services.~~

~~(f) **Type of services provided and duties of the SoonerRide driver.**~~

~~(1) The SoonerRide NET program is limited to curb-to-curb services. Curb-to-curb services are defined as services for which the vehicle picks up and discharges the passengers at the curb or driveway in front of their place of residence or destination. The SoonerRide NET driver does not provide assistance to passengers along walkways or steps to the door or the residence or other destination or assistance getting into or out of the vehicle. The SoonerRide NET driver will open and close the vehicle doors, load or provide assistance with loading adaptive equipment. Additionally, the SoonerRide NET driver may fasten and unfasten safety restraints when that service is requested by the rider or on behalf of the rider.~~

~~(2) If the recipient is traveling by lift van, the SoonerRide NET driver will load and unload the recipient according to established protocols for such procedures that have been approved by the Oklahoma Health Care Authority.~~

~~(3) The SoonerRide NET driver will deliver the recipient to the scheduled destination, and is not required to remain with the recipient.~~

~~(g) **Scheduling NET services through SoonerRide.**~~

~~(1) The nursing facility will schedule SoonerRide NET services for transportation to covered services for nursing facility eligible residents. SoonerRide NET services may be scheduled by calling the toll free SoonerRide number or by faxing a request to SoonerRide.~~

~~(2) All NET routine services must be scheduled by advance appointment. Appointments must be made at least three business days in advance of the health care appointment, but may be scheduled up to fourteen business days in advance. Scheduling for recipients with standing appointments may be scheduled for those appointments beyond the 14 days.~~

~~(3) NET services for eligible recipients residing in nursing facilities will be scheduled and obtained through the SoonerRide NET program. The nursing facilities will be financially responsible for NET services which are not scheduled for eligible recipients residing in nursing facilities through the SoonerRide program. The nursing facility may not charge the recipient or recipient's family for NET services which were not paid for by SoonerRide because they were not scheduled through SoonerRide in the appropriate manner.~~

~~(4) Whenever possible SoonerRide will give consideration for recipients who request NET for routine care and the request is made less than three business days in advance of the appointment. However, such requests for service are not guaranteed and will depend on the available space and resources.~~

~~(5) If SoonerRide cannot provide NET for urgent care, the nursing facility may provide the NET transportation and submit proper documentation to SoonerRide for reimbursement. In such cases the nursing facility must attempt to schedule the service through SoonerRide first, or the service must have become necessary during a time that SoonerRide scheduling was unavailable, such as after hours or weekends. For NET for urgent services provided after hours or on weekends, the nursing facility must notify SoonerRide within two business days of the date of service.~~

~~(6) Requests for NET Exceptional Transportation must be made through SoonerRide. Exceptional transportation service is denied as non-emergency transportation which is necessary under extraordinary medical circumstances that requires traveling out of state for health care treatment not normally provided through in state health care providers. Exceptional travel does not include direct service providers within 50 miles of the State's border counties who are utilized for routine care.~~

~~(h) **Requirement for an attendant to accompany Medicaid eligible recipients who reside in nursing facilities during SoonerRide NET.**~~

~~(1) When Medicaid eligible recipients residing in nursing facilities utilize SoonerRide for NET services, the nursing facility must provide an Attendant who will accompany the recipient. For purposes of SoonerRide, an Attendant is defined as an employee of a nursing facility who is provided by and trained by the nursing facility at the nursing facility's expense.~~

~~(2) An Attendant must be at least at the level of a Nurses Aide, and must have the appropriate training necessary to provide any and all assistance to the recipient, including physical assistance needed to seat the recipient in the vehicle. The Attendant must have the ability to interface with health care providers as appropriate. An attendant must be of an age of legal majority recognized under State law.~~

~~(3) The Attendant will be responsible for any care needed by the recipient during transport and any assistance needed by the recipient to assure the safety of all passengers and the driver of the vehicle. An attendant leaves the vehicle at its destination and remains with the recipient.~~

~~(4) When multiple eligible Medicaid recipients who reside in the same nursing facility are being transported to the same provider for health care services the nursing facility may provide one qualified Attendant for each three recipients unless other circumstances indicate the need for additional attendants. Such circumstances might include but are not limited to:~~

~~(A) the physical and/or mental status of the recipient,~~

~~(B) difficulty in getting the recipient in and out of the vehicle,~~

~~(C) the amount of time that a recipient would have to wait unattended, etc.~~

~~(5) SoonerRide is not responsible for arranging for an Attendant. The services of the Attendant are not directly reimbursable by the SoonerRide program or the Medicaid program. The cost for the attendant is included in the Medicaid nursing facility per diem rate.~~

~~(i) **Use of an escort to accompany Medicaid eligible recipients who reside in nursing facilities during SoonerRide NET.**~~

~~(1) In certain instances a family member or legal guardian may wish to accompany the eligible Medicaid recipient who resides in a nursing facility for health care services. In such instances, the family member or legal guardian may accompany the recipient in place of the Attendant.~~

~~(2) An Escort is defined as a family member or legal guardian whose presence is required to assist a recipient during transport and while at the place of treatment. An escort replaces the Attendant who would normally be employed by the nursing facility. An Escort voluntarily accompanies the recipient during transport and leaves the vehicle at its destination and remains with the recipient. An escort must be of an age of legal majority recognized under State law. Only one Escort may accompany a recipient. The Escort must be able to provide any services and assistance necessary to assure the safety of all passengers in the vehicle.~~

~~(3) When an Escort wishes to accompany the recipient in place of an Attendant provided by the nursing facility the Escort and the nursing facility must sign a release form stating that an Escort will be traveling with the recipient and performing the services which would normally be performed by the Attendant. This release must be faxed to the SoonerRide business office prior to the date of the transport.~~

~~(4) If an Escort is used in place of an Attendant provided by the nursing facility, that Escort cannot be counted as an Escort for any other Medicaid recipients who are traveling in the same vehicle.~~

~~(5) SoonerRide is not required to transport any additional family members other than the one family member providing Escort services. In the event that additional family members request transportation, SoonerRide may charge those family members according to SoonerRide policies which have been approved by OHCA.~~

~~(6) An Escort is not eligible for direct compensation by the SoonerRide or Medicaid program.~~

~~(j) **Transportation for dialysis Services.**~~

~~(1) For eligible Medicaid recipients residing in nursing facilities who require NET for dialysis, SoonerRide shall allow one Attendant to accompany a group of up to three dialysis patients when they are being transported for dialysis services. The Attendant will remain with the patients unless the provider of the dialysis treatment and the nursing facility sign a release form stating that the presence of the Attendant is not necessary during the dialysis treatment. This release must be faxed to the SoonerRide business office prior to the date of the dialysis service.~~

~~(2) In instances when an Attendant does not remain with the eligible Medicaid recipient during dialysis treatment, SoonerRide is not responsible for transporting the Attendant back to the nursing facility.~~

~~(3) In instances when an Attendant does not remain with the eligible Medicaid recipient during dialysis treatment, the nursing facility is responsible for providing an Attendant to accompany the recipient on the return trip from the dialysis center. The nursing facility is also responsible for transporting that Attendant to the dialysis center in order to accompany the recipient on their return trip.~~

317:30-5-327.1. Access to non-emergency non-ambulance transportation through SoonerRide

(a) Non-emergency, non-ambulance transportation services are available through the state's SoonerRide Non-Emergency Transportation (NET) program. SoonerRide NET is available on a statewide basis to all eligible members.

(b) SoonerRide NET includes non-emergency, non-ambulance transportation for members to and from SoonerCare providers of health care services. Eligible providers are providers who have valid OHCA contracts. The NET must be to access medically necessary covered services for which a member has available benefits. Additionally, SoonerRide NET may also be provided for eligible members to providers other than SoonerCare providers if the transportation is to access medically necessary services covered by SoonerCare.

(c) The use of SoonerCare funded transportation for any other purpose is fraudulent activity and subject to criminal prosecution and civil and administrative sanctions.

(d) The SoonerRide broker assures that NET transportation services are provided:

(1) in a manner consistent with the best interest of the member;

(2) similar in scope and duration state-wide, although there will be some variation based on available resources in a particular geographical area of the state;

(3) appropriate to available services; and

(4) appropriate for the limitations of the member.

317:30-5-327.2. Service availability

(a) SoonerRide NET is available for SoonerCare covered admission and discharge into inpatient hospital care, outpatient hospital care, services from physicians, diagnostic devices, clinic services, pharmacy services, eye care and dental care.

(b) SoonerRide NET is available if a member is being discharged from a facility to home. The facility is responsible for scheduling the transportation.

(c) In documented medically necessary instances, a family member or legal guardian may wish to accompany the member for health care services. In such instances, the family member or legal guardian may accompany the member.

(1) SoonerRide is not required to transport any additional family members other than the one family member providing escort services. In the event that additional family members request transportation, the SoonerRide broker may charge those family members according to the SoonerRide broker's policies which have been approved by the OHCA.

(2) An escort is not eligible for direct compensation by the SoonerRide broker or SoonerCare.

317:30-5-327.3. Coverage for residents of nursing facilities

(a) An attendant must accompany members during SoonerRide Non-Emergency Transportation (NET). An attendant must be at least at the level of a nurse's aide, and must have the appropriate training necessary to provide any and all assistance to the member, including physical assistance needed to seat the member in the vehicle. The attendant must have the ability to interface with health care providers as appropriate. An attendant must be of an age of legal majority recognized under State law.

(1) The nursing facility must provide an attendant to accompany members receiving NET services.

(2) The attendant will be responsible for any care needed by the member(s) during transport and any assistance needed by the member(s) to assure the safety of all passengers and the driver of the vehicle. An attendant leaves the vehicle at its destination and remains with the member(s).

(3) When multiple members residing in the same nursing facility are being transported to the same provider for health care services, the nursing facility may provide one qualified attendant for each three members unless other circumstances indicate the need for additional attendants. Such circumstances might include but are not limited to:

(A) the physical and/or mental status of the member(s),

(B) difficulty in getting the member(s) in and out of the vehicle,

(C) the amount of time that a member(s) would have to wait unattended, etc.

(4) SoonerRide is not responsible for arranging for an attendant. The services of the attendant are not directly reimbursable by the SoonerRide program or SoonerCare. The cost for the attendant is included in the SoonerCare nursing facility per diem rate.

(5) In certain instances, a family member or legal guardian may wish to accompany the member for health care services. In such instances, the family member or legal guardian may accompany the member in place of the attendant. Only one escort may accompany a member. The escort must be able to provide any services and assistance necessary to assure the safety of the member in the vehicle.

(A) When an escort wishes to accompany the member in place of an attendant provided by the nursing facility, the escort and the nursing facility must sign a release form stating that an escort will be traveling with the member and performing the services which would normally be performed by the attendant. This release must be faxed to the SoonerRide broker's business office prior to the date of the transport.

(B) If an escort is used in place of an attendant provided by the nursing facility, that escort cannot be counted as an escort for any other member who is traveling in the same vehicle.

(C) SoonerRide is not required to transport any additional family members other than the one family member providing escort services. In the event that additional family members request transportation, the SoonerRide broker may charge those family members according to the SoonerRide broker's policies approved by the OHCA.

(D) An escort is not eligible for direct compensation by the SoonerRide broker or SoonerCare.

(b) For members who require non-emergency transportation for dialysis, one attendant is required to accompany a group of up to three dialysis patients when they are being transported for dialysis services. The attendant must remain with the patient(s) unless the provider of the dialysis treatment and the nursing facility sign a release form stating that the presence of the attendant is not necessary during the dialysis treatment. The release must be faxed to the SoonerRide broker's business office prior to the date of the dialysis service.

(1) In instances when an attendant does not remain with the member(s) during dialysis treatment, SoonerRide is not responsible for transporting the attendant back to the nursing facility.

(2) In instances when an attendant does not remain with the member(s) during dialysis treatment, the nursing facility is responsible for providing an attendant to accompany the member(s) on the return trip from the dialysis center. The nursing facility is also responsible for transporting that attendant to the dialysis center in order to accompany the member(s) on the return trip.

(c) In the event that a member is voluntarily moving from one nursing facility to another, SoonerRide will provide NET to the new facility. The nursing facility that the member is moving from will be responsible for scheduling the transportation and providing an attendant for the member.

(d) In the event that a nursing facility's license is terminated, SoonerRide will provide NET to a new nursing facility. The nursing facility that the member is moving from will be responsible for scheduling the NET through SoonerRide and providing an attendant to accompany the member.

317:30-5-327.4. Coverage for children

(a) Services, deemed medically necessary and allowable under federal Medicaid regulations, may be covered by the EPSDT/OHCA Child Health program even though the services may not be part of the OHCA SoonerCare program. Such services must be prior authorized.

(b) Federal Medicaid regulations also require the State to make the determination as to whether the service is medically

necessary and do not require the provision of any items or services that the State determines are not safe and effective or which are considered experimental.

317:30-5-327.5. Exclusions from SoonerRide NET

SoonerRide NET excludes:

(1) transportation of members to access emergency services;

(2) transportation of members by ambulance for any reason;

(3) transportation of members whose medical condition requires transport by stretcher;

(4) transportation of members to services that are not covered by SoonerCare; and

(5) transportation of members to services that are not medically necessary.

317:30-5-327.6. Denial of SoonerRide NET services by the SoonerRide broker

(a) In addition to the exclusions listed in 317:30-5-327.5 of this Part, the SoonerRide broker may deny NET services if:

(1) the nursing facility/member refuses to cooperate in determining the member's eligibility;

(2) the nursing facility/member refuses to provide the documentation required to determine the medical necessity for NET services;

(3) the member or attendant exhibits uncooperative behavior or misuses/abuses NET services;

(4) the member is not ready to board NET transport at the scheduled time or within 10 minutes after the scheduled pick up time; and

(5) the nursing facility/member fails to request a reservation at least three days in advance of a health care appointment without good cause. Good cause is created by factors such as, but not limit to any of the following:

(A) urgent care;

(B) post-surgical and/or medical follow up care specified by a health care provider to occur in fewer than three days;

(C) imminent availability of an appointment with a specialist when the next available appointment would require a delay of two weeks or more; and

(D) the result of administrative or technical delay caused by SoonerRide and requiring that an appointment be rescheduled.

(b) Pursuant to Federal law, SoonerRide will provide notification in writing to nursing facilities/member when members have been denied services. This notification must include the specific reason for the denial and the member's right to appeal.

317:30-5-327.7. SoonerRide provider network

(a) The SoonerRide broker will maintain an adequate number of appropriate network providers to provide non-emergency, non-ambulance transportation services for eligible members.

(b) If a nursing facility has the capability to provide non-emergency, non-ambulance transportation, the SoonerRide broker may contract with the nursing facility as a NET network provider. The nursing facility must meet the same standards as any other SoonerRide contracted provider for vehicle and driver licensing, safety, training, liability, and ADA regulations. Additionally, when a nursing facility is contracted as a NET provider, the nursing facility cannot limit transportation services to members of a specific nursing facility, but must have the same availability as any other contracted network provider except for the transportation of members for dialysis services.

(c) SoonerRide may contract with other transportation providers solely for the non-emergency, non-ambulance transportation of members for dialysis services.

317:30-5-327.8. Type of services provided and duties of the SoonerRide driver

(a) The SoonerRide NET program is limited to curb-to-curb services. Curb-to-curb services are defined as services for which the vehicle picks up and discharges the passengers at the curb or driveway in front of their place of residence or destination. The SoonerRide NET driver does not provide assistance to passengers along walkways or steps to the door or the residence or other destination. The SoonerRide NET driver will open and close the vehicle doors, load or provide assistance with loading adaptive equipment. Additionally, the SoonerRide NET driver may fasten and unfasten safety restraints when that service is requested by the rider or on behalf of the rider.

(b) If the member is traveling by lift van, the SoonerRide NET driver will load and unload the member according to established protocols for such procedures approved by the Oklahoma Health Care Authority.

(c) The SoonerRide NET driver will deliver the member to the scheduled destination, and is not required to remain with the member.

317:30-5-327.9. Scheduling NET services through SoonerRide

(a) The nursing facility/member will schedule SoonerRide NET services for transportation to covered services. SoonerRide NET services may be scheduled by calling the toll free SoonerRide number or by faxing a request to SoonerRide.

(b) All SoonerRide NET routine services must be scheduled by advance appointment. Appointments must be made at least three business days in advance of the health care appointment, but may be scheduled up to fourteen business days in advance. Scheduling for members with standing appointments may be scheduled for those appointments beyond the 14 days.

(c) NET services for eligible members will be scheduled and obtained through the SoonerRide NET program. The nursing facilities/member will be financially responsible for NET services which are not scheduled for eligible members through the SoonerRide program. The nursing facility may not charge the member or member's family for NET services which were

not paid for by SoonerRide because they were not scheduled through SoonerRide in the appropriate manner.

(d) Whenever possible SoonerRide will give consideration for members who request NET for routine care and the request is made less than three business days in advance of the appointment. However, such requests for service are not guaranteed and will depend on the available space and resources.

(e) If SoonerRide cannot provide NET for urgent care, the nursing facility/member may provide the NET transportation and submit proper documentation to SoonerRide for reimbursement. In such cases the nursing facility/member must attempt to schedule the service through SoonerRide first, and obtain a reference number or the service must have become necessary during a time that SoonerRide scheduling was unavailable, such as after hours or weekends. For NET for urgent services provided after hours or on weekends, the nursing facility/member must notify SoonerRide within two business days of the date of service.

[OAR Docket #07-1046; filed 5-16-07]

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

[OAR Docket #07-1047]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 9. Long Term Care Facilities
317:30-5-134. [AMENDED]
(Reference APA WF # 06-46)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; House Bill 1071XX (Appropriations Bill) of the 50th Oklahoma State Legislature
DATES:
Comment period:
February 1, 2007 through March 5,2007
Public hearing:
March 5, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 15, 2007
Submitted to House:
March 15, 2007
Submitted to Senate:
March 15, 2007
Gubernatorial approval:
April 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 10, 2007
Final adoption:
May 10,2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 5. Individual Providers and Specialties
Part 9. Long Term Care Facilities
317:30-5-134. [AMENDED]
Gubernatorial approval:
January 30, 2007
Register publication:
24 Ok Reg 675
Docket number:
07-321
(Reference APA WF # 06-46)
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Long term care facility rules are revised to allow OHCA to make payments to nursing facilities for nurse aide training as an administrative claim instead of including the cost of nurse aide training in the nursing facility rate. Current rules indicate that this payment will only be made in the daily per diem rate. This process allows OHCA to comply with all State and Federal regulations to obtain federal matching funds for nurse aide training.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 9. LONG TERM CARE FACILITIES

317:30-5-134. Nurse Aide Training Reimbursement

(a) Nurse Aide training programs and competency evaluation programs occur in two settings, a nursing facility setting and private training courses. Private training includes, but is not limited to, certified training offered at vocational technical institutions. This rule outlines payment for training in either setting.

(b) ~~In the case of nurse aides trained and tested in a Medicaid contracted nursing facility training program, payment is made by the Oklahoma Health Care Authority in the daily per diem rate paid the nursing facility.~~ In the case a nursing facility provides training and competency evaluation in a program that is not properly certified under federal law, the Oklahoma Health Care Authority may offset the nursing facility's payment for monies paid to the facility for these programs. Such action shall occur after notification to the facility of the period of non-certification and the amount of the payment by the Oklahoma Health Care Authority.

(c) In the case of nurse aide training provided in private training courses, reimbursement is made to nurse aides who have paid a reasonable fee for training in a certified training program at the time training was received. The federal regulations prescribe applicable rules regarding certification of the program and certification occurs as a result of certification by the State Survey Agency. For nurse aides to receive reimbursement for private training courses, all of the following requirements must be met:

(1) the training and competency evaluation program must be certified at the time the training occurred;

(2) the nurse aide has paid for training;

(3) a reasonable fee was paid for training (however, reimbursement will not exceed the maximum amount set by the Oklahoma Health Care Authority);

(4) the Oklahoma Health Care Authority is billed by the nurse aide receiving the training within 12 months of the completion of the training;

(5) the nurse aide has passed her or his competency evaluation; and

(6) the nurse aide is employed at a ~~Medicaid~~ SoonerCare contracted nursing facility as a nurse aide during all or part of the year after completion of the training and competency evaluation.

(d) If all the conditions in subsection (c) are met, then the Authority will compensate the nurse aide based upon the following pro-rata formula:

(1) For every month employed in a nursing facility, OHCA will pay 1/12 of the sum of eligible expenses incurred by the nurse aide. The term "every month" is defined as a period of 16 days or more within one month.

(2) The maximum amount paid by the Oklahoma Health Care Authority may be set by the Rates and Standards Committee. The rate paid by the nurse aide, up to the maximum set by the Oklahoma Health Care Authority, will be paid in the event a nurse aide was employed all 12 months after completion of the training program.

(e) The claimant must submit a completed Nurse Aide Training Reimbursement Program Form and ~~FIN-12~~ ADM-12 claim voucher. Documentation of eligible expenses must also be provided. Eligible expenses include course training fees, textbooks and exam fees.

(f) No nurse aide trained in a nursing facility program that has an offer of employment or is employed by the nursing facility in any capacity at the inception of the training program may be charged for the costs associated with the nurse aide training or competency evaluation program.

(g) The SoonerCare share of Nurse Aide training and testing costs incurred by a nursing facility will be reimbursed in the following manner:

(1) Annually, the facilities will complete and file a "Nurse Aide Training and Testing Costs" report as prescribed by the OHCA. These reports will be due by October 31 of the year and cover the preceding State Fiscal Year (July 1 to June 30).

(2) From the "Nurse Aide Training and Testing Costs" reports the OHCA will determine a cost per day for each facility for the upcoming rate period (State Fiscal Year). New facilities will be paid at the statewide average rate until their first report establishes a specific rate. Facilities that do not file or are late in filing will be paid at 90% of their previously established rate or at the 40th percentile of the established rate, whichever is less.

(3) Each month the OHCA will pay each facility based on the prior months' actual SoonerCare paid days regardless of service date.

[OAR Docket #07-1047; filed 5-16-07]

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

[OAR Docket #07-1036]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 75. Federally Qualified Health Centers
317:30-5-660. [AMENDED]
317:30-5-660.1. through 317:30-5-660.5. [NEW]
317:30-5-661. [AMENDED]
317:30-5-661.1. through 317:30-5-661.7. [NEW]
317:30-5-662. through 317:30-5-664. [REVOKED]
317:30-5-664.1. through 317:30-5-664.15. [NEW]
(Reference APA WF # 06-01)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
DATES:
Comment period:
December 15, 2006 through January 16, 2007
Public hearing:
January 23, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 15, 2007
Submitted to House:
March 15, 2007
Submitted to Senate:
March 15, 2007
Gubernatorial approval:
April 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 10, 2007
Final adoption:
May 10,2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 5. Individual Providers and Specialties
Part 75. Federally Qualified Health Centers
317:30-5-660. [AMENDED]
317:30-5-660.1. through 317:30-5-660.5. [NEW]
317:30-5-661. [AMENDED]
317:30-5-661.1. through 317:30-5-661.7. [NEW]
317:30-5-662. through 317:30-5-664. [REVOKED]
317:30-5-664.1. through 317:30-5-664.15. [NEW]
Gubernatorial approval:
June 7, 2006
Register publication:
23 Ok Reg 3183
Docket number:
06-1245
(Reference APA WF # 06-01)
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Federally Qualified Health Centers rules are revised to provide needed clarity by reorganizing the rules to be more user friendly for providers and recipients. Terminology is updated and definitions are added. The rule defines the "core" services for these facilities, which will be billed as an encounter, and will allow eligible facilities to bill for multiple encounters with distinctly different diagnosis including a medical encounter, a behavioral health encounter and a dental encounter and in some cases, an emergency encounter. This rule does not expand eligibility; however, the scope of services is expanded to allow eligible facilities to bill Medicaid for covered medically

necessary services provided by licensed marital and family therapists, licensed professional counselors, licensed behavioral practitioners, and licensed alcohol and drug counselors within the scope of their practice.

CONTACT PERSON:

Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 75. FEDERALLY QUALIFIED HEALTH CENTERS

317:30-5-660. Eligible ~~Providers~~ providers

(a) Federally Qualified Health Centers (FQHC) are entities or programs more commonly known as Community Health Centers, Migrant Health Centers, and Health Care for the Homeless Programs. ~~For purposes of providing covered services under Medicaid, FQHC's may qualify as follows:~~ The facilities in this Part are hereafter referred to as "Health Centers" or "Centers".

~~(1) The entity receives a grant under Sections 329, 330, or 340 of the Public Health Service (PHS) Act, receives funding from such grants under a contract with the recipient of such a grant and includes an outpatient health program or entity operated by a tribe or tribal organization under the Indian Self-Determination Act (PL 93-638);~~

~~(2)The Health Resources and Services Administration (HRSA) within the PHS recommends, and the Secretary determines that, the entity meets the requirements for receiving such a grant; or~~

~~(3)The Secretary determines that an entity may, for good cause, qualify through waivers of the requirements described above. Such a waiver cannot exceed a period of 2 years.~~

(b) ~~Any entity seeking to qualify as a FQHC should contact the U.S. Public Health Service. Eligible FQHCs must have a current FQHC contract on file with this Authority.~~ For purposes of providing covered services under SoonerCare, Health Centers may qualify by one of the following methods:

(1) The entity receives a grant under Section 330 of the Public Health Service (PHS) Act (Public Law 104-229), receives funding from such grants under a contract with the recipient of such a grant and includes an outpatient health program or entity operated by a tribe or tribal organization under the Indian Self-Determination Act (Public Law 93-638);

(2) The Health Resources and Services Administration (HRSA) within the PHS recommends, and the Centers for Medicare and Medicaid Services (CMS) determines that, the entity meets the requirements for receiving such a grant and is designated a FQHC look-alike; or

(3) The Secretary of Health and Human Services (Secretary) determines that an entity may, for good cause, qualify through waiver of requirements. Such a waiver cannot exceed a period of two years.

(c) Any entity seeking to qualify as a FQHC should contact the U.S. Public Health Service.

317:30-5-660.1. Health Center multiple sites contracting

(a) Health Centers may contract as SoonerCare Traditional providers and as a PCP/CM under SoonerCare Choice (Refer to OAC 317:25-7-5).

(b) Health Centers are required to submit a list of all entities affiliated or owned by the Center including any programs that do not have Health Center status, along with all OHCA provider numbers.

317:30-5-660.2. Health Center professional staff

(a) Health Centers must either directly employ or contract the services of legally credentialed professional staff that are authorized within their scope of practice under state law to provide the services for which claims are submitted to OHCA or its designated agent.

(b) Professional staff contracted or employed by the Health Center recognized by the OHCA for direct reimbursement are required to individually enroll with the OHCA and will be affiliated with the organization which contracts or employs them. Participating Health Centers are required to submit a list of names upon request of all practitioners working within the Center and a list of all individual OHCA provider numbers. Reimbursement for services rendered at or on behalf of the Health Center is made to the organization. Practitioners eligible for direct reimbursement for providing services to a clinic patient outside of the clinic may bill with their individual assigned number if they are not compensated under agreement by the Health Center.

(c) Other providers who are not eligible for direct reimbursement may be recognized by OHCA for the provision and payment of FQHC services to a health center as long as they are legally credentialed under state law and OHCA enrollment requirements.

317:30-5-660.3. Health Center enrollment requirements for other behavioral health services

(a) For the provision of behavioral health related case management services, Health Centers must meet the requirements found at OAC 317:30-5-585 through 317:30-5-589 and OAC 317:30-5-595 through 317:30-5-599.

(b) For the provision of psychosocial rehabilitation services, Health Centers must contract as an outpatient behavioral health agency and meet the requirements found at OAC 317:30-5-240.

(c) Health Centers which provide substance abuse treatment services must also have a contract with the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS).

317:30-5-660.4. Health Center enrollment requirements for school-based health services

For the provision of school-based health services (not a health care delivery site), Health Centers must be contracted with a qualified school provider. Reimbursement is made directly to the school. Payment may be made to Health Centers that have a health care delivery site in a school setting (i.e., the school has no responsibility/no contract with OHCA and a parental authorization must be on file).

317:30-5-660.5. Health Center service definitions

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

"Core Services" means outpatient services that may be covered when furnished to a patient at the Center or other location, including the patient's place of residence.

"Encounter or Visit" means a face-to-face contact between a health care professional and an eligible SoonerCare member for the provision of defined services through a Health Center within a 24-hour period ending at midnight, as documented in the patient's medical record.

"Mental Health Professional (MHP)" means licensed psychologists, licensed clinical social workers (LCSWs), licensed marital and family therapists (LMFTs), licensed professional counselors (LPCs), licensed behavioral practitioners (LBPs), and licensed alcohol and drug counselors (LADCs).

"Other ambulatory services" means other health services covered under the State plan other than core services.

"Physician" means:

(A) a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the function is performed or who is a licensed physician employed by the Public Health Service;

(B) within limitations as to the specific services furnished, a doctor of dentistry or dental or oral surgery, a doctor of optometry, or a doctor of podiatry;

(C) a resident as defined in OAC 317:25-7-5(4) who meet the requirements for payment under SoonerCare;

"Physicians' services" means professional services that are performed by a physician at the Health Center (or are performed away from the Center, excluding inpatient hospital services) whose agreement with the Center provides that he or she will be paid by the Health Center for such services.

"PPS" means prospective payment system all-inclusive per visit rate method specified in the State plan.

317:30-5-661. Coverage by category

~~(a) **Payment.** Payment will be made to FQHCs for services which meet the definition of core services as specified in Section 1905(l)(2) of the Social Security Act and for other ambulatory services covered under Oklahoma's Title XIX state plan. Payment is made to federally qualified health centers as set forth in this Section.~~ Health Center services are covered for SoonerCare adults and children as set forth in this Part, unless otherwise specified.

~~(1) **Adults.** Payment will be made on an encounter basis for medical services. An encounter is all medical services provided by the FQHC for an eligible recipient in one day.~~

~~(A) **Core services.** The following core services are covered for adults 21 years of age and older:~~

~~(i) physician services;~~

~~(ii) services and supplies incidental to physician services (including drugs and biologicals that cannot be self-administered);~~

~~(iii) pneumococcal vaccine and its administration and influenza vaccine and its administration;~~

~~(iv) physician assistant services;~~

~~(v) advanced practice nurse services;~~

~~(vi) clinical social worker services;~~

~~(vii) services and supplies incidental to clinical psychologist and clinical social worker services as would otherwise be covered if furnished by or incidental to physician services;~~

~~(viii) in the case of those FQHC's that are located in an area that has a shortage of home health agencies, part-time or intermittent nursing care and related medical supplies to a homebound individual;~~

~~(B) **Ambulatory services.** Other ambulatory services include but are not limited to the following services which are Title XIX payable, covered under Oklahoma's State Plan and offered by the FQHC. The same limitations on services set out in the State Plan are applicable to other ambulatory services.~~

~~(i) podiatrist services;~~

~~(ii) optometrist services;~~

~~(iii) dental services for persons under age 21;~~

~~(iv) prescribed drugs;~~

~~(v) prosthetic devices;~~

~~(vi) eyeglasses for persons under age 21;~~

~~(vii) transportation;~~

~~(viii) durable medical equipment;~~

~~(ix) technical component of diagnostic tests such as x-rays and EKGs~~

~~(x) specialized laboratory tests~~

~~(2) **Children.** Coverage is the same as for adults given in paragraph (1) of this Section except as follows. Payment will be made on a separate encounter basis for medical or dental services. Refer to Subchapter 1, General Provisions, OAC 317:30-3-51 for exceptions to the visit limit for children under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program.~~

~~(3) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the Medicaid allowable for comparable services.~~

~~(b) **Record keeping.** Adequate records must be kept to show what services were provided in the encounter claimed.~~

~~(c) **Cost reporting.** All FQHC's requesting Medicaid reimbursement must complete a free standing Federally Funded Health Center Worksheet (HCFA-242) as modified by OHCA to accommodate all allowable costs for Medicaid purposes.~~

~~OHCA will contract for an independent audit of each FQHC's cost report.~~

317:30-5-661.1. Health Center core services

Health Center "core" services include:

(1) Physicians' services and services and supplies incident to a physician's services;

(2) Services of advanced practice nurse (APNs), physician assistants (PAs), certified nurse midwives (CNMs), or specialized advanced practice nurse practitioners;

(3) Services and supplies incident to the services of APNs, nurse midwives, and PAs;

(4) Visiting nurse services to the homebound;

(5) Mental health professional services and services and supplies incident to the services of MHPs;

(6) Preventive primary care services;

(7) Preventive primary dental services.

317:30-5-661.2. Services and supplies "incident to" Health Center encounters

(a) Services and supplies incident to the service of covered health center providers may be covered if the service or supply is:

(1) of a type commonly furnished in physician offices;

(2) of a type commonly rendered either without charge or included in the Health Center's bill;

(3) furnished as an incidental, although integral, part of professional services furnished by a physician, advanced practice nurse, physician assistant, certified nurse midwife, or specialized advanced practice nurse;

(4) furnished under the direct, personal supervision of an advanced practice nurse, physician assistant, certified nurse midwife, specialized advanced practice nurse or a physician; and

(5) in the case of a service, furnished by a member of the Health Center's health care staff who is an employee or contractor of the organization.

(b) "Services and supplies incident to" include services such as minor surgery, reading x-rays, setting casts or simple fractures and other activities that involve evaluation or treatment of a patient's condition. They also include laboratory services performed by the Health Center, specimen collection for laboratory services furnished by an off-site CLIA certified laboratory and injectable drugs.

317:30-5-661.3. Visiting Nurse services

Visiting Nurse services may be covered if the Health Center is located in an area in which the Secretary of Health and Human Services has determined that there is a shortage of home health agencies.

317:30-5-661.4. Behavioral health professional services provided at Health Centers

(a) Medically necessary behavioral health services that are primary, preventive, and therapeutic and that would be covered if provided in another setting may be provided by Health Centers. Services provided by a Health Center (refer to OAC 317:30-5-241 for a description of services) must meet the same requirements as services provided by other behavioral health providers. Services include:

(1) Assessment/Evaluation/Testing;

(2) Alcohol and/or Substance Abuse Services Assessment and Treatment plan development;

(3) Crisis Intervention Services;

(4) Medication Training and Support;

(5) Individual/Interactive Psychotherapy;

(6) Group Psychotherapy; and

(7) Family Psychotherapy.

(b) Medically necessary behavioral health professional therapy services are covered when provided in accordance with a documented individualized treatment plan, developed to treat the identified mental health and/or substance abuse disorder(s). A minimum of a 45 to 50 minute standard clinical session must be completed by a Health Center in order to bill an encounter for the session.

(c) In order to support the member's access to behavioral health services, these services may take place in settings away from the Health Center. Off-site behavioral health services must take place in a confidential setting.

317:30-5-661.5. Health Center preventive primary care services

(a) Preventive primary care services are those health services that:

(1) a Health Center is required to provide as preventive primary health services under section 330 of the Public Health Service Act;

(2) are furnished by or under the direct supervision of an APN, PA, CNMW, specialized advanced practice nurse practitioner, MHP, or a physician;

(3) are furnished by a member of the Health Center's health care staff who is an employee of the Center or provides services under arrangements with the Center; and

(4) includes only drugs and biologicals that cannot be self-administered.

(b) Preventive primary care services which may be paid for when provided by Health Centers include:

(1) medical social services;

(2) nutritional assessment and referral;

(3) preventive health education;

(4) children's eye and ear examinations;

(5) prenatal and post-partum care;

(6) perinatal services;

(7) well child care, including periodic screening (refer to OAC 317:30-3-65);

(8) immunizations, including tetanus-diphtheria booster and influenza vaccine;

(9) voluntary family planning services;

(10) taking patient history;

(11) blood pressure measurement;

(12) weight;

(13) physical examination targeted to risk;

(14) visual acuity screening;

(15) hearing screening;

(16) cholesterol screening;
(17) stool testing for occult blood;
(18) dipstick urinalysis;
(19) risk assessment and initial counseling regarding risks;
(20) tuberculosis testing for high risk patients;
(21) clinical breast exam;
(22) referral for mammography;
(23) thyroid function test; and
(24) dental services (specified procedure codes).

317:30-5-661.6. Health Center preventive and primary care exclusions

Preventive primary care Health Center services do not include:

(1) health education classes, or group education activities, including media productions and publications, group or mass information programs;
(2) eyeglasses or hearing aids (except under EPSDT);
(3) screening mammography provided at a Health Center unless the Center meets the requirements as specified in OAC 317:30-5-900; and
(4) vaccines covered by the Vaccines For Children program (refer to OAC 317:30-5-14).

317:30-5-661.7. Off-site services

(a) Off-site Services means services provided at a location other than the Center. Off-site services are considered Health Center services if the physician's or other practitioner's agreement requires that he or she seek reimbursement from the Health Center. Off-site services include services provided at mobile health clinics operated by the Center. Services provided by Centers in school settings (i.e., the school has no responsibility/no contract with OHCA and a parental authorization must be on file) are considered off-site services.
(b) Medically necessary Health Center services provided off-site or outside of the Health Center setting are compensable when billed by the Center. The Health Center must have a written contract with the physician and other Center core practitioners that specify that Center services provided off-site will be billed to Medicaid and, how such providers will be compensated. It is expected that services provided in off-site settings should be, in most cases, temporary and intermittent, i.e., when the member cannot come to the clinic due to health reasons.
(c) In order to support the member's access to behavioral health services, these services may take place in settings away from the Center. Off-site behavioral health services must take place in a confidential setting.

317:30-5-662. Reimbursement [REVOKED]

~~Reimbursement for FQHC services is paid at entity specific rates to cover 100% of reasonable costs for medical and dental encounters. Interim rates are established annually for each entity from the entity's most recently filed cost report. An annual settlement adjustment will be calculated from subsequently audited cost report information. The Medicare principles of reasonable cost are used to determine 100% of reasonable cost for FQHC services. The cost per encounter is calculated using the same formula as that used by Medicare for federally funded health centers on the HCFA 242 cost report form.~~

~~(1) In the absence of entity specific cost reporting information, a new entity is reimbursed on an interim basis at the FQHC statewide mean cost for medical and dental encounters.~~
~~(2) The costs of pharmacy services are excluded from the interim medical and dental encounter rates and are paid through the Authority's vendor drug program (Refer to Subchapter 5, Part 5, Pharmacies, of this Chapter). Reasonable cost for pharmacy services will be determined from the audited cost report. The Medicare principles of reasonable cost are used to determine 100% of reasonable cost for FQHC services. If reasonable cost exceeds reimbursement paid through the vendor drug program, an additional payment will be paid by the Authority to cover 100% of reasonable cost for pharmacy services.~~

317:30-5-663. Billing [REVOKED]

~~Payment is made for a maximum of one medical encounter and one dental encounter per day per recipient. FQHC's having a licensed pharmacy must bill through the Authority's vendor drug program separate from the following procedure codes.~~

~~(1) **Medical encounters.** Medical encounters are as follows:~~
~~(A) A FQHC medical encounter consists of primary care services performed by a physician, services and supplies incident to physicians services, clinical social worker, advanced practice nurse, clinical psychologist, physical therapist, services and supplies incident to the clinical psychologists and clinical social workers services as would otherwise be covered if furnished by or incidental to physicians services, physician assistant services and other services that may be considered primary care medical services.~~
~~(B) An EPSDT Screening must include a comprehensive health and developmental history, unclothed physical examination, appropriate immunizations, appropriate laboratory tests, and health education. This service is billed by the attending medical provider utilizing CPT codes.~~
~~(C) An EPSDT vision screening consists of an age appropriate vision assessment.~~
~~(D) An EPSDT Hearing Screening consists of an age appropriate hearing assessment.~~
~~(E) A family planning encounter includes initial and annual examinations and necessary laboratory work, provision of chosen contraceptive methods to include oral contraceptives, IUD, Depo Provera, diaphragm, foam, condoms or natural family planning, and treatment of minor gynecological problems. Coverage of family planning services are available to women between the child bearing age of 10 and 50.~~

~~(2) **Dental Encounters.**~~

~~(A) A Dental Encounter consists of all dental treatment other than a dental screening.~~

~~(B) An EPSDT Dental Screening consists of an oral dental examination by a dentist.~~

317:30-5-664. Timely filing [REVOKED]

~~In order to be eligible for payment under Medicaid, claims must be received by the fiscal agent within 12 months from the date of service. If eligibility of the patient has not been established after 10 months from the date of service, a claim should be filed in order to assure timely filing limitations are met. Claims for coinsurance and/or deductible must be filed within 90 days from the date of Medicare payment in order to be eligible for payment. In order to be eligible for payment under Medicaid, claims must be received by the fiscal agent within 12 months from the date of service. If eligibility of the patient has not been established after 10 months from the date of service, a claim should be filed in order to assure timely filing limitations are met. Claims for coinsurance and/or deductible must be filed within 90 days of the date of Medicare payment in order to be eligible for payment.~~

317:30-5-664.1. Provision of other health services outside of the Health Center core services

(a) If the Center chooses to provide other SoonerCare State Plan covered health services which are not included in the Health Center core service definition in OAC 317:30-5-661.1, the practitioners of those services are subject to the same program coverage limitations, enrollment and billing procedures described by the OHCA, and these services (e.g., home health services) are not included in the PPS settlement methodology in OAC 317:30-5-664.12.

(b) Other health services include, but are not limited to:

(1) dental services (refer to OAC 317:30-5-696) except for primary preventive dental services;

(2) eyeglasses (refer to OAC 317:30-5-450);

(3) clinical lab tests performed in the Center lab (other than the specific laboratory tests set out for Health Centers' certification and covered as Health Center services);

(4) technical component of diagnostic tests such as x-rays and EKGs (interpretation of the test provided by the Center physician is included as physician professional services);

(5) durable medical equipment (refer to OAC 317:30-5-210);

(6) emergency ambulance transportation (refer to OAC 317:30-5-335);

(7) prescribed drugs (refer to OAC 317:30-5-70);

(8) prosthetic devices (other than dental) which replace all or part of an internal body organ (including colostomy bags) and supplies directly related to colostomy care and the replacement of such devices;

(9) specialized laboratory services furnished away from the clinic;

(10) Psychosocial Rehabilitation Services [refer to OAC 317:30-5-241(a)(7)]; and

(11) Behavioral health related case management services (refer to OAC 317:30-5-585 through 317:30-5-589 and OAC 317:30-5-595 through 317:30-5-599).

317:30-5-664.2. Prior authorization and referrals

(a) Health Center encounters for core services, whether medical or behavioral health, are not subject to prior authorization. However, some Health Center services may require a referral from a PCP/CM.

(b) Other SoonerCare State Plan covered health services that the Center chooses to provide are subject to all applicable Medicaid regulations which govern the provision and coverage for that service.

317:30-5-664.3. Health Center encounters

(a) Health Center encounters that are billed to the OHCA must meet the definition in this Section and are limited to services covered by OHCA. These services include other health (ambulatory) services included in the State Plan.

(b) An encounter is defined as a face-to-face contact between a health care professional and a member for the provision of defined services through a Health Center within a 24-hour period ending at midnight, as documented in the member's medical record.

(c) For information about multiple encounters, refer to OAC 317:30-5-664.4.

(d) Services considered reimbursable encounters (including any related medical supplies provided during the course of the encounter) include:

(1) medical;

(2) diagnostic;

(3) addiction, dental, medical and mental health screenings;

(4) vision;

(5) physical therapy;

(6) occupational therapy;

(7) podiatry;

(8) mental health;

(9) alcohol and drug;

(10) speech;

(11) hearing;

(12) medically necessary Health Center encounters with a RN or LPN and related medical supplies (other than drugs and biologicals) furnished on a part-time or intermittent basis to home-bound members (refer to OAC 317:30-5-661.3);

(13) any other medically necessary health services covered by OHCA are also reimbursable as permitted within the Health Center's scope of services and allowed under OHCA's SoonerCare State Plan and OHCA Administrative Rules.

317:30-5-664.4. Multiple encounters at Health Centers

(a) A Health Center may bill for more than one medically necessary encounter per 24 hour period under certain conditions.

(b) It is intended that multiple medically necessary encounters will occur on an infrequent basis.
(c) A Center may not develop Center procedures that routinely involve multiple encounters for a single date of service, unless medical necessity warrant multiple encounters.
(d) Each service must have distinctly different diagnoses in order to meet the criteria for multiple encounters. For example, a medical visit and a dental visit on the same day are considered different services with distinctly different diagnoses.
(e) Similar services, even when provided by two different health care practitioners, are not considered multiple encounters.

317:30-5-664.5. Health Center encounter exclusions and limitations

(a) Service limitations governing the provision of all services apply pursuant to OAC 317:30. Excluded from the definition of reimbursable encounter core services are:

(1) Services provided by an independently CLIA certified and enrolled laboratory.
(2) Radiology services including nuclear medicine and diagnostic ultrasound services.
(3) Venipuncture for lab tests is considered part of the encounter and cannot be billed separately. When a client is seen at the clinic for a lab test only, use the appropriate CPT code. A visit for "lab test only" is not considered a Center encounter.
(4) Durable medical equipment or medical supplies not generally provided during the course of a Center visit such as diabetic supplies. However, gauze, band-aids, or other disposable products used during an office visit are considered as part of the cost of an encounter and cannot be billed separately under SoonerCare.
(5) Supplies and materials that are administered to the member are considered a part of the physician's or other health care practitioner's service.
(6) Drugs or medication treatments provided during a clinic visit are included in the encounter rate. For example, a client has come into the Center with high blood pressure and is treated at the Center with a hypertensive drug or drug samples provided to the Center free of charge are not reimbursable services and are included in the cost of an encounter. Prescriptions are not included in the encounter rate and must be billed through the pharmacy program by a qualified enrolled pharmacy.
(7) Administrative medical examinations and report services;
(8) Emergency services including delivery for pregnant members that are eligible under the Non-Qualified (ineligible) provisions of OAC 317:35-5-25;
(9) Family planning services provided to individuals enrolled in the Family Planning Waiver;
(10) Other services that are not defined in this rule or the State Plan.

(b) In addition, the following limitations and requirements apply to services provided by Health Centers:

(1) Physician services are not covered in a hospital.
(2) Encounters for PCP/CM covered capitated services provided to eligible SoonerCare Choice members enrolled in the Health Center's panel (except family planning services or HIV/AIDS prevention services) are not reimbursed as an encounter. However, PCP/CM covered services are included in the PPS wrap-around/reconciliation process (refer to OAC 317:30-5-664.11 for specific details).
(3) Behavioral health case management and psychosocial rehabilitation services are limited to Health Centers enrolled under the provider requirements in OAC 317:30-5-240, 317:30-5-585, and 317:30-5-595 and contracted with OHCA as an outpatient behavioral health agency.
(4) Behavioral health services are limited to those services furnished to members at or on behalf of the Health Center.

317:30-5-664.6. Prescription drugs provided by Health Centers

(a) Eligible Health Centers may elect to participate in the 340B prescription drug program which limits the purchase cost of covered outpatient drugs.
(b) Centers that are eligible for participation in the 340B program must submit a request to participate to the Office of Pharmacy Affairs which includes their SoonerCare billing information. On an annual basis, a copy of the completed 340B participation form from the Office of Pharmacy Affairs must also be submitted to OHCA's Pharmacy Unit. Additionally, the Center must notify OHCA in writing of any changes in participation as well as any changes in name, address, or the addition of any satellite facilities.
(c) For purposes of SoonerCare reimbursement, Health Centers participating in the 340B program may only dispense 340B drugs to the members who meet the definition of patient as defined by the Office of Pharmacy Affairs and outlined in this subsection:

(1) The Health Center has established a relationship with the member, such that the Center maintains records of the individual's health care; and
(2) The individual receives health care services from a health care professional who is either employed by the Center or provides health care under contractual or other arrangements (e.g., referral for consultation) such that responsibility of the care provided remains with the Center; and
(3) The individual receives a health care service or range of services from the Center which is consistent with the service or range of services for Health Centers.

(d) An individual will not be considered a "patient" of the Center for purposes of 340B funding if the only health care service received by the individual from the Center is the dispensing of a drug or drugs for subsequent self-administration or administration in the home setting.
(e) If the Center subcontracts for pharmacy services, the Center must have a written contract which includes the reimbursement methodology for the subcontractor. The Health

Center must be the entity purchasing any 340B drugs and must be the entity billing SoonerCare for any 340B drugs.

(f) Health Centers participating in the 340B program must maintain a separate accounting system for their 340B drugs and any other drugs which were not purchased through the 340B program.

(g) On an annual basis, the Center must submit to OHCA a description of their inventory system and accounting system for both their 340B drugs and any drugs purchased and dispensed outside the 340B program.

(h) Health Centers participating in the 340B prescription drug program can only bill SoonerCare for their acquisition cost plus dispensing fee for drugs purchased through the 340B program.

(i) Health Centers that purchase drugs outside of the 340B program can bill SoonerCare at the SoonerCare fee schedule for those drugs.

317:30-5-664.7. Dental services provided by Health Centers

(a) Covered medically necessary preventive dental services provided to adults and children are considered core services.

(b) The Health Center core service benefit to adults is intended to provide services requiring immediate treatment and is not intended to restore teeth. Services are limited to treatment for conditions such as:

(1) Acute infection;

(2) Acute abscesses;

(3) Severe tooth pain; and

(4) Tooth re-implantation, when clinically appropriate.

(c) Other medically necessary dental services which are not considered to be preventive may be billed by the Health Center utilizing the current SoonerCare fee schedule.

(d) Health Centers must submit all claims for SoonerCare reimbursement for dental services on the American Dental Association (ADA) form.

317:30-5-664.8. Obstetrical care provided by Health Centers

(a) **Billing written agreement.** In order to avoid duplicative billing situations, a Health Center must have a written agreement with its physician, certified nurse midwife, advanced practice nurse, or physician assistant that specifically identifies how obstetrical care will be billed. The agreement must specifically identify the service provider's compensation for Health Center core services and other health services that may be provided by the Center.

(b) **Prenatal or postpartum services.**

(1) If the Health Center compensates the physician, certified nurse midwife or advanced practice nurse for the provision of obstetrical care, then the Health Center bills the OHCA for each prenatal and postpartum visit separately using the appropriate CPT evaluation and management code(s) as provided in the Health Center billing manual.

(2) If the clinic does not compensate the provider for the provision of obstetrical care, then the provider must bill the OHCA for prenatal care according to the global method described in the SoonerCare Traditional provider specific rules for physicians, certified nurse midwives, physician assistants, and advanced practice nurses (refer to OAC 317:30-5-22).

(3) Under both billing methods, payment for prenatal care includes all routine or minor medical problems. No additional payment is made to the prenatal provider except in the case of a major illness distinctly unrelated to pregnancy.

(c) **Delivery services.** Delivery services are billed using the appropriate CPT codes for delivery. If the clinic does not compensate the provider for the provision of obstetrical care, then the provider must be individually enrolled and bill for those services using his or her assigned provider number. The costs associated with the delivery must be excluded from the cost settlement/encounter rate setting process (see OAC 317:300-5-664.11).

317:30-5-664.9. Family planning services provided by Health Centers

Family planning services provided to SoonerCare Traditional and Choice members are considered Health Center core services.

317:30-5-664.10. Health Center reimbursement

(a) In accordance with Section 702 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000, effective January 1, 2002, reimbursement is provided for core services and other health services at a Health Center facility-specific Prospective Payment System (PPS) rate per visit (encounter) determined according to the methodology described in OAC 317:30-5-664.12.

(b) As claims/encounters are filed, reimbursement for SoonerCare Choice members is made for all medically necessary covered primary care services (that are not included in the SoonerCare capitation payment, if applicable) and other health services at the current rate for that CPT/HCPCS code.

(c) As claims are filed, reimbursement for SoonerCare Traditional members is made for all medically necessary covered primary care and other health services at the PPS rate.

317:30-5-664.11. PPS rate reconciliation to Health Centers

(a) PPS reconciliation/wrap-around adjustments will be made for the difference in the facility-specific PPS rate and the fee schedule payments.

(b) OHCA compares the total payments due under the PPS rate per visit method and the payments made under the methods described in OAC 317:30-5-664.10 (b) and (c).

(c) OHCA will make an adjustment for the difference in the payments allowed and the facility-specific PPS rate. The difference in payments will be reconciled not less often than quarterly.

317:30-5-664.12. Determination of Health Center PPS rate

(a) **Methodology.** The methodology for establishing each facility's PPS rate is found in Attachment 4.19 B of the OHCA's State Plan, as amended effective January 1, 2001, and incorporated herein by reference.

(b) **Scope of service adjustment.** If a Center significantly changes its scope of services, the Center may request in writing that new baseline encounter rates be determined. Adjustments to encounter rates are made only if the change in the scope of services results in the inclusion of behavioral health services or dental services or a difference of at least five percent from the Center's current costs (other than overhead). The OHCA may initiate a rate adjustment, based on audited financial statements or cost reports, if the scope of services has been modified to include behavioral health services or dental services or would otherwise result in a change of at least five percent from the Center's current rate. If a new rate is set, the rate change takes effect on the latter of the change of services date or the date of application to the OHCA for rate change.

317:30-5-664.13. Individuals eligible for Part B of Medicare

For individuals eligible for Part B of Medicare, payment is made utilizing the SoonerCare allowable for comparable services.

317:30-5-664.14. Health Center record keeping

(a) Adequate records must be maintained to show what services were provided in the encounter claimed.

(b) All outpatient behavioral health services must be reflected by documentation in the patient records in accordance with OAC 317:30-5-248.

317:30-5-664.15. Health Center cost reporting

(a) All Health Centers requesting SoonerCare reimbursement must complete an annual report, in a format prescribed by the OHCA, covering a 12-month period of operations based upon the Center's reporting period, to accommodate all allowable costs.

(b) Health Centers that have several sites must file the required cost report.

(c) The cost report may be used to adjust payments based on increases or decreases in change in scope of services provided.

(d) Health Centers select the annual period for reporting purposes, subject to approval by the OHCA.

(e) Once the Health Center has selected a reporting period and obtained the approval of the OHCA, the Center must adhere to the period initially selected unless a change has been authorized in writing by the OHCA. Such a change is made only after the OHCA has established that the reason for such a change is valid.

(f) Periodically, the OHCA may contract for an independent audit of the Health Center's cost report.

[OAR Docket #07-1036; filed 5-16-07]

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

[OAR Docket #07-1041]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 6. Inpatient Psychiatric Hospitals
317: 30-5-96.2. [AMENDED]
(Reference APA WF # 06-35)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
DATES:
Comment period:
February 1, 2007 through March 5,2007
Public hearing:
March 5, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 15, 2007
Submitted to House:
March 15, 2007
Submitted to Senate:
March 15, 2007
Gubernatorial approval:
April 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 10, 2007
Final adoption:
May 10,2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 5. Individual Providers and Specialties
Part 6. Inpatient Psychiatric Hospitals
317: 30-5-96.2. [AMENDED]
Gubernatorial approval:
January 30, 2007
Register publication:
24 Ok Reg 678
Docket number:
07-320
(Reference APA WF # 06-35)
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Rules are revised to reflect transportation of family members to participate in family counseling with a SoonerCare member who resides in a psychiatric residential treatment center is the responsibility of the facility. Family therapy is a face-to-face interaction between a therapist and the patient/family to facilitate emotional, psychological or behavioral changes and promote communication and understanding. Family therapy must be provided for the benefit of a SoonerCare eligible child as a specifically identified component of an individual treatment plan. OHCA recently increased the per diem rate to facilities to cover this expense. Currently, policy states that the facility is responsible for transportation but until recently, SoonerRide has been providing the transportation for family members. Rules are revised to specifically state that the facility has to provide transportation for the member's necessary patient care and the member's facility to attend family therapy sessions at the facility.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 6. INPATIENT PSYCHIATRIC HOSPITALS

317:30-5-96.2. Payments definitions

The following words and terms, when used in Sections OAC 317:30-5-96.3 through 317:30-5-96.7, shall have the following meaning, unless the context clearly indicates otherwise:

"Allowable costs" means costs necessary for the efficient delivery of patient care.

"Ancillary Services" means the services for which charges are customarily made in addition to routine services. Ancillary services include, but are not limited to, physical therapy, speech therapy, laboratory, radiology and prescription drugs.

"Border Status" means a placement in a state that does not border Oklahoma but agrees to the same terms and conditions of instate or border facilities.

"Community-Based extended" means a PRTF that provides an extended environment for individuals who have completed a more intense treatment program and are preparing for full transition into the community, but who are not yet ready for independent living due to unresolved clinical issues, or unmet needs for personal, social, or vocational skills, that is furnished in a large campus residential setting.

"Community-Based, transitional" means a PRTF that furnishes structured, therapeutic treatment services in the context of a family-like, small multiple resident home environments of 16 beds or less.

"Developmentally disabled child" means a child with deficits in adaptive behavior originating during the developmental period. This condition may exist concurrently with a significantly sub-average general intellectual functioning.

"Eating Disorders Programs" means acute or intensive residential behavioral, psychiatric and medical services provided in a discreet unit to individuals experiencing an eating disorder.

"Free-standing" means an entity that is not integrated with any other entity as a main provider, a department of a provider, remote location of a hospital, satellite facility, or a provider-based entity.

"Professional services" means services of a physician, psychologist or dentist legally authorized to practice medicine and/or surgery by the state in which the function is performed.

"Provider-Based PRTF" means a PRTF that is part of a larger general medical surgical main hospital, and the PRTF is treated as "provider based" under 42 CFR 413.65 and operates under the same license as the main hospital.

"Public" means a hospital or PRTF owned or operated by the state.

"Routine Services" means services that are considered routine in the freestanding PRTF setting. Routine services include, but are not limited to:

(A) room and board;
(B) treatment program components;
(C) psychiatric treatment;
(D) professional consultation;
(E) medical management;
(F) crisis intervention;
(G) transportation;
(H) rehabilitative services;
(I) case management;
(J) interpreter services (if applicable);
(K) routine health care for individuals in good physical health; and
(L) laboratory services for a substance abuse/detoxification program.

"Specialty treatment program/specialty unit" means acute or intensive residential behavioral, psychiatric and medical services that provide care to a population with a special need or issues such as developmentally disabled, mentally retarded, autistic/Asperger's, eating disorders, sexual offenders, or reactive attachment disorders. These patients require a higher level of care and staffing ratio than a standard PRTF and typically have multiple problems.

"Sub-Acute Services" means a planned regimen of 24-hour professionally directed evaluation, care, and treatment for individuals. Care is delivered by an interdisciplinary team to individuals whose sub-acute neurological and emotional/behavioral problems are sufficiently severe to require 24-hour care. However, the full resources of an acute care general hospital or medically managed inpatient treatment is not necessary. An example of subacute care is services to children with pervasive developmental disabilities including autism, hearing impaired and dually diagnosed individuals with mental retardation and behavioral problems.

"Transportation" means the service, provided by the PRTF, of transporting a member for necessary patient care and furnishing transportation for the member's family to attend required family therapy at the facility.

"Treatment Program Components" means therapies, activities of daily living and rehabilitative services furnished by physician/psychologist or other licensed mental health professionals.

"Usual and customary charges" refers to the uniform charges listed in a provider's established charge schedule which is in effect and applied consistently to most patients and recognized for program reimbursement. To be considered "customary" for Medicaid reimbursement, a provider's charges for like services must be imposed on most patients regardless of the type of patient treated or the party responsible for payment of such services.

[OAR Docket #07-1041; filed 5-16-07]

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

[OAR Docket #07-1045]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Coverage and Exclusions
317:35-3-2.* [AMENDED]
(Reference APA WF # 06-45A)*[**Note:* This action amends text that became effective by permanent action on May 11, 2007, as published in the May 1, 2007 issue of The Oklahoma Register (see 24 Ok Reg 943)]
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
DATES:
Comment period:
February 1, 2007 through March 5,2007
Public hearing:
March 5, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 15, 2007
Submitted to House:
March 15, 2007
Submitted to Senate:
March 15, 2007
Gubernatorial approval:
April 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 10, 2007
Final adoption:
May 10,2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Rules for SoonerCare transportation and subsistence are revised to define member eligible for non-emergency transportation (NET) and the availability and access for utilization of the SoonerRide program for all NET qualified members. Rules are reorganized to be more user friendly for providers and members by adding definitions and grouping like services together.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 3. COVERAGE AND EXCLUSIONS

317:35-3-2. SoonerCare transportation and subsistence

(a) The Oklahoma Health Care Authority (OHCA) is responsible for assuring that necessary transportation is available to all eligible SoonerCare members who are in need of SoonerCare medical services in accordance with 42 CFR 431.53. The agency contracts with a broker to provide statewide curb to curb coverage for non-emergency transportation under the SoonerRide program. The broker provides the most appropriate and least costly mode of transportation necessary to meet the individual needs of SoonerCare members. Payment for covered services to the broker is reimbursed under a capitated methodology based on per member per month. The agency contracts directly with ambulance and air providers for all other transportation needs for eligible members not provided by SoonerRide. ~~Ambulance and air providers are reimbursed at a rate published statewide based on the Medicare established rates for covered services. Transportation must be for medically necessary treatment in accordance with 42 CFR 440.170.~~ SoonerRide excludes those individuals who are categorized as:

(1) Qualified Medicare Beneficiaries Plus (QMBP);
(2) Specified Low Income Medicare Beneficiaries (SLMB);
(3) Qualifying Individuals-1;
(4) individuals who are in an institution for mental disease (IMD), inpatient;
(5) institutionalized~~,~~ ;
(6) Home and Community Based Waiver members with the exception of the In-home Supports Waiver for Children and the ADvantage Waiver~~, those individuals who are categorized as Qualified Medicare Beneficiaries Plus (QMBP), Specified Low Income Medicare Beneficiaries (SLMB), Qualifying Individuals-1 and individuals who are in an institution for mental disease (IMD)~~.

(b) Members seeking medically necessary non-emergency transportation will be required to contact the SoonerRide reservation center. Contact will be made via a toll-free phone number which is answered Monday through Saturday, 8 a.m. to 6 p.m. Whenever possible, the member is required to notify SoonerRide at least 72 hours prior to the appointment. The member is asked to furnish the SoonerRide reservation center their SoonerCare member number, home address, the time and date of the medical appointment, the address and phone number of the medical provider, and any physical/mental limitations which will impact the type of transportation needed. SoonerRide makes arrangements for the most appropriate, least costly transportation. SoonerRide verifies appointments when appropriate. ~~The SoonerRide contractor is responsible for recruiting providers in each county and ensuring that all transportation providers meet all appropriate regulations for the provision of public transportation. Provider qualifications include, but are not limited to, verification of liability insurance and drug testing. All non-emergency transportation will be arranged by SoonerRide.~~ If the member disagrees with the transportation arranged or denied by SoonerRide, an appeal ~~is~~ must be filed with OHCA according to OAC 317:2-1-2 ~~within 48 hours of the notification~~. The appropriateness of transportation may be appealed only to the extent that the transportation does not meet the medical needs of the member. Dissatisfaction with the use of public transportation, shared

rides, type of vehicle, etc., is not appropriate grounds for appeal. The Oklahoma Health Care Authority's decision is final.

(1) **Authorization for transportation by private vehicle or bus.** Transportation by private vehicle or bus is administered through the broker when it is necessary for an eligible member to receive medical services.

(2) **Authorization for transportation by taxi.** Taxi service may be authorized at the discretion of the broker.

(3) **Transportation by ambulance (ground, air ambulance or helicopter).** Transportation by ambulance is compensable for individuals eligible for SoonerCare benefits when other available transportation does not meet the medical needs of the individual. Payment is made for ambulance transportation to and/or from a medical facility ~~(a physician's office or clinic is not considered a medical facility)~~ for medical care compensable under SoonerCare.

(4) **Transportation by airplane.** When an individual's medical condition is such that transportation out-of-state by a commercial airline is required, approval for airfare must be secured by telephoning the OHCA who will make the necessary flight arrangements.

(5) **Subsistence (sleeping accommodations and meals).** An individual who is eligible for transportation to or from a medical facility to obtain medical services may receive assistance with the necessary expenses of lodging and meals from SoonerCare funds. If the individual needs assistance with necessary expenses of lodging and meals, the member ~~must first~~ may pay for the lodging and meals and then submit a travel reimbursement form for reimbursement; if the member does not have the funds for the necessary subsistence, authorization is made by the local office on the Room and Board Order form. The travel reimbursement form may be obtained by contacting OHCA or the local OKDHS office. Any subsistence expense claimed on the travel reimbursement form must be documented with receipts, and reimbursement cannot exceed state per diem amounts. Payment for meals is only provided for overnight stays that are more than 50 miles from the home and are based on a daily per diem and may be used for breakfast, lunch or dinner, or all three meals, whichever is required.

(6) **Escort assistance required.** Payment for transportation and subsistence of one escort may be authorized if the service is required. Only one escort may be authorized. It is the responsibility of the OHCA to determine this necessity. The decision should be based on the following circumstances:

(A) when the individual's health does not permit traveling alone; and

(B) when the individual seeking medical services is a minor child.

[OAR Docket #07-1045; filed 5-16-07]

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

[OAR Docket #07-1039]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Eligibility and Countable Income
Part 3. Non-Medical Eligibility Requirements
317:35-5-25. [AMENDED]
Subchapter 7. Medical Services
Part 5. Determination of Eligibility for Medical Services
317:35-7-41. [AMENDED]
Subchapter 21. Breast and Cervical Cancer Treatment Program
317:35-21-1. [AMENDED]
317:35-21-7. [AMENDED]
317:35-21-11. [AMENDED]
(Reference APA WF # 06-15B)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 6036 of the Deficit Reduction Act of 2005
DATES:
Comment period:
February 1, 2007 through March 5,2007
Public hearing:
March 5, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 15, 2007
Submitted to House:
March 15, 2007
Submitted to Senate:
March 15, 2007
Gubernatorial approval:
April 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 10, 2007
Final adoption:
May 10,2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Eligibility rules regarding citizenship/alien status and identity verification requirements are revised to comply with the provisions of the Deficit Reduction Act (DRA) of 2005. Section 6036 of the DRA requires states to obtain satisfactory documentary evidence of citizenship in order to receive Federal Financial Participation. States are required to obtain satisfactory documentary evidence of citizenship from all applicants and recipients unless otherwise exempted in order to receive Federal Financial Participation. For applicants, the State must obtain such evidence of citizenship at the time of application. For recipients, the State must obtain such evidence of citizenship at the time redetermination. Individuals who have applied for and have been approved for SSI and Medicare will have had their citizenship status verified by the Social Security Administration and the OKDHS Social Workers will be able to use data exchange systems with Social Security for verification. Some of the most common documents that may be accepted as proof of citizenship will include: a United States birth certificate, a hospital record of birth made at the time of birth in one of the 50 states, a United States passport, a Certificate of U.S. Citizenship (DHS FORMS N-560 or N-561), a Certificate of Naturalization (DHS FORMS N-550 or N570), a religious record of birth recorded in the United States or its Territories within 3 months of birth, a Report of Birth Abroad of a U.S. Citizen (Form FRS-240), or a U.S. Citizen

I.D. card (DHS Form I-197). Revisions to citizenship eligibility rules are in need of revision in order to comply with the Deficit Reduction Act of 2005.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 3. NON-MEDICAL ELIGIBILITY REQUIREMENTS

317:35-5-25. Citizenship/alien status and identity verification requirements

(a) ~~**Establishment of citizenship and alienage**~~ **Citizenship/alien status and identity verification requirements.** Verification of citizenship/alien status and identity are required for all adults and children approved for Medicaid. ~~Medicaid services are provided to the defined groups provided in this subsection if they meet all other factors of eligibility.~~

~~(1) **U. S. Citizens and aliens admitted for permanent residence.** The groups listed in the following subparagraphs are eligible for the full range of Medicaid services.~~

~~(A) U.S. Citizens;~~

~~(B) aliens admitted for permanent residence who have resided in the United States for a period greater than five years from the date of entry; and~~

~~(C) certain parolees, refugees, Western Hemisphere aliens, immigrants, conditioned entries, Kickapoo Indians and American Indians born in Canada.~~

(1) The types of acceptable evidence that verify identity and citizenship include:

(A) United States (U.S.) Passport;

(B) Certificate of Naturalization issued by U.S. Citizenship & Immigration Services (USCIS)(Form N-550 or N-570);

(C) Certificate of Citizenship issued by USCIS (Form N-560 or N-561); or

(D) Copy of the Medicare card or printout of a BENDEX or SDX screen showing receipt of Medicare benefits, Supplemental Security Income or disability benefits from the Social Security Administration.

(2) The types of acceptable evidence that verify citizenship but require additional steps to obtain satisfactory evidence of identity are listed in subparagraphs (A) and (B). Subparagraph (A) lists the most reliable forms of verification and is to be used before using items listed in (B). Subparagraph (B) lists those verifications that are less reliable forms of verification and are used only when the items in (A) are not attainable.

(A) Most reliable forms of citizenship verification are:

(i) A U.S. public Birth Certificate showing birth in one of the 50 states, the District of Columbia, Puerto Rico (on or after 1/13/1941), Guam (on or after 4/10/1899), the U.S. Virgin Islands (on or after 1/17/1917), American Samoa, Swain's Island, or the Northern Mariana Islands after 11/4/1986;

(ii) A Report of Birth Abroad of a U.S. citizen issued by the Department of Homeland Security or a Certification of birth issued by the State Department (Form FS-240, FS-545 or DS-1350);

(iii) A U.S. Citizen ID Card (Form I-179 or I-197);

(iv) A Northern Mariana Identification Card (Form I-873) (Issued by the INS to a collectively naturalized citizen of the U.S. who was born in the Northern Mariana Islands before 11/3/1986);

(v) An American Indian Card issued by the Department of Homeland Security with the classification code "KIC" (Form I-872);

(vi) A Final Adoption Decree showing the child's name and U. S. place of birth;

(vii) Evidence of U.S. Civil Service employment before 6/1/1976; or

(viii) An Official U.S. Military Record of Service showing a U.S. place of birth (for example a DD-214).

(B) Other less reliable forms of citizenship verification are:

(i) An extract of a hospital record on hospital letterhead established at the time of the person's birth that was created five years before the initial application date and that indicates a U.S. place of birth. For children under 16 the evidence must have been created near the time of birth or five years before the date of application;

(ii) Life, health, or other insurance record showing a U.S. place of birth that was created at least five years before the initial application date and that indicates a U.S. place of birth;

(iii) Federal or State census record showing U.S. citizenship or a U.S. place of birth (generally for persons born 1900 through 1950). The census record must also show the applicant's/member's age; or

(iv) One of the following items that show a U.S. place of birth and was created at least five years before the application for Medicaid. This evidence must be one of the following and show a U.S. place of birth:

(I) Seneca Indian tribal census record;

(II) Bureau of Indian Affairs tribal census records of the Navajo Indians;

(III) U.S. State Vital Statistics official notification of birth registration;

(IV) An amended U.S. public birth record that is amended more than five years after the person's birth; or

(V) Statement signed by the physician or midwife who was in attendance at the time of birth.

(3) Acceptable evidence of identity that must accompany citizenship evidence listed in (A) and (B) of paragraph (2) of this subsection includes:

(A) A driver's license issued by a U.S. state or territory with either a photograph of the individual or other identifying information such as name, age, sex, race, height, weight, or eye color;

(B) A school identification card with a photograph of the individual;

(C) An identification card issued by Federal, state, or local government with the same information included on driver's licenses;

(D) A U.S. military card or draft record;

(E) A U.S. military dependent's identification card;

(F) A Native American Tribal document including Certificate of Degree of Indian Blood, or other U.S. American Indian/Alaska Native Tribal document with a photograph of the individual or other personal identifying information;

(G) A U.S. Coast Guard Merchant Mariner card;

(H) A state court order placing a child in custody as reported by the OKDHS;

(I) For children under 16, school records may include nursery or daycare records;

(J) If none of the verification items on the list are available, an affidavit may be used for children under 16. An affidavit is only acceptable if it is signed under penalty of perjury by a parent or guardian stating the date and place of the birth of the child and **cannot be used if an affidavit for citizenship was provided.**

(b) **Centralized Verification Unit.**

(1) When the applicant/member is unable to obtain citizenship verification, a reasonable opportunity is afforded the applicant/member to obtain the evidence as well as assistance in doing so. A reasonable opportunity is afforded the applicant/member before taking action affecting the individual's eligibility for Medicaid. The reasonable opportunity time frame usually consists of 60 days. In rare instances, the CVU may extend the time frame to a period not to exceed an additional 60 days.

(2) Additional methods of verification are available to the CVU. These methods are the least reliable forms of verification and should only be used as a last resort:

(A) Institutional admission papers from a nursing facility, skilled care facility or other institution. Admission papers generally show biographical information for the person including place of birth; the record can be used to establish U.S. citizenship when it shows a U.S. place of birth;

(B) Medical (clinic, doctor, or hospital) record created at least five years before the initial application date that indicates a U.S. place of birth. For children under 16, the document must have been created near the time of birth. Medical records generally show biographical information for the person including place of birth; the record can be used to establish U.S. citizenship when it shows a U.S. place of birth. An immunization record is not considered a medical record for purposes of establishing U.S. citizenship;

(C) Written affidavit. Affidavits are only used in rare circumstances. If the verification requirements need to be met through affidavits, the following rules apply:

(i) There must be at least two affidavits by two individuals who have personal knowledge of the event(s) establishing the applicant's/member's claim of citizenship;

(ii) At least one of the individuals making the affidavit cannot be related to the applicant/member;

(iii) In order for the affidavit to be acceptable the persons making them must be able to provide proof of their own citizenship and identity;

(iv) If the individual(s) making the affidavit has information which explains why evidence establishing the applicant's/member's claim or citizenship does not exist or cannot be readily obtained, the affidavit must contain this information as well;

(v) The State must obtain a separate affidavit from the applicant/member or other knowledgeable individual (guardian or representative) explaining why the evidence does not exist or cannot be obtained; and

(vi) The affidavits must be signed under penalty of perjury.

(c) **Alienage verification requirements.** Medicaid services are provided as listed to the defined groups as indicated in this subsection if they meet all other factors of eligibility.

(~~2~~1) **Eligible aliens (qualified aliens).** The groups listed in the following subparagraphs are eligible for the full range of Medicaid services. A qualified alien is:

(A) an alien who was admitted to the United States and has resided in the United States for a period greater than five years from the date of entry and who was:

(i) lawfully admitted for permanent residence under the Immigration and Nationality Act;

(ii) paroled into the United States under Section 212(d)(5) of such Act for a period of at least one year;

(iii) granted conditional entry pursuant to Section 203(a)(7) of such Act as in effect prior to April 1, 1980; or

(iv) a battered spouse, battered child, or parent or child of a battered person with a petition under 204(a)(1)(A) or (B) or 244(a)(3) of the Immigration and Naturalization Act.

(B) an alien who was admitted to the United States and who was:

(i) granted asylum under Section 208 of such Act regardless of the date asylum is granted;

(ii) a refugee admitted to the United States under Section 207 of such Act regardless of the date admitted;

(iii) an alien with deportation withheld under Section 243(h) of such Act regardless of the date deportation was withheld;

(iv) a Cuban or Haitian entrant as defined in Section 501(e) of the Refugee Education Assistance Act of 1980, regardless of the date of entry;

(v) an alien who is a veteran as defined in 38 U.S.C. § 101, with a discharge characterized as an honorable discharge and not on the grounds of alienage;

(vi) an alien who is on active duty, other than active duty for training, in the Armed Forces of the United States;

(vii) the spouse or unmarried dependent child of an individual described in (C) ~~or (D)~~ of this ~~subsection~~ paragraph.

(viii) a victim of a severe form of trafficking pursuant to Section 107(b) of the Trafficking Victims Protection Act of 2000; or

(ix) admitted as an Amerasian immigrant.

(C) permanent residents who first entered the country under ~~(2)(B) of this subsection~~ (B) of this paragraph and who later converted to lawful permanent residence status.

(~~3~~2) **Other aliens lawfully admitted for permanent residence (non-qualified aliens).** Non-qualified aliens are those individuals who were admitted to the United States and who do not meet any of the definitions in paragraph (1) ~~(2)~~ of this subsection. Non-qualified aliens are ineligible for Medicaid for five years from the date of entry except that non-qualified aliens are eligible for emergency services only when the individual has a medical condition (including emergency labor and delivery) with acute symptoms which may result in placing his/her health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of body organ or part without immediate medical attention.

(4 3) **~~Illegal~~ Undocumented aliens.** ~~Illegal~~ Undocumented aliens who do not meet any of the definitions in (1)-(2) of this subsection are eligible for emergency services only when the individual has a medical condition (including emergency labor and delivery) with acute symptoms which may result in placing his/her health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of body organ or part without immediate medical attention.

(~~5~~4) **Ineligible aliens.**

(A) Ineligible aliens who do not fall into the categories in (1) ~~(4)~~ and (2) of this subsection, yet have been lawfully admitted for temporary or specified periods of time include, but are not limited to: foreign students, visitors, foreign government representatives, crewmen, members of foreign media and temporary workers including agricultural contract workers. This group is ineligible for Medicaid, including emergency services, because of the temporary nature of their admission status.

(B) These individuals are generally issued Form I-94, Arrival Departure Record, on which an expiration date is entered. This form is not the same Form I-94 that is issued to persons who have been paroled into the United States. Parolees carry a Form I-94 that is titled "Arrival-Departure Record - Parole Edition". Two other forms that do not give the individual "Immigrant" status are Form I-186, Nonresident Alien Mexican Border Crossing Card, and Form SW-434, Mexican Border Visitors Permit.

~~(6) **Declaration.** A declaration of citizenship/alien status is required for all adults and children approved for Medicaid. This requirement is met when all adults in the case or person acting in behalf of individual(s) in the case have signed the application form attesting to the status indicated for all case members on the application form.~~

(~~7~~5) **Preauthorization.** Preauthorization is required for payment of emergency medical services rendered to non-qualified and ~~illegal~~ undocumented aliens. Persons determined as having lawful alien status must have the status verified through Systematic Alien Verification for Entitlements (SAVE).

~~(b) **Citizenship.** An individual may be a citizen of the United States by being born in the United States or by being born in some other country but moving to the United States and being granted United States citizenship through the Bureau of Citizenship and Immigration Services (BCIS). The area defined by Medicaid regulations pertaining to United States citizenship include the 50 states, the District of Columbia, Puerto Rico, Guam, Virgin Islands and the Northern Marianas. Nationals from American Samoa or Swain's Island are also regarded as U.S. citizens for Medicaid purposes.~~

~~(1) When the situation indicates a need to verify citizenship, birth in the United States may be verified by a birth certificate, religious or similar proof of birth, or a United States passport.~~

~~(2) If the individual's birth occurred in some other country and he/she entered the United States as an alien but has become a United States citizen, this must be verified by a certificate of citizenship or certificate of naturalization provided by BCIS.~~

~~(3) If the Social Security Administration has already determined the individual meets the citizenship and alienage requirement for SSI or Medicare eligibility, DHS accepts this determination. In such an instance, the individual's notification of eligibility for SSI, SSI check, or Medicare card must be seen and an entry made in the FACS Case Notes as to which of these documents was seen as verification.~~

~~(4) In all other instances in which the adult (or a parent of a minor) was an alien who has become a naturalized citizen of the United States, the citizenship papers of the~~

~~individual must be seen and the exact name shown and any pertinent numbers, dates, etc., must be recorded in the FACS Case Notes.~~

(~~c~~d) **Alienage.** A decision regarding eligibility cannot be made until the eligibility condition of citizenship and alienage is determined.

(1) **Immigrants.** Aliens lawfully admitted for permanent residence in the United States are classified as immigrants by the BCIS. These are individuals who entered this country with the express intention of residing here permanently.

(2) **Parolees.** Under Section 212(d)(5) of the Immigration and Nationality Act, individuals can be paroled into the United States for an indefinite or temporary period at the discretion of the United States Attorney General. Individuals admitted as Parolees are considered to meet the "citizenship and alienage" requirement.

(3) **Refugees and Western Hemisphere aliens.** Under Section 203(a)(7) of the Immigration and Nationality Act, Refugees and Western Hemisphere aliens may be lawfully admitted to the United States if, because of persecution or fear of prosecution due to race, religion, or political opinion, they have fled from a Communist or Communist-dominated country or from the area of the Middle East; or if they are refugees from natural catastrophes. These entries meet the citizenship and alienage requirement. Western Hemisphere aliens will meet the citizenship requirement for Medicaid if they can provide either of the documents in subparagraphs (A) and (B) of this paragraph as proof of their alien status.

(A) Form I-94 endorsed "Voluntary Departure Granted-Employment Authorized", or

(B) The following court-ordered notice sent by BCIS to each of those individuals permitted to remain in the United States: "Due to a Court Order in Silva vs. Levi, 76 C4268 entered by District Judge John F. Grady in the District Court for the Northern District of Illinois, we are taking no action on your case. This means that you are permitted to remain in the United States without threat of deportation or expulsion until further notice. Your employment in the United States is authorized".

~~(4) **Conditioned entries of aliens made available by the U. S. Attorney General for emergent reasons or for reasons deemed strictly in the public interest.** Conditioned entries of aliens may be made available by the U.S. Attorney General for emergent reasons or for reasons deemed strictly in the public interest. Because the reasons for conditioned entries differ, a decision regarding eligibility can not be made until clearance is received from BCIS.~~

(~~5~~4) **Special provisions relating to Kickapoo Indians.** Kickapoo Indians migrating between Mexico and the United States carry Form I-94, Arrival-Departure Record (Parole Edition). If Form I-94 carries the statement that the Kickapoo is "paroled pursuant to Section 212(d)(5) of the Immigration and Nationality Act" or that the "Kickapoo status is pending clarification of status by Congress" regardless of whether such statements are preprinted or handwritten and regardless of a specific mention of the "treaty", they meet the "citizenship and alienage" requirement. All Kickapoo Indians paroled in the United States must renew their paroled status each year at any local Immigration Office. There are other Kickapoos who have entered the United States from Mexico who carry Form I-151 or Form I-551, Alien Registration Receipt Cards. These individuals have the same status as other individuals who have been issued Form I-151 or Form I-551 and therefore, meet the citizenship and alienage requirements. Still other Kickapoos are classified as Mexican Nationals by the BCIS. They carry Form I-94, Arrival-Departure Record, which has been issued as a visiting visa and does not make mention of the treaty. Such form does not meet the "citizenship and alienage" requirements but provides only the non-immigrant status described in ~~(c)~~(d)(1) of this Section.

(~~6~~5) **American Indians born in Canada.** An American Indian born in Canada, who has maintained residence in the United States since entry, is considered to be lawfully admitted for permanent residence if he/she is of at least one-half American Indian blood. This does not include the non-citizen whose membership in an Indian tribe or family is created by adoption, unless such person is of at least 50 percent or more Indian blood. The methods of documentation are birth or baptismal certificate issued on a reservation, tribal records, letter from the Canadian Department of Indian Affairs, or school records.

(6) **Marshall Islanders.** Marshall Islanders are classified as permanent non-immigrants by BCIS. They are eligible for emergency services only.

SUBCHAPTER 7. MEDICAL SERVICES

PART 5. DETERMINATION OF ELIGIBILITY FOR MEDICAL SERVICES

317:35-7-41. Eligibility as Qualified Disabled and Working Individual

(a) An individual determined to be categorically related to Aid to the Blind or Disabled is eligible for Medicaid as a Qualified Disabled and Working Individual (QDWI) if the following eligibility conditions are met.

(1) Social Security disability benefits were terminated solely due to excess earnings.

(2) Countable income and resources do not exceed the standards as shown on DHS Appendix C-1, Schedule V, in which the income standards are based on 200% of the Federal Poverty Level.

(3) Medicaid eligibility cannot be established under QMB or categorically needy programs.

(4) Individual is enrolled in Medicare Part A.

(b) Individuals applying for QDWI must also meet the general eligibility requirements for social security number, residence, citizenship, and assignment of rights. Refer to OAC

317:35-5-25 regarding citizenship/alien status and identity verification requirements.

(c) Countable income and resources are determined using the same rules followed in determining eligibility for individuals categorically related to Aid to the Aged, Blind or Disabled, with the following exception: The $20 general income disregard is applied to either earned or unearned income, but not both.

(d) Coverage for a Qualified Disabled and Working Individual is restricted to payment of the Medicare Part A premiums. Medical cards are not issued.

SUBCHAPTER 21. BREAST AND CERVICAL CANCER TREATMENT PROGRAM

317:35-21-1. Breast and Cervical Cancer Treatment program

(a) The Breast and Cervical Cancer Prevention and Treatment Act of 2000 (BCCPTA) allows states to provide Medicaid to uninsured women under age 65 who are in need of treatment for breast and/or cervical cancer. Medical eligibility is determined through the Centers for Disease Control and Prevention's (CDC) National Breast and Cervical Cancer Early Detection Program (NBCCEDP) as needing treatment for breast and/or cervical cancer, including pre-cancerous conditions and early stage, recurrent or metastatic cancer.

(b) To receive Breast and Cervical Cancer (BCC) Treatment services, the woman must meet all of the following conditions.

(1) The woman must have been screened for BCC under the CDC Breast and Cervical Cancer Early Detection Program (see OAC 317:35-21-3) established under Title XV of the Public Health Service (PHS) Act, and found to be in need of treatment, including abnormal finding on screening examination, precancerous conditions and early stage, recurrent or metastatic cancer (see OAC 317:35-21-5).

(2) The woman must:

(A) not have creditable insurance coverage that covers BCC (see OAC 317:35-21-4),

(B) not be eligible for any other categorically needy Medicaid eligibility group,

(C) be under 65 years of age,

(D) be a US citizen or qualified alien (see OAC ~~317:35-21-7~~ 317:35-5-25 for citizenship/alien status and identity verification requirements),

(E) be a resident of Oklahoma,

(F) declare her Social Security number,

(G) assign her rights to Third Party Liability if she has insurance that is not creditable, and

(H) declare her household income for the purpose of determining that she is not otherwise eligible for Medicaid. For the BCC treatment program, income is not a condition of eligibility and verification of income is not required.

317:35-21-7. Citizenship and Residence

The requirements for ~~citizenship~~ citizenship/alien status and identity verification and residence found at OAC 317:35-5-25 and 317:35-5-26 apply to the BCC treatment program.

317:35-21-11. Certification for BCC

(a) In order for a woman to receive BCC treatment services she must first be screened for BCC under the CDC Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act and found to be in need of treatment. Once determined to be in need of treatment the CDC screener determines that the woman:

(1) does not have creditable health insurance coverage,

(2) is under age 65,

(3) is a ~~self-declared~~ US citizen or qualified alien (see OAC 317:35-5-25),

(4) is a self declared Oklahoma resident,

(5) has provided her social security number,

(6) is willing to assign medical rights to TPL, and

(7) has declared all household income.

(b) If all of the conditions in subchapter (a) are met, the CDC screener assists the woman in completing the BCC application (OHCA BCC-1). The completed BCC-1 is forwarded to the OKDHS office.

(c) If all of the conditions in subchapter (a) are not met, an application is not completed.

(d) The OKDHS worker verifies that the screener is a CDC screener. The worker also establishes whether or not the woman is otherwise eligible for Medicaid. If the woman is not otherwise eligible for Medicaid, she is certified for the BCC program. If the woman is eligible under another Medicaid category, the application is certified in the other Medicaid category.

(e) If a woman does not cooperate in determining her eligibility for other Medicaid programs, her BCC application is denied and the appropriate notice is computer generated. For example, a woman otherwise eligible for Medicaid, related to the low income families with children category, refuses to cooperate with child support enforcement without good cause would not be eligible for the BCC program.

(f) If a woman in treatment for breast or cervical cancer contacts

the OKDHS office and has not been through the CDC screening process, she is referred to the BCC program.

(g) An individual determined eligible for BCC may be certified the first day of the month of application or, if the individual had a medical service within three months prior to the application date, the first day of the first, second or third month prior to the month of application, provided the date of certification is not prior to the CDC Screen.

[OAR Docket #07-1039; filed 5-16-07]

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

[OAR Docket #07-1048]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Eligibility and Countable Income
Part 5. Countable Income and Resources
317:35-5-41. [AMENDED]
(Reference APA WF # 06-47)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
DATES:
Comment period:
February 1, 2007 through March 5,2007
Public hearing:
March 5, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 15, 2007
Submitted to House:
March 15, 2007
Submitted to Senate:
March 15, 2007
Gubernatorial approval:
April 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 10, 2007
Final adoption:
May 10,2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 5. Eligibility and Countable Income
Part 5. Countable Income and Resources
317:35-5-41. [AMENDED]
Gubernatorial approval:
January 30, 2007
Register publication:
24 Ok Reg 680
Docket number:
07-322
(Reference APA WF # 06-47)
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Resource eligibility rules for individuals related to aged, blind and disabled are revised to increase the maximum monthly income for a Medicaid Income Pension Trust, also known as a Miller Trust, from $2,500 to $3,000. A Medicaid Income Pension Trust is a trust account established for individuals in need of long-term care who have countable income above the categorically needy standard for long-term care but the income is insufficient to meet the cost of long-term care. The Trust consists of all of the individual's monthly income. A monthly income that is equal to the categorically needy standard for long-term care is disbursed from the trust to the individual thus qualifying the individual for Long Term Care. The State receives all amounts remaining in the trust upon the death of the individual up to an amount equal to the total benefits paid on behalf of the individual subsequent to the date of the establishment of the trust. The Medicaid Income Pension Trust rules were originally established in 1992 with a maximum monthly income amount for the Trust set at $2,000. In 1998, the monthly maximum income was increased to $2,500. This current maximum no longer meets the rising costs of minimum nursing home care nor the other necessary expenses such as prescribed medications, Medicare and health insurance premiums, and other personal need items. Therefore, rules are needed to increase the monthly income maximum for a Medicaid Income Pension Trust from $2,500 to $3,000.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 5. COUNTABLE INCOME AND RESOURCES

317:35-5-41. Determination of capital resources for individuals categorically related to aged, blind and disabled

(a) **General.** The term capital resources is a general term representing any form of real and/or personal property which has an available money value. All available capital resources, except those required to be disregarded by law or by policies of the OHCA or OKDHS are considered in determining need. Available resources are those resources which are in hand or under the control of the individual.

(1) In defining need, OHCA and OKDHS recognize the importance of a ~~recipient~~ member retaining a small reserve for emergencies or special need and has established a maximum reserve a ~~client~~ member or family may hold and be considered in need.

(2) Capital resources are evaluated on a monthly basis in determining eligibility for an applicant for medical services. An applicant is determined ineligible for any month resources exceed the resource standard at any time during that month. When a ~~recipient~~ member has resources which exceed the resource standard, case closure action is taken for the next possible effective date.

(3) State law is specific on the mutual responsibility of spouses for each other. Therefore, if husband and wife are living together, a capital resource and/or income available to one spouse constitutes a resource and/or income to the other. When there is a break in the family relationship and the husband and wife are separated, but not divorced or legally separated, they constitute a possible resource to each other and this possible resource is explored to determine what, if any, resource can be made available. When spouse is in a nursing facility, see Subchapter 9 and 19 of this Chapter.

(4) Only the resources of the child determined eligible for TEFRA are considered in determining eligibility.

(5) Household equipment used for daily living is not considered a resource.

(6) Each time that need is determined, gross income and the equity of each capital resource are established.

Equity equals current market value minus indebtedness. The ~~recipient~~ member may change the form of capital resources from time to time without affecting eligibility so long as the equity is not decreased in doing so or increased in excess of the allowable maximum reserve. In the event the equity is decreased as the result of a sale or transfer, the reduction in the equity is evaluated in relation to policy applicable to resources disposed of while receiving assistance.

(b) **Eligibility.** In determining eligibility based on resources, only those resources available for current use or those which the ~~client~~ member can convert for current use (no legal impediment involved) are considered as countable resources. Examples of legal impediments include, but are not limited to, clearing an estate, probate, petition to sell or appointment of legal guardian.

(1) Generally, a resource is considered unavailable if there is a legal impediment to overcome. However, the ~~client~~ member must agree to pursue all reasonable steps to initiate legal action within 30 days. While the legal action is in process, the resource is considered unavailable.

(2) If a determination is made and documented that the cost of making a resource available exceeds the gain, the ~~client~~ member will not be required to pursue action to make it available.

(3) Determination of available and unavailable resources must be well documented in the case record.

(4) The major types of capital resources are listed in (c) and (d) of this Section. The list is not intended to be all inclusive and consideration must be given to all resources.

(c) **Home/real property.** Home property is excluded from resources regardless of value. For purposes of the home property resource exclusion, a home is defined as any shelter in which the individual has an ownership interest and which is used by the individual as his/her principal place of residence. The home may be either real or personal property, fixed or mobile. Home property includes all property which is adjacent to the home. Home property in a revocable trust under the direct control of the individual, spouse, or legal representative retains the exemption as ~~outlines~~ outlined in OAC 317:35-5-41(c)(6). Property has a value regardless of whether there is an actual offer to purchase. Verification of home/real property value is established by collateral contacts with specialized individuals knowledgeable in the type and location of property being considered.

(1) The home may be retained without affecting eligibility during periods when it is necessary to be absent for illness or other necessity. The OHCA has not set a definite time limit to the ~~client's~~ member's absence from the home. When it is determined that the ~~client~~ member does not have a feasible plan for and cannot be expected to return to his/her home, the market value of the property is considered in relation to the reserve. The ~~client~~ member is responsible for taking all steps necessary to convert the resource for use in meeting current needs. If the ~~client~~ member is making an effort to make the resource available, a reasonable period of time is given (not to exceed 90 days) to convert the resource. He/she is advised in writing that the 90-day period begins with the determination that the property be considered in relation to the reserve. The 90-day period is given only if efforts are in progress to make the resource available. Any extension beyond the initial 90-day period is justified only after interviewing the ~~client~~ member, determining that a good faith effort to sell is still being made and failure to sell is due to circumstances beyond the control of the ~~client~~ member. A written notification is also provided to the ~~client~~ member at any time an extension is allowed. Detailed documentation in the case record is required.

(2) If the ~~client~~ member fails or is unwilling to take steps necessary to convert the resource for use in meeting current needs, continuing eligibility cannot be established and the ~~client~~ member is advised as to the effective date of closure and of the right to receive assistance when the resources are within the maximum reserve provided other conditions of eligibility continue to be met.

(3) When a ~~recipient~~ member sells his/her home with the intention of purchasing another home or when an insurance payment for damage to the home is received, a reasonable period of time is given to reinvest the money in another home. A reasonable period of time is considered to be not in excess of a 90-day period. Extensions beyond the 90 days may be justified only after interviewing the ~~client~~ member, determining that a good faith effort is still being made and that completion of the transaction is beyond his/her control. This must be documented in the case record.

(4) At the point a ~~recipient~~ member decides not to reinvest the proceeds from the sale of his/her home in another home, the ~~recipient's~~ member's plan for use of the proceeds is evaluated in relation to rules on resources disposed of while receiving assistance.

(5) A home traded for another home of equal value does not affect the ~~recipient's~~ member's eligibility status. If the home is traded for a home of lesser value, the difference may be invested in improvement of the new home.

(6) Absences from home for up to 90 days for trips or visits of six months for medical care (other than nursing facilities) do not affect receipt of assistance or the home exclusion as long as the individual intends to return home. Such absences, if they extend beyond those limits, may indicate the home no longer serves as the principal place of residence. Absence from home due to nursing facility care does not affect the home exclusion as long as the individual intends to return home within 12 months from the time he/she entered the facility. The Acknowledgment of Temporary Absence/Home Property Policy form is completed at the time of application for nursing facility care when the applicant has home property. After explanation of temporary absence, the ~~client~~ member, guardian or responsible person indicates whether there is or is not intent to return to the home and signs the form.

(A) If at the time of application the applicant states he/she does not have plans to return to the home, the home property is considered a countable resource. For ~~recipients~~ members in nursing facilities, a lien

may be filed in accordance with OAC 317:35-9-15 and OAC 317:35-19-4 on any real property owned by the ~~recipient~~ member when it has been determined, after notice and opportunity for a hearing, that the ~~recipient~~ member cannot reasonably be expected to be discharged and return home. However, a lien shall not be filed on the home property of the ~~recipient~~ member while any of the persons described in OAC 317:35-9-15(b)(1) and OAC 317:35-19-4(b)(1) are lawfully residing in the home:

(B) If the individual intends to return home, he/she is advised that:

(i) the 12 months of home exemption begins effective with the date of entry into the nursing home regardless of when application is made for ~~Medicaid~~ SoonerCare benefits, and

(ii) after 12 months of nursing care, it is assumed there is no reasonable expectation the ~~recipient~~ member will be discharged from the facility and return home and a lien may be filed against real property owned by the ~~client~~ member for the cost of medical services received.

(C) "Intent" in regard to absence from the home is defined as a clear statement of plans in addition to other evidence and/or corroborative statements of others.

(D) At the end of the 12-month period the home property becomes a countable resource unless medical evidence is provided to support the feasibility of the ~~client~~ member to return to the home within a reasonable period of time (90 days). This 90-day period is allowed only if sufficient medical evidence is presented with an actual date for return to the home.

(E) A ~~client~~ member who leaves the nursing facility must remain in the home at least three months for the home exemption to apply if he/she has to re-enter the facility.

(F) However, if the spouse, minor child(ren) under 18, or relative who is aged, blind or disabled or a recipient of TANF resides in the home during the individual's absence, the home continues to be exempt as a resource so long as the spouse or relative lives there (regardless of whether the absence is temporary).

(G) For purpose of this reference a relative is defined as: son, daughter, grandson, granddaughter, stepson, stepdaughter, in-laws, mother, father, stepmother, stepfather, ~~halfsister~~ half-sister, ~~halfbrother~~ half-brother, niece, nephew, grandmother, grandfather, aunt, uncle, sister, brother, stepbrother, or stepsister.

(H) Once a lien has been filed against the property of an NF resident, the property is no longer considered as a countable resource.

(7) Mineral rights associated with the home property are considered along with the surface rights and are excluded as a resource. However, mineral rights which are not associated with the home property are considered as a resource. Since evaluation and scalability of mineral rights fluctuate, the establishment of the value of mineral rights are established based on the opinion of collateral sources. Actual offers of purchase are used when established as a legitimate offer through a collateral source. Mineral rights not associated with home property which are income producing are considered in the same way as income producing property.

(8) The market value of real estate other than home property owned by the ~~client~~ member or legal dependent and encumbrances against such property are ascertained in determining the equity (including the cost to the ~~client~~ member of a merchantable title to be determined when the reserve approaches the maximum). The market value of real estate other than the home owned by the applicant is established on the basis of oral and/or written information which the applicant has on hand **and** counsel with persons who have specialized knowledge about this kind of resource. Refer to (12) of this subsection for exclusion of real estate that produces income.

(9) Land which is held by an enrolled member of an Indian tribe is excluded from resources as it cannot be sold or transferred without the permission of other individuals, the tribe, or a federal agency. If permission is needed, the land is excluded as a resource.

(10) A life estate conveys upon an individual or individuals for his/her lifetime, certain rights in property. Its duration is measured by the lifetime of the tenant or of another person; or by the occurrence of some specific event, such as remarriage of the tenant. The owner of a life estate has the right of possession, the right to use the property, the right to obtain profits from the property and the right to sell his/her life estate interest. However, the contract establishing the life estate may restrain one or more rights of the individual. The individual does not have title to all interest in the property and does not have the right to sell the property other than the interest owned during his/her lifetime. He/she may not usually pass it on to heirs in the form of an inheritance.

(A) When a life estate in property is not used as the ~~client's~~ member's home, it is necessary to establish the value. A computer procedure is available to compute the value of a life estate by input of the current market value of the property and the age of the life estate owner.

(B) The value of a life estate on mortgaged property is based on equity rather than market value and the age of the individual.

(C) In the event the ~~client~~ member does not accept as valid the value of the life estate as established through this method, the ~~client~~ member will secure written appraisal by two persons who are familiar with current values. If there is substantial unexplained divergence between these appraisals, the worker and the ~~client~~ member will jointly arrange for the market value to be established by an appraisal made by a third person who is familiar with current market values and who is acceptable to both the ~~client~~ member and the worker.

(11) Homestead rights held by a ~~client~~ member in real estate provide the ~~client~~ member with shelter (or shelter and income) so long as he/she resides on the property. Payment for care in a nursing facility provided to the ~~recipient~~ member through ~~Medicaid~~ SoonerCare constitutes a waiver of the homestead rights of the ~~recipient~~ member. If the ~~client~~ member moves from the property, a lien is filed, or the ~~client~~ member otherwise abandons his/her homestead rights, the property becomes subject to administration. Since a homestead right cannot be sold, it does not have any value.

(12) Real and/or personal property which produces income is excluded if it meets the following conditions.

(A) **Trade or business property.** The existence of a trade or business may be established through business tax returns that would be used to compute self-employment earnings. If the current business tax return is unavailable, the existence of the business may be determined through other business forms, records, partnership, a detailed description of the business and its activities, etc. Once it is established that a trade or business exists, any property (real or personal) connected to it and in current use is excluded. This exclusion includes liquid assets, such as a bank account(s) necessary for the business operation. All property used by a trade or business and all property used by an employee in connection with employment is excluded as property essential to self support. The income from the trade or business is determined as any other self-employment income.

(B) **Non-trade or non-business property.** Property which produces income but is not used in a trade or business is excluded if the total equity value does not exceed $6000, and the net return equals at least 6% of the equity annually. An equity value in excess of $6000 is a countable resource. If the equity exceeds $6000 and 6% return is received on the total equity, only the amount in excess of $6000 is a countable resource. An annual return of less than 6% is acceptable if it is beyond the individual's control, and there is a reasonable expectation of a future 6% return. Liquid resources cannot be excluded as income producing property or meeting the $6000/6% rule (mortgages, including contract for deed, and notes which are income producing are considered as liquid resources). The $6000/6% rule applies to all resources in total, and not separately. Examples of non-business income producing property are rental property, timber rights, mineral rights, etc.

(d) **Personal property.**

(1) **Property used to produce goods and services.** Personal property necessary to perform daily activities or to produce goods for home consumption is excluded if the equity value does not exceed $6000. An equity value in excess of $6000 is a countable resource. The property does not have to produce a 6% annual return. The $6000 equity maximum includes all such resources in total and does not pertain to each item separately. Examples of property used to produce goods and services are tractors, wildcatting tools, mechanized equipment for gardening, livestock grown for home consumption, etc.

(2) **Cash savings and bank accounts.** Money on hand or in a savings account is considered as reserve. The ~~client's~~ member's statement that he/she does not have any money on hand or on deposit is sufficient unless there are indications to the contrary. When there is information to the contrary or when the ~~client~~ member does not have records to verify the amount on deposit, verification is obtained from bank records. Title 56, O.S., Section 1671 provides that financial records obtained for the purpose of establishing eligibility for assistance or services must be furnished without cost to the ~~client~~ member or the Agency.

(A) Checking accounts may or may not represent savings. Current bank statements are evaluated with the ~~client~~ member to establish what, if any, portion of the account represents savings. Any income which has been deposited during the current month is not considered unless it exceeds what is considered as ordinary maintenance expense for the month.

(B) Accounts which are owned jointly by the ~~client~~ member and a ~~non-recipient~~ person not receiving SoonerCare are considered available to the ~~client~~ member in their entirety unless it can be established what part of the account actually belongs to each of the owners and the money is actually separated and the joint account dissolved. When the ~~recipient~~ member is in a nursing facility and the spouse is in the home or if both are institutionalized, a joint bank account may be maintained with one-half of the account considered available to each.

(3) **Life insurance policies.** If the total face value of all life insurance policies owned by an individual is $1500 or less, the policies (both face value and cash surrender value) are excluded as resources.

(A) If the total face value of all policies owned by an individual exceeds $1500, the net cash surrender value of such policies must be counted as resources. Life insurance policies which do not provide a cash surrender value (e.g., term insurance) are not used in determining whether the total face value of all policies is over $1,500.

(B) The face value of a life insurance policy which has been assigned to fund a prepaid burial contract must be evaluated and counted according to the policy on burial funds or, if applicable, the policy on the irrevocable burial contract.

(C) The net cash surrender value of insurance (i.e., cash surrender value less any loans or unpaid interest thereon) usually can be verified by inspection of the insurance policies and documents in the ~~client's~~ member's possession or by use of the Request to Insurance Company form.

(D) Dividends which accrue and which remain with the insurance company increase the amount of reserve. Dividends which are paid to the ~~client~~ member are considered as income.

(E) If an individual has a life insurance policy which allows death benefits to be received while living, and the individual meets the insurance company's requirements for receiving such proceeds, the individual is not required to file for such proceeds. However, if the individual does file for and receive the benefits, the payment will be considered as income in the month it is received and countable as a resource in the following months to the extent it is available. The payment of such benefits is not considered a conversion of a resource because the cash surrender value of the insurance policy is still available to the individual. The individual is in effect, receiving the death benefits and not the cash surrender value.

(4) **Burial spaces.** The value of burial spaces for an individual, the individual's spouse or any member of the individual's immediate family will be excluded from resources. "Burial spaces" means conventional grave sites, crypts, mausoleums, urns, and other repositories which are customarily and traditionally used for the remains of deceased persons. "Immediate family" means individual's minor and adult children, including adopted children and step-children; and individual's brothers, sisters, parents, adoptive parents, and the spouse of these individuals. Neither dependency nor living in the same household will be a factor in determining whether a person is an immediate family member.

(5) **Burial funds.** Revocable burial funds not in excess of $1500 are excluded as a resource if the funds are specifically set aside for the burial arrangements of the individual or the individual's spouse. Any amount in excess of $1500 is considered as a resource. Burial policies which require premium payments and do not accumulate cash value are not considered to be prepaid burial policies.

(A) "Burial funds" means a prepaid funeral contract or burial trust with a funeral home or burial association which is for the individual's or spouse's burial expenses.

(B) The face value of a life insurance policy, when properly assigned by the owner to a funeral home or burial association, may be used for purchasing "burial funds" as described in (5)(A) of this subsection.

(C) The burial fund exclusion must be reduced by the face value of life insurance policies owned by the individual or spouse; and amounts in an irrevocable trust or other irrevocable arrangement.

(D) Interest earned or appreciation on the value of any excluded burial funds are excluded if left to accumulate and become a part of the burial fund.

(E) If the ~~client~~ member did not purchase his/her own prepaid burial, even if his/her money was used for the purchase, the ~~client~~ member is not the "owner" and the prepaid burial funds cannot be considered a resource to him/her. However, if the ~~client's~~ member's money was used by another to purchase the prepaid burial, the rules on transfer of property must be applied since the purchaser (owner) could withdraw the funds any time.

(6) **Irrevocable burial contract.** Oklahoma law provides that a purchaser (buyer) of a prepaid funeral contract may elect to make the contract irrevocable. The irrevocability cannot become effective until 30 days after purchase.

(A) If the irrevocable election was made prior to July 1, 1986 and the ~~client~~ member received assistance on July 1, 1986, the full amount of the irrevocable contract is not considered a countable resource. This exclusion applies only if the ~~client~~ member does not add to the amount of the contract. Interest accrued on the contract is not considered as added by the ~~client~~ member. Any break in assistance will require that the contract be evaluated at the time of reapplication according to rules in (B) of this paragraph.

(B) If the effective date for the irrevocable election or application for assistance is July 1, 1986 or later:

(i) the face value amount in an irrevocable contract cannot exceed $7,500, plus accrued interest.

(ii) a ~~client~~ member may exclude the face value, up to $7,500, plus accrued interest in any combination of irrevocable contract, revocable prepaid account, designated account or cash value in life insurance policies not used to fund the burial policy, regardless of the face value, provided the cash value in policies and designated accounts does not exceed $1500. When the amount exceeds $7,500, the ~~client~~ member is ineligible for assistance. Accrued interest is not counted as a part of the $7,500 limit regardless of when it is accrued.

(iii) the face value of life insurance policies used to fund burial contracts is counted towards the $7,500 limit.

(C) For an irrevocable contract to be valid, the election to make it irrevocable must be made by the purchaser (owner) or the purchaser's guardian or an individual with power of attorney for the purchaser (owner).

(D) In instances where Management of Recipient's Funds form is on file in the nursing facility, the form serves as a power of attorney for the administrator to purchase and/or elect to make irrevocable the burial funds for the ~~client~~ member.

(7) **Medical insurance.** When a ~~client~~ member has medical insurance, the available benefits are applied toward the medical expense for which the benefits are paid. The type of insurance is clarified in the record. If an assignment of the insurance is not made to the provider and payment is made directly to the ~~client~~ member, the ~~client~~ member is expected to apply the payment to the cost of medical services. Any amount remaining after payment for medical services is considered in relation to the reserve.

(8) **Stocks, bonds, mortgages and notes.** The ~~client's~~ member's equity in stocks and bonds (including U.S. Savings Bonds series A thru EE) is considered in relation to the reserve. The current market value less encumbrances

is the equity. In general, determination of current market value can be obtained from daily newspaper quotations, brokerage houses, banks, etc.

(A) The current value of U.S. Savings bonds which have been held beyond the maturity date is the redemption value listed in the table on the back of the bond for the anniversary date most recently reached. If the bond has been held beyond maturity date, it has continued to draw interest. An acceptable determination of the value may be made by checking against a chart at the bank.

(B) The amount which can be realized from notes and mortgages and similar instruments, if offered for immediate sale, constitutes a reserve. Notes and mortgages and similar instruments have value regardless of whether there is an actual offer. Appraisals obtained from bankers, realtors, loan companies and others qualified to make such estimates are obtained in determining current market value. When a total reserve approaches the maximum, it is desirable to get two or more estimates.

(C) Mortgages (including contracts for deed) and notes which are income producing are liquid countable resources.

(9) **Trust accounts.** Monies held in trust for an individual applying for or receiving ~~Medicaid~~ SoonerCare must have the availability of the funds determined. Funds held in trust are considered available when they are under the direct control of the individual or his/her spouse, and disbursement is at their sole discretion. Funds may also be held in trust and under the control of someone other than the individual or his/her spouse, such as the courts, agencies, other individuals, etc., or the Bureau of Indian Affairs (BIA).

(A) **Availability determinations.** The social worker should be able to determine the availability of a trust using the definitions and explanations listed in (B) of this subsection. However, in some cases, the worker may wish to submit a trust to the OKDHS State Office for determination of availability. In these instances, all pertinent data is submitted to Family Support Services Division, Attention: Health Related and Medical Services Section, for a decision.

(B) **Definition of terms.** The following words and terms, when used in this paragraph, shall have the following meaning, unless the context clearly indicates otherwise:

(i) **Beneficiary.** Beneficiary means the person(s) who is to receive distributions of either income or principal, or on behalf of whom the trustee is to make payments.

(ii) **Corpus/principal.** Corpus/principal means the body of the trust or the original asset used to establish the trust, such as a sum of money or real property.

(iii) **Discretionary powers.** Discretionary powers means the grantor gives the trustee the power to make an independent determination whether to distribute income and/or principal to the beneficiary(ies) or to retain the income and add it to the principal of the trust.

(iv) **Distributions.** Distributions means payments or allocations made from the trust from the principal or from the income produced by the principal (e.g., interest on a bank account).

(v) **Grantor (trustor/settlor).** Grantor (trustor/settlor) means the individual who establishes the trust by transferring certain assets.

(vi) **Irrevocable trust.** Irrevocable trust means a trust in which the grantor has expressly not retained the right to terminate or revoke the trust and reclaim the trust principal and income.

(vii) **Pour over or open trust.** Pour over or open trust means a trust which may be expanded from time to time by the addition to the trust principal (e.g., a trust established to receive the monthly payment of an annuity, a workers' compensation settlement, a disability benefit or other periodic receivable). The principal may accumulate or grow depending upon whether the trustee distributes the receivable or permits it to accumulate. Generally, the terms of the trust will determine the availability of the income in the month of receipt and the availability of the principal in subsequent months.

(viii) **Primary beneficiary.** Primary beneficiary means the first person or class of persons to receive the benefits of the trust.

(ix) **Revocable trust.** Revocable trust means a trust in which the grantor has retained the right to terminate or revoke the trust and reclaim the trust principal and income. Unless a trust is specifically made irrevocable, it is revocable. Even an irrevocable trust is revocable upon the written consent of all living persons with an interest in the trust.

(x) **Secondary beneficiary.** Secondary beneficiary means the person or class of persons who will receive the benefits of the trust after the primary beneficiary has died or is otherwise no longer entitled to benefits.

(xi) **Testamentary trust.** Testamentary trust means a trust created by a will and effective upon the death of the individual making the will.

(xii) **Trustee.** Trustee means an individual, individuals, a corporation, court, bank or combination thereof with responsibility for carrying out the terms of the trust.

(C) **Documents needed.** To determine the availability of a trust for an individual applying for or receiving ~~Medicaid~~ SoonerCare, copies of the following documents are obtained:

(i) Trust document;

(ii) When applicable, all relevant court documents including the Order establishing the trust, Settlement Agreement, Journal Entry, etc.; and

(iii) Documentation reflecting prior disbursements (date, amount, purpose).

(D) **Trust accounts established on or before August 10, 1993.** The rules found in (i) - (iii) of this subparagraph apply to trust accounts established on or before August 10, 1993.

(i) **Support trust.** The purpose of a support trust is the provision of support or care of a beneficiary. A support trust will generally contain language such as "to provide for the care, support and maintenance of ...", "to provide as necessary for the support of ...", or "as my trustee may deem necessary for the support, maintenance, medical expenses, care, comfort and general welfare." Except as provided in (I)-(III) of this unit, the amount from a support trust deemed available to the beneficiary is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the beneficiary, assuming the full exercise of discretion by the trustee(s) for distribution of the maximum amount to the beneficiary. The beneficiary of a support trust, under which the distribution of payments to the beneficiary is determined by one or more trustees who are permitted to exercise discretion with respect to distributions, may show that the amounts deemed available are not actually available by:

(I) Commencing proceedings against the trustee(s) in a court of competent jurisdiction;

(II) Diligently and in good faith asserting in the proceedings that the trustee(s) is required to provide support out of the trust; and

(III) Showing that the court has made a determination, not reasonably subject to appeal, that the trustee must pay some amount less than the amount deemed available. If the beneficiary makes the showing, the amount deemed available from the trust is the amount determined by the court. Any action by a beneficiary or the beneficiary's representative, or by the trustee or the trustee's representative, in attempting a showing to make the Agency or the State of Oklahoma a party to the proceeding, or to show to the court that ~~Medicaid~~ SoonerCare benefits may be available if the court limits the amounts deemed available under the trust, precludes the showing of good faith required.

(ii) **Medicaid Qualifying Trust (MQT).** A Medicaid Qualifying Trust is a trust, or similar legal device, established (other than by will) by an individual or an individual's spouse, under which the individual may be the beneficiary of all or part of the distributions from the trust and such distributions are determined by one or more trustees who are permitted to exercise any discretion with respect to distributions to the individual. A trust established by an individual or an individual's spouse includes trusts created or approved by a representative of the individual (parent, guardian or person holding power of attorney) or the court where the property placed in trust is intended to satisfy or settle a claim made by or on behalf of the individual or the individual's spouse. This includes trust accounts or similar devices established for a minor child pursuant to Title 12 Oklahoma Statute § 83. In addition, a trust established jointly by at least one of the individuals who can establish an MQT and another party or parties (who do not qualify as one of these individuals) is an MQT as long as it meets the other MQT criteria. The amount from an irrevocable MQT deemed available to the individual is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the individual assuming the full exercise of discretion by the trustee(s). The provisions regarding MQT apply even though an MQT is irrevocable or is established for purposes other than enabling an individual to qualify for ~~Medicaid~~ SoonerCare; and, whether or not discretion is actually exercised.

(I) **Similar legal device.** MQT rules listed in of this subsection also apply to "similar legal devices" or arrangements having all the characteristics of an MQT except that there is no actual trust document. An example is the ~~client~~ member petitioning the court to irrevocably assign all or part of his/her income to another party (usually the spouse). The determination whether a given document or arrangement constitutes a "similar legal device" should be made by the OKDHS Office of General Counsel, Legal Unit.

(II) **MQT resource treatment.** For revocable MQTs, the entire principal is an available resource to the ~~client~~ member. Resources comprising the principal are subject to the individual resource exclusions (e.g., the home property exclusion) since the ~~client~~ member can access those resource items without the intervention of the trustee. For irrevocable MQTs, the countable amount of the principal is the maximum amount the trustee can disburse to (or for the benefit of) the ~~client~~ member, using his/her full discretionary powers under the terms of the trust. If the trustee has unrestricted access to the principal and has discretionary power to disburse the entire principal to the ~~client~~ member (or to use it for the ~~client's~~ member's benefit), the entire principal is an available resource to the ~~client~~ member. Resources transferred to such a trust lose individual resource consideration (e.g., home property transferred to such a trust is no longer home property and the home property exclusions do not apply). The value of the property is included in the value of the principal. If the MQT permits a specified amount of trust income to be distributed periodically to

the ~~client~~ member (or to be used for his/her benefit), but those distributions are not made, the ~~client's~~ member's countable resources increase cumulatively by the undistributed amount.

(III) **Income treatment.** Amounts of MQT income distributed to the ~~client~~ member are countable income when distributed. Amounts of income distributed to third parties for the ~~client's~~ member's benefit are countable income when distributed.

(IV) **Transfer of resources.** If the MQT is irrevocable, a transfer of resources has occurred to the extent that the trustee's access to the principal (for purposes of distributing it to the ~~client~~ member or using it for the ~~client's~~ member's benefit) is restricted (e.g., if the trust stipulates that the trustee cannot access the principal but must distribute the income produced by that principal to the ~~client~~ member, the principal is not an available resource and has, therefore, been transferred).

(iii) **Special needs trusts.** Some trusts may provide that trust benefits are intended only for a beneficiary's "special needs" and require the trustee to take into consideration the availability of public benefits and resources, including ~~Medicaid~~ SoonerCare benefits. Some trusts may provide that the trust is not to be used to supplant or replace public benefits, including ~~Medicaid~~ SoonerCare benefits. If a trust contains such terms and is not an MQT, the trust is not an available resource.

(E) **Trust accounts established on or after August 11, 1993.** The rules found in (i) - (iii) of this subparagraph apply to trust accounts established on or after August 11, 1993.

(i) For purposes of this subparagraph, the term "trust" includes any legal document or device that is similar to a trust. An individual is considered to have established a trust if assets of the individual were used to form all or part of the principal of the trust and if the trust was established other than by will and by any of the following individuals:

(I) the individual;

(II) the individual's spouse;

(III) a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

(IV) a person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(ii) Where trust principal includes assets of an individual described in this subparagraph and assets of any other person(s), the provisions of this subparagraph apply to the portion of the trust attributable to the assets of the individual. This subparagraph applies without regard to the purposes for which the trust is established, whether the trustees have or exercise any discretion under the trust, and restrictions on when or whether distributions may be made from the trust, or any restrictions on the use of the distribution from the trust.

(iii) There are two types of trusts, revocable trusts and irrevocable trusts.

(I) In the case of a revocable trust, the principal is considered an available resource to the individual. Home property in a revocable trust under the direct control of the individual, spouse or legal representative retains the exemption as outlined in OAC 317:35-5-41(c)(6). Payments from the trust to or for the benefit of the individual are considered income of the individual. Other payments from the trust are considered assets disposed of by the individual for purposes of the transfer of assets rule and are subject to the 60 months look back period.

(II) In the case of an irrevocable trust, if there are any circumstances under which payments from the trust could be made to or for the benefit of the individual, the portion of the principal of the trust, or the income on the principal, from which payment to the individual could be made shall be considered available resources. Payments from the principal or income of the trust shall be considered income of the individual. Payments for any other purpose are considered a transfer of assets by the individual and are subject to the 60 months look back period. Any portion of the trust from which, or any income on the principal from which no payment could under any circumstances be made to the individual is considered as of the date of establishment of the trust (or if later, the date on which payment to the individual was foreclosed) to be assets disposed by the individual for purposes of the asset transfer rules and are subject to the 60 months look back period.

(F) **Exempt trusts.** Subparagraph (E) of this paragraph shall not apply to the following trusts:

(i) A trust containing the assets of a disabled individual under the age of 65 which was established for the benefit of such individual by the parent, grandparent, legal guardian of the individual or a court if the State receives all amounts remaining in the trust on the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual. This type of trust requires:

(I) The trust may only contain the assets of the disabled individual.

(II) The trust must be irrevocable and cannot be amended or dissolved without the written

agreement of the Oklahoma Department of Human Services or the Oklahoma Health Care Authority.

(III) Trust records shall be open at all reasonable times to inspection by an authorized representative of the OHCA or OKDHS.

(IV) The exception for the trust continues after the disabled individual reaches age 65. However, any addition or augmentation after age 65 involves assets that were not the assets of an individual under age 65; therefore, those assets are not subject to the exemption.

(V) Establishment of this type of trust does not constitute a transfer of assets for less than fair market value if the transfer is made into a trust established solely for the benefit of a disabled individual under the age of 65.

(VI) Payments from the trust are counted according to SSI rules. According to these rules, countable income is anything the individual receives in cash or in kind that can be used to meet the individual's needs for food, clothing and shelter. Accordingly, any payments made directly to the individual are counted as income to the individual because the payments could be used for food, clothing, or shelter for the individual. This rule applies whether or not the payments are actually used for these purposes, as long as there is no legal impediment which would prevent the individual from using the payments in this way. In addition, any payments made by the trustee to a third party to purchase food, clothing, or shelter for the individual can also count as income to the individual. For example, if the trustee makes a mortgage payment for the individual, that payment is a shelter expense and counts as income.

(VII) A corporate trustee may charge a reasonable fee for services in accordance with its published fee schedule.

(VIII) The OKDHS Supplemental Needs Trust form is an example of the trust. Social workers may give the sample form to the ~~client~~ member or his/her representative to use or for their attorney's use.

(IX) To terminate or dissolve a Supplemental Needs Trust, the social worker sends a copy of the trust instrument and a memorandum to OKDHS Family Support Services Division, Attention: HR&MS explaining the reason for the requested termination or dissolution of the Supplemental Needs Trust, and giving the name and address of the trustee. The name and address of the financial institution and current balance are also required. Health Related and Medical Services notifies OHCA/TPL to initiate the recovery process.

(ii) A trust (known as the Medicaid Income Pension Trust) established for the benefit of an individual if:

(I) The individual is in need of long-term care and has countable income above the categorically needy standard for long-term care (OKDHS Appendix C-1) but less than ~~$2500~~ $3000 per month.

(II) The Trust is composed only of pension, social security, or other income of the individual along with accumulated income in the trust. Resources can not be included in the trust.

(III) All income is paid into the trust and the applicant is not eligible until the trust is established and the monthly income has been paid into the trust.

(IV) The trust must retain an amount equal to the ~~client's~~ member's gross monthly income less the current categorically needy standard of OKDHS Appendix C-1. The Trustee shall distribute the remainder.

(V) The income disbursed from the trust is considered as the monthly income to determine the cost of their care, and can be used in the computations for spousal diversion.

(VI) The trust must be irrevocable and cannot be amended or dissolved without the written agreement of the OHCA. Trust records shall be open at all reasonable times to inspection by an authorized representative of the OHCA or OKDHS.

(VII) The State will receive all amounts remaining in the trust up to an amount equal to the total ~~Medicaid~~ SoonerCare benefits paid on behalf of the individual subsequent to the date of establishment of the trust.

(VIII) Accumulated funds in the trust may only be used for medically necessary items not covered by ~~Medicaid~~ SoonerCare, or other health programs or health insurance and a reasonable cost of administrating the trust. Reimbursements cannot be made for any medical items to be furnished by the nursing facility. Use of the accumulated funds in the trust for any other reason will be considered as a transfer of assets and would be subject to a penalty period.

(IX) The trustee may claim a fee of up to 3% of the funds added to the trust that month as compensation.

(X) An example trust is included on OKDHS form M-11. Social Workers may give this to the ~~client~~ member or his/her representative to use or for their attorney's use as a guide for the Medicaid Income Pension Trust.

(XI) To terminate or dissolve a Medicaid Income Pension Trust, the social worker sends a memorandum with a copy of the trust

to OKDHS Family Support Services Division, Attention: HR&MS, explaining the reason for the requested termination or dissolution of the Medicaid Income Pension Trust, and giving the name and address of the trustee. The name and address of the financial institution, account number, and current balance are also required. Health Related and Medical Services notifies OHCA/TPL to initiate the recovery process.

(iii) A trust containing the assets of a disabled individual when all of the following are met:

(I) The trust is established and managed by a non-profit association;

(II) The trust must be made irrevocable;

(III) The trust must be approved by the Oklahoma Department of Human Services and may not be amended without the permission of the Oklahoma Department of Human Services;

(IV) The disabled person has no ability to control the spending in the trust;

(V) A separate account is maintained for each beneficiary of the trust but for the purposes of investment and management of funds, the trust pools these accounts;

(VI) The separate account on behalf of the disabled person may not be liquidated without payment to OHCA for the medical expenses incurred by the ~~recipients~~ members;

(VII) Accounts in the trust are established by the parent, grandparent, legal guardian of the individual, the individual, or by a court;

(VIII) To the extent that amounts remaining in the beneficiary's account on the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts an amount equal to the total medical assistance paid on behalf of the individual. A maximum of 30% of the amount remaining in the beneficiary's account at the time of the beneficiary's death may be retained by the trust.

(G) **Funds held in trust by Bureau of Indian Affairs (BIA).** Interests of individual Indians in trust or restricted lands shall not be considered a resource in determining eligibility for assistance under the Social Security Act or any other federal or federally assisted program.

(H) **Disbursement of trust.** At any point that disbursement occurs, the amount disbursed is counted as a non-recurring lump sum payment in the month received. Some trusts generate income on a regular basis and the income is sent to the beneficiary. In those instances, the income is treated as unearned income in the month received.

(10) **Retirement funds.** The rules regarding the countable value, if any, of retirement funds are found in subparagraph (A) - (B) of this paragraph:

(A) **Annuities.**

(i) Annuities purchased prior to February 1, 2005. An annuity gives the right to receive fixed, periodic payments either for life or a term of years. The annuity instrument itself must be examined to determine the provisions and requirements of the annuity. For example, it is determined whether the individual can access the principal of the annuity; e.g., can it be cashed in. If so, the annuity is treated as a revocable trust (OAC 317:35-5-41(d)(9)(E)(iii)(I). If the individual cannot access the principal, the annuity is treated as an irrevocable trust. In this instance, it must also be determined what part of the annuity can, under any circumstances, be paid to, or for the benefit of the individual. When making such a determination, the date of application is used or, if later, the date of institutionalization (for an institutionalized individual) or the date of creation of the annuity (for a non-institutionalized individual). Also, these dates are used in determining whether the transfer of asset provisions apply to a particular annuity. If the annuity provides for payments to be made to the individual, those payments would be considered income to the individual. Any portion of the principal of the annuity that could be paid to or on behalf of the individual would be treated as a resource to the individual and portions of the annuity that cannot be paid to or for the benefit of the individual are treated as transfers of assets. Annuities may also be a transfer of assets for less than fair market value. The worker determines, in accordance with the OKDHS life expectancy tables, whether the ~~client~~ member will receive fair market value from the annuity during his/her projected lifetime. Any funds used to purchase the annuity that will not be repaid to the ~~client~~ member during his/her projected lifetime, are a transfer of assets and the appropriate penalty period is imposed.

(ii) Annuities purchased after January 31, 2005.

(I) An annuity is presumed to be an available resource to the individual who will receive the payments because the annuity can be sold. The value of the annuity is the total of all remaining payments, discounted by the Applicable Federal Rate set by the IRS for the valuation of annuities for the month of application or review.

(II) The applicant or ~~recipient~~ member may rebut the presumption that the annuity can be sold by showing compelling evidence to the contrary, in which case the annuity is not considered available. The applicant or ~~recipient~~ member may also rebut the presumed annuity value by showing compelling evidence that the actual value of the annuity is less than the presumed value.

(B) **Other retirement investment instruments.** This subparagraph relates to individual retirement accounts (IRA), Keogh plans, profit sharing plans, and work related plans in which the employee and/or employer contribute to a retirement account.

(i) **Countability of asset.** In each case, the document governing the retirement instrument must be examined to determine the availability of the retirement benefit at the time of application. Retirement benefits are considered countable resources if the benefits are available to the applicant and/or spouse. Availability means that the applicant and/or spouse has an option to receive retirement benefits or is actually receiving benefits. For example, a retirement instrument may make a fund available at the time of termination of employment, at age 65, or at some other time. A retirement fund is not a countable resource if the applicant is currently working and must terminate employment in order to receive benefits. An individual may have the choice of withdrawing the monies from the retirement fund in a single payment or periodic payments (i.e., monthly, quarterly, etc.). If the individual elects to receive a periodic payment, the payments are considered as income as provided in OAC 317:35-5-42(c)(3). If the monies are received as a lump sum, the rules at OAC 317:35-5-42(c)(3)(C)(i) apply.

(ii) **Asset valuation.** Valuation of retirement benefits is the amount of money that an individual can currently withdraw from the fund or is actually receiving. Valuation does not include the amount of any penalty for early withdrawal. Taxes due on the monies received by the applicant are not deducted from the valuation.

(iii) **Timing of valuation.** Retirement funds are a countable resource in the month that the funds are available to the applicant. For purposes of this subsection, the month that the funds are available means the month following the month of application for the funds. For example, the retirement instrument makes retirement funds available at age 65. The applicant turns 65 on January 1st. The applicant makes a request for the funds on February 1st and the monies are received on June 1st. The retirement fund would be considered as a countable resource in the month of March. The resource would not be counted in the month in which it is later received.

(11) **Automobiles, pickups, and trucks.** Automobiles, pickups, and trucks are considered in the eligibility determination for ~~Medicaid~~ SoonerCare benefits.

(A) **Exempt automobiles.** One automobile is excluded from counting as a resource to the extent its current market value (CMV) does not exceed $4,500. The CMV in excess of $4,500 is counted against the resource limit; or exempt one automobile, pickup or truck per family regardless of the value if it is verified that the car is used:

(i) for medical services 4 times a year to obtain either medical treatment or prescription drugs; or

(ii) for employment purposes; or

(iii) especially equipped for operation by or transportation of a handicapped person.

(B) **Other automobiles.** The equity in other automobiles, pickups, and trucks is considered in relation to the reserve. The current market value, less encumbrances on the vehicle, is the equity. Only encumbrances that can be verified are considered in computing equity.

(i) The market value of each year's make and model is established on the basis of the "~~av'g~~ avg. Trade In" value as shown in the current publication of the National Automobile Dealers Association (NADA) on "Cars, Trucks, and Imports" which is provided monthly to each county office by the OKDHS State Office.

(ii) If a vehicle's listing has been discontinued in the NADA book, the household's estimate of the value of the vehicle is accepted unless the worker has reason to believe the estimate is incorrect.

(iii) The market value of a vehicle no longer operable is the verified salvage value.

(iv) In the event the ~~client~~ member and worker cannot agree on the value of the vehicle, the ~~client~~ member secures written appraisal by two persons who are familiar with current values. If there is substantial unexplained divergence between these appraisals or between the book value and one or more of these appraisals, the worker and the ~~client~~ member jointly arrange for the market value to be established by an appraisal made by a third person who is familiar with current values and who is acceptable to both the ~~client~~ member and the worker.

(12) **Resource disregards.** In determining need, the following are not considered as resources:

(A) The coupon allotment under the Food Stamp Act of 1977;

(B) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(C) Education grants (excluding Work Study) scholarships, etc., that are contingent upon the student regularly attending school. The student's classification (graduate or undergraduate) is not a factor;

(D) Loans (regardless of use) if a bona fide debt or obligation to pay can be established. Criteria to establish a loan as bona fide includes:

(i) an acknowledgment of obligation to repay or evidence that the loan was from an individual or financial institution in the loan business. If the loan agreement is not written, OKDHS Form ADM-103, Loan Verification, should be completed by the borrower attesting that the loan is bona fide and signed by the lender verifying the

date and amount of loan. When copies of written agreements or Form ADM-103 are not available, detailed case documentation must include information that the loan is bona fide and how the debt amount and date of receipt was verified.

(ii) If the loan was from a person(s) not in the loan business, the borrower's acknowledgment of obligation to repay (with or without interest) and the lender's verification of the loan are required to indicate that the loan is bona fide.

(iii) Proceeds of a loan secured by an exempt asset are not an asset.

(E) Indian payments or items purchased from Indian payments (including judgement funds or funds held in trust) distributed per capita by the Secretary of the Interior (BIA) or distributed per capita by the tribe subject to approval by the Secretary of the Interior. Also, any interest or investment income accrued on such funds while held in trust or any purchases made with judgement funds, trust funds, interest or investment income accrued on such funds. Any income from mineral leases, from tribal business investments, etc., as long as the payments are paid per capita. For purposes of this Subchapter, per capita is defined as each tribal member receiving an equal amount. However, any interest or income derived from the principal or produced by purchases made with the funds after distribution is considered as any other income;

(F) Special allowance for school expenses made available upon petitions (in writing) from funds held in trust for the student;

(G) Benefits from State and Community Programs on Aging (Title III) are disregarded. Income from the Older American Community Service Employment Act (Title V), including AARP and Green Thumb organizations as well as employment positions allocated at the discretion of the Governor of Oklahoma, is counted as earned income. Both Title III and Title V are under the Older Americans Act of 1965 amended by PL 100-175 to become the Older Americans Act amendments of 1987;

(H) Payments for supportive services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Services Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE);

(I) Payment to volunteers under the Domestic Volunteer Services Act of 1973 (VISTA), unless the gross amount of VISTA payments equals or exceeds the state or federal minimum wage, whichever is greater;

(J) The value of supplemental food assistance received under the Child Nutrition Act or the special food services program for children under the National School Lunch Act;

(K) Any portion of payments made under the Alaska Native Claims Settlement Act to an Alaska Native which are exempt from taxation under the Settlement Act;

(L) Experimental Housing Allowance Program (EHAP) payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended;

(M) Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

(N) Payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;

(O) Federal major disaster and emergency assistance provided under the Disaster Relief Act of 1974, and comparable disaster assistance provided by States, local governments and disaster assistance organizations;

(P) Interests of individual Indians in trust or restricted lands. However, any disbursements from the trust or the restricted lands are considered as income;

(Q) Resources set aside under an approved Plan for Achieving Self-Support for Blind or Disabled People (PASS). The Social Security Administration approves the plan, the amount of resources excluded and the period of time approved. A plan can be approved for an initial period of 18 months. The plan may be extended for an additional 18 months if needed, and an additional 12 months (total 48 months) when the objective involves a lengthy educational or training program;

(R) Payments made to individuals because of their status as victims of Nazi persecution (PL 103-286);

(S) A migratory farm worker's out-of-state homestead is disregarded if the farm worker's intent is to return to the homestead after the temporary absence;

(T) Payments received under the Civil Liberties Act of 1988. These payments are to be made to individuals of Japanese ancestry who were detained in interment camps during World War II;

(U) Dedicated bank accounts established by representative payees to receive and maintain retroactive SSI benefits for disabled/blind children up to the legal age of 18. The dedicated bank account must be in a financial institution, the sole purpose of which is to receive and maintain SSI underpayments which are required or allowed to be deposited into such an account. The account must be set up and verification provided to SSA before the underpayment can be released; and

(V) Payments received as a result of participation in a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation". These payments are made to hemophilia patients who are infected with HIV. Payments are not considered as income or resources. A penalty cannot be assessed

against the individual if he/she disposes of part or all of the payment. The rules at OAC:35-5-41(d)(9) regarding the availability of a trust do not apply if an individual establishes a trust using the settlement payment.

(e) **Changes in capital resources.** Rules on transfer or disposal of capital resources are not applicable. See OAC 317:35-9, OAC 317:35-17, and OAC 317:35-19 if the individual enters a nursing home or receives Home and Community Based Waiver Services, HCBWS/MR or ADvantage waiver services.

(1) **Resources of an applicant.** If the resource(s) of an applicant is in a form which is not available for immediate use, such as real estate, mineral rights, or one of many other forms, and the applicant is trying to make the resource available, the applicant may be certified and given a reasonable amount of time to make this available. A reasonable amount of time would normally not exceed 90 days. The ~~client~~ member is notified in writing that a period of time not to exceed 90 days will be given to make the resource available. Any extension beyond the initial 90-day period is justified only after interviewing the ~~client~~ member, determining that a good faith effort to sell is still being made and failure to sell is due to circumstances beyond the control of the ~~client~~ member.

(2) **Capital resources acquired while receiving assistance.** If the ~~recipient~~ member acquires resources which increase his/her available reserve above the maximum, he/she is ineligible for assistance unless there are specific plans for using the resources in compliance with rules on "resources disposed of while receiving assistance". The term "using the resource" is construed to mean that the resource has been encumbered or actually transferred. If the facts show a reasonable delay in executing the plan to use the required resource or if the resource is in a form which is not available for immediate use (such as real estate, mineral rights, or one of many other forms), and if efforts are in progress to make the resource available, the ~~recipient~~ member is given a reasonable amount of time to make this available. The ~~client~~ member is notified in writing that a period of time not to exceed 90 days will be given to make the resources available.

(A) Any extension beyond the initial 90 day period is justified only after interviewing the ~~client~~ member, determining that a good faith effort is still being made and that failure to make the resource available is due to circumstances beyond the control of the ~~client~~ member.

(B) Money borrowed on any of the ~~client's~~ member's resources, except the home, merely changes his/her resource from one form to another. Money borrowed on the home is evaluated in relation to the reserve.

(f) **Maximum reserve.** Maximum reserve is a term used to designate the largest amount which a ~~recipient~~ member can have in one or more nonexempt resources, and still be considered to be in need. A ~~recipient's~~ member's reserve may be held in any form or combination of forms. If the resources of the applicant or ~~recipient~~ member exceed the maximums listed on OKDHS Appendix C-1, he/she is not eligible.

(1) For each minor blind or disabled child up to the age of 18 living with parent(s) whose needs are not included in a TANF grant, or receiving SSI and/or SSP, the resource limit is the same as the individual limit as shown on OKDHS Appendix C-1. If the parent's resources exceed the maximum amount, the excess is deemed available to the child (resources of an ineligible child are not deemed to an eligible child). If there is more than one eligible child, the amount is prorated.

(2) If the minor blind or disabled child:

(A) is residing in a nursing facility, or a medical facility if the confinement lasts or is expected to last for 30 days, the parent(s)' resources are not deemed to the child; or

(B) under age 19 is eligible for TEFRA, the parent's(s') resources are not deemed to the child.

(3) Premature infants (i.e., 37 weeks or less) whose birth weight is less than 1200 grams (approximately 2 pounds 10 ounces) will be considered disabled by SSA even if no other medical impairment(s) exist. In this event, the parents resources are not deemed to the child until the month following the month in which the child leaves the hospital and begins living with his/her parents.

(4) when both parents are in the home and one parent is included in an aged, blind or disabled case and the spouse is included in an TANF case with the children, the resources of both parents are evaluated in relation to eligibility for SSI and therefore not considered on the AFDC case. All resources of the parents would be shown on the aged, blind or disabled case.

[OAR Docket #07-1048; filed 5-16-07]

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

[OAR Docket #07-1044]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Medical Services
Part 5. Determination of Eligibility for Medical Services
317:35-7-48. [AMENDED]
(Reference APA WF # 06-43)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; House Bill 1071XX (Appropriations Bill) of the 50th Oklahoma State Legislature
DATES:
Comment period:
February 1, 2007 through March 5,2007
Public hearing:
March 5, 2007
Adoption:
March 8, 2007

Submitted to Governor:
March 15, 2007
Submitted to House:
March 15, 2007
Submitted to Senate:
March 15, 2007
Gubernatorial approval:
April 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 10, 2007
Final adoption:
May 10,2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 7. Medical Services
Part 5. Determination of Eligibility for Medical Services
317:35-7-48. [AMENDED]
Gubernatorial approval:
January 30, 2007
Register publication:
24 OkReg 693
Docket number:
07-334
(Reference APA WF # 06-43)
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
SoonerPlan rules are revised to allow OHCA to comply with CMS clarifications that persons who have Medicare or other creditable health insurance coverage including family planning services are not eligible for SoonerPlan, the Family Planning Waiver program. Stand alone policies such as dental, vision or pharmacy are not considered creditable insurance coverage when determining eligibility for the SoonerPlan program. This revision also addresses the $240 deduction for work related expenses for individuals who qualify for SoonerPlan as addressed in APA Work Folder #06-53 submitted to the Governor this same date.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 7. MEDICAL SERVICES

PART 5. DETERMINATION OF ELIGIBILITY FOR MEDICAL SERVICES

317:35-7-48. Eligibility for the Family Planning Waiver Program

(a) Women and men ages 19 and above are eligible to receive family planning services if they meet all of the conditions of eligibility in paragraphs (1), (2), and (3) of this Section. This is regardless of pregnancy or paternity history and includes women who gain eligibility for family planning services due to a pregnancy, but whose eligibility ends 60 days postpartum.

(1) The countable income is at or below 185% of the federal poverty level. The standard deduction for work related expenses such as income tax payments, Social Security taxes, and transportation to and from work, is $240 per each full-time or part-time employed member of the benefit group. Deductions for work related expenses for self-employed individuals are found at OAC 317:35-10-26(b)(1).

(2) The individual is not otherwise eligible for Medicaid.

(3) The individual is uninsured. ~~or has health insurance coverage but this coverage excludes all coverage for family planning services.~~ Persons who have Medicare or creditable health insurance coverage are not eligible for the Family Planning Waiver program. A stand alone policy such as dental, vision or pharmacy is not considered creditable health insurance coverage.

(b) All health insurance is listed on the OKDHS computer system in order for OHCA Third Party Liability Unit to verify insurance coverage.

(c) Income for the Family Planning Waiver Program does not require verification, unless questionable. If the income is questionable the worker must verify the income.

(d) There is not an asset test for Family Planning Waiver Program.

[OAR Docket #07-1044; filed 5-16-07]

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

[OAR Docket #07-1058]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. ICF/MR, HCBW/MR, and Individuals Age 65 or Older in Mental Health Hospitals
Part 2. Medicaid Recovery Program
317:35-9-15. [AMENDED]
Part 7. Determination of Financial Eligibility
317:35-9-67. [AMENDED]
Subchapter 17. ADvantage Waiver Services
317:35-17-10. [AMENDED]
Subchapter 19. Nursing Facility Services
317:35-19-4. [AMENDED]
317:35-19-20. [AMENDED]
(Reference APA WF # 06-64)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 6011 of the Deficit Reduction Act of 2005
DATES:
Comment period:
February 1, 2007 through March 5,2007
Public hearing:
March 5, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 15, 2007
Submitted to House:
March 15, 2007
Submitted to Senate:
March 15, 2007
Gubernatorial approval:
April 1, 2007

Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 10, 2007
Final adoption:
May 10,2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Rules regarding eligibility for long-term care services are revised to comply with Section 6011 of the Deficit Reduction Act of 2005 which President Bush signed into law on February 8, 2006. The revised rules lengthen the "look-back" period for asset transfers to establish SoonerCare eligibility for nursing home and ADvantage coverage from three to five years. The revised rules also change the start of the penalty period from the date of transfer to the date of SoonerCare eligibility and specify conditions under which an undue hardship exists.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 9. ICF/MR, HCBW/MR, AND INDIVIDUALS AGE 65 OR OLDER IN MENTAL HEALTH HOSPITALS

PART 2. MEDICAID RECOVERY PROGRAM

317:35-9-15. Medicaid recovery

(a) **General overview.** The Omnibus Budget Reconciliation Act of 1993 mandates the state to seek recovery against the estate of certain Title XIX ~~recipients~~ members who received medical care on or after July 1, 1994, and who were 55 years of age or older when the care was received. The payment of Title XIX by the Oklahoma Health Care Authority on behalf of a ~~recipient~~ member who is an inpatient of a nursing facility, intermediate care facility for the mentally retarded or other medical institution creates a debt to the Authority subject to recovery by legal action either in the form of a lien filed against the real property of the ~~recipient~~ member and/or a claim made against the estate of the ~~recipient~~ member. Only Title XIX received on or after July 1, 1994, will be subject to provisions of this Part. Recovery for payments made under Title XIX for nursing care is limited by several factors, including the family composition at the time the lien is imposed and/or at the time of the ~~recipient's~~ member's death and by the creation of undue hardship at the time the lien is imposed or the claim is made against the estate. ~~(~~ [See OAC 317:35-5-41(c)(6)(H) for consideration of home property as a countable resource.~~)~~] State Supplemental Payments are not considered when determining the countable income. The types of medical care for which recovery can be sought include:

(1) nursing facility services,
(2) home and community based services,
(3) related hospital services,
(4) prescription drug services,
(5) physician services, and
(6) transportation services.

(b) **Recovery through lien.** The Oklahoma Health Care Authority (OHCA) may file and enforce a lien, after notice and opportunity for a hearing (~~DHS~~ OKDHS will conduct hearings), against the real property of a ~~recipient~~ member who is an inpatient in a nursing facility, ICF/MR or other medical institution in certain instances.

(1) **Exceptions to filing a lien.** A lien may not be filed on the home property if the ~~client's~~ member's family includes:

(A) a surviving spouse residing in the home, or
(B) a child or children age 20 or less lawfully residing in the home, or
(C) a disabled child or children of any age lawfully residing in the home, or
(D) a brother or sister of the ~~recipient~~ member who has an equity interest in the home and has been residing in the home for at least one year immediately prior to the ~~recipient's~~ member's admission to the nursing facility and who has continued to live there on a continuous basis since that time.

(2) **Reasonable expectation to return home.** A lien may be filed only after it has been determined, after notice and opportunity for a hearing, that the ~~recipient~~ member cannot reasonably be expected to be discharged and return to the home. To return home means the ~~recipient~~ member leaves the nursing facility and resides in the home on which the lien has been placed for a period of at least 90 days without being re-admitted as an inpatient to a facility providing nursing care. Hospitalizations of short duration that do not include convalescent care are not counted in the 90 day period. Upon certification for Title XIX for nursing care, ~~DHS~~ OKDHS provides written notice to the ~~recipient~~ member that a one-year period of inpatient care shall constitute a determination by the ~~Department~~ OKDHS that there is no reasonable expectation that the ~~recipient~~ member will be discharged and return home for a period of at least ~~three months~~ 90 days. The ~~recipient~~ member or the ~~recipient's~~ member's representative is asked to declare intent to return home by signing the Acknowledgment of Intent to Return Home/Medicaid Recovery Program form. Intent is defined here as a clear statement of plans in addition to other evidence and/or corroborative statements of others. Should the intent be to return home, the ~~recipient~~ member must be informed that a one-year period of care at a nursing facility or facilities constitutes a determination that the ~~recipient~~ member cannot reasonably be expected to be discharged and return home. When this determination has been made, the ~~recipient~~ member receives a notice and opportunity for hearing. This notification occurs prior to filing of a lien. At the end of the 12-month period, a lien may be filed against the ~~recipient's~~ member's real property unless medical evidence is provided to support the feasibility of his/her returning to the home within a reasonable

period of time (90 days). This 90-day period is allowed only if sufficient medical evidence is presented with an actual date for the return to the home.

(3) **Undue hardship waiver.** When enforcing a lien or a recovery from an estate ~~(~~ [see (c) of this Section~~)~~] would create an undue hardship, a waiver may be granted. Undue hardship exists when enforcing the lien would deprive the individual of medical care such that ~~his/her~~ the individual's health or life would be endangered. Undue hardship exists when application of the rule would deprive the individual or family members who are financially dependent on him/her for food, clothing, shelter, or other necessities of life. Undue hardship does not exist, however, when the individual or his/her family is merely inconvenienced or when their life style is restricted because of the lien or estate recovery being enforced. Decisions on undue hardship waivers are made at ~~DHS~~ OKDHS State Office, Family Support Services Division, Health Related and Medical Services Section. Upon applying for an undue hardship waiver, an individual will receive written notice, in a timely process, whether an undue hardship waiver will be granted. If an undue hardship waiver is not granted, the individual will receive written notice of the process under which an adverse determination can be appealed. The OHCA Legal Division staff will receive notification on all undue hardship waiver decisions.

(4) **Filing the lien.** After it has been determined that the ~~recipient~~ member cannot reasonably be expected to be discharged from the nursing facility and return home and the ~~recipient~~ member has been given notice of an intent to file a lien against the real property and an opportunity for a hearing on the matter, a lien is filed by the Oklahoma Health Care Authority, Third Party Liability Unit, for record against the legal description of the real property in the office of the county clerk of the county in which the property is located. A copy of the lien is sent by OHCA to the ~~client~~ member or his/her representative by certified mail. The lien must contain the following information:

(A) the name and mailing address of the ~~recipient~~ member, ~~recipient's~~ member's spouse, legal guardian, authorized representative, or individual acting on behalf of the ~~recipient~~ member,

(B) the amount of Title XIX paid at the time of the filing of the lien and a statement that the lien amount will continue to increase by any amounts paid thereafter for Title XIX on the ~~recipient's~~ member's behalf,

(C) the date the ~~recipient~~ member began receiving compensated inpatient care at a nursing facility or nursing facilities, intermediate care facility for the mentally retarded or other medical institution,

(D) the legal description of the real property against which the lien will be recorded, and

(E) the address of the Oklahoma Health Care Authority.

(5) **Enforcing the lien.** The lien filed by OHCA for Title XIX correctly received may be enforced before or after the death of the ~~recipient~~ member. But it may be enforced only:

(A) after the death of the surviving spouse of the ~~recipient~~ member or until such time as the surviving spouse abandons the homestead to reside elsewhere;

(B) when there is no child of the ~~recipient~~ member, natural or adopted, who is 20 years of age or less residing in the home;

(C) when there is no adult child of the ~~recipient~~ member, natural or adopted, who is blind or disabled, as defined in OAC 317:35-1-2, residing in the home;

(D) when no brother or sister of the ~~recipient~~ member is lawfully residing in the home, who has resided there for at least one year immediately before the date of the ~~recipient's~~ member's admission to the nursing facility, and has resided there on a continuous basis since that time; and

(E) when no son or daughter of the ~~recipient~~ member is lawfully residing in the home who has resided there for at least two years immediately before the date of the ~~recipient's~~ member's admission to the nursing facility, and establishes to the satisfaction of the DHS that he or she provided care to the ~~recipient~~ member which permitted the ~~recipient~~ member to reside at home rather than in an institution and has resided there on continuous basis since that time.

(6) **Dissolving the lien.** The lien remains on the property even after transfer of title by conveyance, sale, succession, inheritance or will unless one of the following events occur:

(A) The lien is satisfied. The ~~recipient~~ member or ~~recipient's~~ member's representative may discharge the lien at any time by paying the amount of lien to the OHCA. Should the payment of the debt secured by the lien be made to the county office, the payment is forwarded to OHCA/Third Party Liability, so that the lien can be released within 50 days. After that time, the ~~recipient~~ member or the ~~recipient's~~ member's representative may request in writing that it be done. This request must describe the lien and the property with reasonable certainty. By statute, a fine may be levied against the lien holder if it is not released in a timely manner.

(B) The ~~client~~ member leaves the nursing facility and resides in a property to which the lien is attached, for a period of more than 90 days without being re-admitted to a facility providing nursing care, even though there may have been no reasonable expectation that this would occur. If the ~~recipient~~ member is re-admitted to a nursing facility during this period, and does return to his/her home after being released, another 90 days must be completed before the lien can be dissolved.

(7) **Capital resources.** Rules on the determination of capital resources for individuals related to the aged, blind, or disabled (OAC 317:35-5-41) apply to the proceeds received for the property in excess of the amount of the lien after the lien is satisfied.

(c) **Recovery from estates.**

(1) If the ~~recipient~~ member was age 55 or older when the nursing care was received, adjustment or recovery may be made only after the death of the individual's spouse, if any, and at a time when there are no surviving children age 20 or less and no surviving disabled children of any age living in the home. Oklahoma Statutes contain stringent time frames concerning when and how claims against an estate in probate are filed and paid. Therefore, timely updating of computer input forms indicating the death of the ~~recipient~~ member is crucial to insure the OHCA's ability to file timely against the estate.

(2) The estate consists of all real and personal property and other assets included in ~~recipient's~~ member's estate as defined by Title 58 of the Oklahoma Statutes. Although county staff ordinarily will not be responsible for inventorying or assessing the estate, assets and property that are not considered in determining eligibility should be documented in the case record.

(3) After updating of computer input form indicating ~~recipient's~~ member's death, a computer generated report is sent to OHCA/Third Party Liability(TPL). This report will serve as notification to OHCA/TPL to initiate estate recovery.

(4) Undue hardship waivers may be granted for estate recovery as provided in (b)(3) of the Section.

PART 7. DETERMINATION OF FINANCIAL ELIGIBILITY

317:35-9-67. Determining financial eligibility of categorically needy individuals

Financial eligibility for ICF/MR, HCBW/MR, and individuals age 65 or older in mental health hospitals medical care for categorically needy individuals is determined as follows:

(1) **Financial eligibility/categorically related to AFDC.** In determining income for the individual related to AFDC, all family income is considered. The "family", for purposes of determining need, includes the following persons if living together (or if living apart but there has been no break in the family relationship):

(A) spouse; and

(B) parent(s) and minor children of their own. Individuals related to AFDC but not receiving a money payment are not entitled to one-half income disregard following the earned income deduction.

(i) For adults, to be categorically needy, the net income must be less than the categorically needy standard as shown on the ~~DHS~~ OKDHS Appendix C-1, Schedule X.

(ii) For individuals under 19, to be categorically needy, the net income must be equal to or less than the categorically needy standard as shown on the ~~DHS~~ OKDHS Appendix C-1, Schedule I. A.

(2) **Financial eligibility/categorically related to ABD.** In determining income and resources for the individual related to ABD, the "family" includes the individual and spouse, if any. To be categorically needy, the individual's countable income must be less than the categorically needy standard as shown on the ~~DHS~~ OKDHS Appendix C-1, Schedule ~~VIII. A~~ VI. If an individual and spouse cease to live together for reasons other than institutionalization, income and resources are considered available to each other through the month in which they are separated. Mutual consideration ceases with the month after the month in which the separation occurs. Any amounts which are actually contributed to the spouse after the mutual consideration has ended are considered. If the individual and spouse cease to live together because of the individual entering an ICF/MR, see OAC 317:35-9-68 (a)(3) to determine financial eligibility.

(A) The categorically needy standard on ~~DHS~~ OKDHS Appendix C-1, Schedule ~~VIII~~ VI, is applicable for individuals related to ABD. If the individual is in an ICF/MR and has received services for 30 days or longer, the categorically needy standard in ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. B., is used. If the individual leaves the facility prior to the 30 days, or does not require services past the 30 days, the categorically needy ~~VIII. A.~~ standard on OKDHS Appendix C-1, Schedule VI, is used. The rules on determination of income and resources are applicable only when an individual has entered a ICF/MR and is likely to remain under care for 30 consecutive days. The 30-day requirement is considered to have been met even if it is interrupted by a hospital stay or the individual is deceased before the 30-day period ends [Refer to OAC ~~317:35-9-68(a)(2)(B)(x)~~ 317:35-9-68 (a)(3)(B)(x)]. An individual who is a patient in an extended care facility may have SSI continued for a three month period if he/she meets conditions described in Subchapter 5 of this Chapter. The continuation of the payments is intended for use of the ~~recipient~~ member and does not affect the vendor payment. If the institutional stay exceeds the three month period, SSI will make the appropriate change.

(B) In determining eligibility for HCBW/MR services, refer to OAC 317:35-9-68(b).

(C) In determining eligibility for individuals age 65 or older in mental health hospitals, refer to OAC 317:35-9-68(c).

(3) **Transfer of capital resources on or before August 10, 1993.** Individuals who have transferred capital resources on or before August 10, 1993 and applying for or receiving NF, ICF/MR or receiving HCBW/MR services are subject to penalty if the individual, the individual's spouse, the guardian, or legal representative of the individual or individual's spouse, disposes of resources for less than fair market value during the 30 months immediately prior to eligibility for ~~Medicaid~~ SoonerCare if the individual is eligible at institutionalization. If the individual is not eligible for ~~Medicaid~~ SoonerCare at institutionalization, the individual is subject to penalty if a resource was transferred during the 30 months immediately prior to the

date of application for ~~Medicaid~~ SoonerCare. Any subsequent transfer is also subject to this rule. When there have been multiple transfers of resources without commensurate return, all transferred resources are added together to determine the penalty period. The penalty consists of a period of ineligibility (whole number of months) determined by dividing the total uncompensated value of the resource by the average monthly cost ($2,000) to a private patient in a nursing facility in Oklahoma. The penalty period begins with the month the resource or resources were first transferred and cannot exceed 30 months. Uncompensated value is defined as the difference between the equity value and the amount received for the resource.

(A) However, the penalty would not apply if:

(i) The transfer was prior to July 1, 1988.

(ii) The title to the individual's home was transferred to:

(I) the spouse;

(II) the individual's child under age 21 or who is blind or totally disabled;

(III) a sibling who has equity interest in the home and resided in the home for at least one year prior to the individual's admission to the nursing facility; or

(IV) the individual's son or daughter who resided in the home and provided care for at least two years prior to the individual's admission to the nursing facility.

(iii) The individual can show satisfactorily that the intent was to dispose of resources at fair market value or that the transfer was for a purpose other than eligibility.

(iv) The transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's resource allowance.

(v) The resource was transferred to the individual's child who is under 21 or who is blind or totally disabled.

(vi) The resource was transferred to the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the resources are not subsequently transferred to still another person for less than fair market value.

(vii) The denial would result in undue hardship. Such determination should be referred to ~~DHS~~ OKDHS State Office, FSSD, Health Related and Medical Services, for a decision.

(B) The individual is advised by a written notice of a period of ineligibility due to transfer of assets. The notice explains the period of ineligibility for payment of NF services and the continuance of eligibility for other ~~Medicaid~~ SoonerCare services.

(C) The penalty period can be ended by either the resource being restored or commensurate return being made to the individual. The cost of care during the penalty period cannot be used to shorten or end the penalty period.

(D) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored resource or the amount of commensurate return.

(E) The restoration or commensurate return will not entitle the ~~client~~ member to benefits for the period of time that the resource remained transferred. An applicant cannot be certified for NF, HCBW/MR, or ADvantage waiver services for a period of resource ineligibility.

(4) **Transfer of assets on or after August 11, 1993 but before February 8, 2006.** An institutionalized individual, an institutionalized individual's spouse, the guardian or legal representative of the individual or individual's spouse who disposes of assets on or after August 11, 1993 but before February 8, 2006 for less than fair market value on or after the look-back date specified in (A) of this paragraph subjects the individual to a penalty period for the disposal of such assets.

(A) For an institutionalized individual, the look-back date is 36 months before the first day the individual is both institutionalized and has applied for medical assistance. However, in the case of payments from a trust or portions of a trust that are treated as transfers of assets, the look-back date is 60 months.

(B) For purposes of this paragraph, an "institutionalized" individual is one who is residing in an ICF/MR or receiving HCBW/MR services.

(C) The penalty period begins the first day of the first month during which assets have been transferred and which does not occur in any other period of ineligibility due to an asset transfer. When there have been multiple transfers, all transferred assets are added together to determine the penalty.

(D) The penalty period consists of a period of ineligibility (whole number of months dropping any leftover portion) determined by dividing the total uncompensated value of the asset by the average monthly cost ($2,000) to a private patient in a nursing facility in Oklahoma. There is no limit to the length of the penalty period for these transfers. Uncompensated value is defined as the difference between the fair market value at the time of transfer less encumbrances and the amount received for the resource.

(E) Assets are defined as all income and resources of the individual and the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action:

(i) by the individual or such individual's spouse;

(ii) by a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse; or

(iii) by any person, including any court or administrative body acting at the direction or upon

the request of the individual or such individual's spouse.

(F) A penalty would not apply if:

(i) the title to the individual's home was transferred to:

(I) the spouse;

(II) the individual's child under age 21 or who is blind or totally disabled as determined by Social Security;

(III) a sibling who has equity interest in the home and resided in the home for at least one year prior to the institutionalization of the individual; or

(IV) the individual's son or daughter who resided in the home and provided care for at least two years immediately prior to the individual's institutionalization.

(ii) the individual can show satisfactorily that the intent was to dispose of assets at fair market value or that the transfer was exclusively for a purpose other than eligibility. It is presumed that any transfer of assets made for less than fair market value was made in order to qualify the individual for ~~Medicaid~~ SoonerCare. In order to rebut this presumption, the individual must present compelling evidence that a transfer was made for reasons other than to qualify for ~~Medicaid~~ SoonerCare. It is not sufficient for an individual to claim that assets were transferred solely for the purposes of allowing another to have them with ostensibly no thought of ~~Medicaid~~ SoonerCare if the individual qualifies for ~~Medicaid~~ SoonerCare as a result of the transfer.

(iii) the transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's asset allowance.

(iv) the asset was transferred to the individual's ~~minor~~ child who is blind or totally disabled as determined by Social Security. The transfer may be to a trust established for the benefit of the individual's child.

(v) the asset was transferred to or from the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the assets are not subsequently transferred to still another person for less than fair market value.

(vi) the asset is transferred to a trust established solely for the benefit of a disabled individual under the age of 65.

(vii) the denial would result in undue hardship. Such determination should be referred to ~~DHS~~ OKDHS State Office for a decision.

(G) The individual is advised by a written notice of a period of ineligibility due to transfer of assets. The notice explains the period of ineligibility for payment of ICF/MR or HCBW/MR services and the continuance of eligibility for other ~~Medicaid~~ SoonerCare services.

(H) The penalty period can be ended by either all assets being restored or commensurate return being made to the individual.

(I) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored asset or the amount of commensurate return.

(J) The restoration or commensurate return will not entitle the ~~client~~ member to benefits for the period of time that the asset remained transferred. An applicant cannot be certified for ~~nursing care services~~ NF, HCBW/MR, or ADvantage waiver services for a period of asset ineligibility.

(K) Assets which are held by an individual with another person or persons, whether held in joint tenancy or tenancy in common or similar arrangement, and the individual's ownership or control of the asset is reduced or eliminated shall be considered a transfer.

(L) When a transfer of assets by the spouse of an individual results in a period of ineligibility and the spouse who made such transfer subsequently becomes institutionalized, the period of ineligibility will be apportioned between the two institutionalized spouses.

(5) **Transfer of assets on or after February 8, 2006.** An institutionalized individual, an institutionalized individual's spouse, the guardian or legal representative of the individual or individual's spouse who disposes of assets on or after February 8, 2006 for less than fair market value on or after the look-back date specified in (A) of this paragraph subjects the individual to a penalty period for the disposal of such assets.

(A) For an institutionalized individual, the look-back date is 60 months before the first day the individual is both institutionalized and has applied for medical assistance.

(B) For purposes of this paragraph, an "institutionalized" individual is one who is residing in an ICF/MR or receiving HCBW/MR services.

(C) The penalty period will begin with the later of:

(i) the first day of a month during which assets have been transferred for less than fair market value; or

(ii) the date on which the individual is:

(I) eligible for medical assistance; or

(II) receiving institutional level of care services that, were it not for the imposition of the penalty period, would be covered by SoonerCare.

(D) The penalty period:

(i) cannot begin until the expiration of any existing period of ineligibility;

(ii) will not be interrupted or temporarily suspended once it is imposed;

(iii) when there have been multiple transfers, all transferred assets are added together to determine the penalty.

(E) The penalty period consists of a period of ineligibility determined by dividing the total uncompensated value of the asset by the average monthly cost to a private patient in a nursing facility in Oklahoma shown on OKDHS Appendix C-1. In this calculation, the penalty must include a partial month disqualification based upon the relationship between that fractional amount and the average monthly cost to a private patient in a nursing facility in Oklahoma. There is no limit to the length of the penalty period for these transfers. Uncompensated value is defined as the difference between the fair market value at the time of transfer less encumbrances and the amount received for the resource.

(F) Assets are defined as all income and resources of the individual and the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action:

(i) by the individual or such individual's spouse;

(ii) by a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse; or

(iii) by any person, including any court or administrative body acting at the direction or upon the request of the individual or such individual's spouse.

(G) Special Situations.

(i) Separate Maintenance or Divorce.

(I) There shall be presumed to be a transfer of assets if an applicant or member receives less than half of the couple's resources pursuant to a Decree of Separate Maintenance or a Decree of Divorce.

(II) There shall be presumed to be a transfer of assets if the income is reduced to an amount lower than the individual's own income plus half of the joint income. The transfer penalty shall be calculated monthly.

(III) Assets which were exempt lose the exempt character when not retained by the applicant or member in the divorce or separate maintenance. These assets, if received by the other spouse, are counted when determining the penalty.

(IV) The applicant or member may rebut the presumption of transfer by showing compelling evidence that the uneven division of income or resources was the result of factors unrelated to SoonerCare eligibility.

(ii) Inheritance from a spouse.

(I) Oklahoma law provides that a surviving spouse is entitled to a minimum portion of a deceased spouse's probate estate. The amount depends on several factors.

(II) It is considered a transfer if the deceased spouse's will places all, or some, of the statutory share the applicant or member is entitled to receive in a trust which the applicant or member does not have unfettered access to or leaves less than the statutory amount to the applicant or member, who does not then elect to receive the statutory share in probate proceedings.

(H) A penalty would not apply if:

(i) the title to the individual's home was transferred to:

(I) the spouse; or

(II) the individual's child under age 21 or who is blind or totally disabled as determined by Social Security; or

(III) a sibling who has equity interest in the home and resided in the home for at least one year immediately prior to the institutionalization of the individual; or

(IV) the individual's son or daughter who resided in the home and provided care for at least two years immediately prior to the individual's institutionalization.

(ii) the individual can show satisfactorily that the intent was to dispose of assets at fair market value or that the transfer was exclusively for a purpose other than eligibility. It is presumed that any transfer of assets made for less than fair market value was made in order to qualify the individual for SoonerCare. In order to rebut this presumption, the individual must present compelling evidence that a transfer was made for reasons other than to qualify for SoonerCare. It is not sufficient for an individual to claim that assets were transferred solely for the purpose of allowing another to have them with ostensibly no thought of SoonerCare if the individual qualifies for SoonerCare as a result of the transfer.

(iii) the transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's asset allowance. "Sole benefit" means that the amount transferred will be used for the benefit of the community spouse during his or her expected life.

(iv) the asset was transferred to the individual's child who is blind or totally disabled as determined by Social Security. The transfer may be to a trust established for the benefit of the individual's child.

(v) the asset was transferred to or from the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the assets are not subsequently transferred to still another person for less than fair market value. "Sole benefit" means that the amount transferred

will be used for the benefit of the spouse (either community or institutionalized) during his or her expected life.

(vi) the asset is transferred to a trust established solely for the benefit of a disabled individual under the age of 65.

(vii) the denial would result in undue hardship. Undue hardship exists when application of a transfer of assets penalty would deprive the individual of medical care such that the individual's health or life would be endangered; or of food, clothing, shelter, or other necessities of life.

(I) An undue hardship does not exist if the individual willingly transferred assets for the purpose of qualifying for SoonerCare services through the use of the undue hardship exemption.

(II) Such determination should be referred to OKDHS State Office for a decision.

(III) If the undue hardship exists because the applicant was exploited, legal action must be pursued to return the transferred assets to the applicant before a hardship waiver will be granted. Pursuing legal action means an APS referral has been made to the district attorney's office or a lawsuit has been filed and is being pursued against the perpetrator.

(I) The individual is advised by a written notice of a period of ineligibility due to transfer of assets, a timely process for determining whether an undue hardship waiver will be granted and a process for an adverse determination appeal. The notice explains the period of ineligibility for payment of ICF/MR or HCBW/MR services and the continuance of eligibility for other SoonerCare services.

(J) The penalty period can be ended by either all assets being restored or commensurate return being made to the individual.

(K) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored asset or the amount of commensurate return.

(L) The restoration or commensurate return will not entitle the member to benefits for the period of time that the asset remained transferred. An applicant cannot be certified for nursing care services or HCBW for a period of asset ineligibility.

(M) Assets which are held by an individual with another person or persons, whether held in joint tenancy or tenancy in common or similar arrangement, and the individual's ownership or control of the asset is reduced or eliminated shall be considered a transfer. The exception to this rule is if ownership of a joint account is divided according to the amount contributed by each owner.

(i) Documentation must be provided to show each co-owner's contribution;

(ii) The funds contributed by the applicant or SoonerCare member end up in an account owned solely by the applicant or member.

(N) When a transfer of assets by the spouse of an individual results in a period of ineligibility and the spouse who made such transfer subsequently becomes institutionalized, the period of ineligibility will be apportioned between the two institutionalized spouses.

(~~5~~ 6) **Commensurate return.** Commensurate return for purposes of this Section is defined as actual money payment or documentation of money spent on the ~~client's~~ member's behalf; i.e., property taxes, medical debts, nursing care expenses, etc., corresponding to the market value of the transferred property. The definition does not include personal services, labor or provision of rent-free shelter. It also does not include a monetary value assigned and projected for future payment either by cash or provision of services. Any transfer of property within the five years prior to application or during receipt of assistance must be analyzed in regard to commensurate return as well as determination of intent.

SUBCHAPTER 17. ADVANTAGE WAIVER SERVICES

317:35-17-10. Determining financial eligibility/categorical relationship for the ADvantage program

Financial eligibility for the ADvantage program is determined as follows:

(1) **Financial eligibility/categorically related to ABD.** In determining income and resources for the individual categorically related to ABD, the "family" includes the individual and spouse, if any. If an individual and spouse cease to live together for reasons other than institutionalization, income and resources are considered available to each other through the month in which they are separated. Mutual consideration ceases with the month after the month in which the separation occurs. Any amounts which are actually contributed to the spouse after the mutual consideration has ended are considered. If the individual and spouse cease to live together because of the individual entering a nursing facility, see OAC 317:35-19-21 to determine financial eligibility.

(A) The categorically needy standard on ~~DHS~~ OKDHS Appendix C-1, Schedule ~~VIII~~ VI, is applicable for individuals categorically related to ABD.

(B) If the individual is receiving ADvantage program services and has received services for 30 days or longer, the categorically needy standard in ~~DHS~~ OKDHS Appendix C-1, Schedule VIII. B.1., is used. The 30-day requirement is considered to have been met even if it is interrupted by a hospital stay or the individual is deceased before the 30-day period ends. If the individual does not require services past the

30 days, the categorically needy standard in ~~DHS~~ OKDHS Appendix C-1, Schedule VI., is used.

(2) **Transfer of capital resources on or before August 10, 1993.** Individuals who have transferred capital resources on or before August 10, 1993 and applying for or receiving ADvantage waiver services are subject to penalty if the individual, the individual's spouse, the guardian, or legal representative of the individual or individual's spouse, disposes of resources for less than fair market value during the 30 months immediately prior to eligibility for Title XIX if the individual is eligible at institutionalization. If the individual is not eligible for Title XIX at institutionalization, the individual is subject to penalty if a resource was transferred during the 30 months immediately prior to the date of application for Title XIX. Any subsequent transfer is also subject to the rules in this paragraph. When there have been multiple transfers of resources without commensurate return, all transferred resources are added together to determine the penalty period. The penalty consists of a period of ineligibility (whole number of months) determined by dividing the total uncompensated value of the resource by the average monthly cost ($2,000) to a private patient in a nursing facility level of care in Oklahoma. The penalty period begins with the month the resource or resources were first transferred and cannot exceed 30 months. Uncompensated value is defined as the difference between the equity value and the amount received for the resource.

(A) However, the penalty would not apply if:

(i) the transfer was prior to July 1, 1988;

(ii) the title to the individual's home was transferred to:

(I) the spouse;

(II) the individual's child who is under age 21 or is blind or totally disabled;

(III) a sibling who has equity interest in the home and resided in the home for at least one year prior to the individual's admission to the ADvantage program; or

(IV) the individual's son or daughter who resided in the home and provided care for at least two years prior to the individual's entry into the ADvantage program;

(iii) the individual can show satisfactorily that the intent was to dispose of resources at fair market value or that the transfer was for a purpose other than eligibility;

(iv) the transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's resource allowance;

(v) the resource was transferred to the individual's minor child who is blind or totally disabled;

(vi) the resource was transferred to the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the resources are not subsequently transferred to still another person for less than fair market value; or

(vii) the denial would result in undue hardship. Such determination should be referred to ~~DHS~~ OKDHS State Office for a decision.

(B) The individual is advised by a written notice of a period of ineligibility due to transfer of assets. The notice explains the period of ineligibility for payment for ADvantage program services and the continuance of eligibility for other Title XIX services.

(C) The penalty period can be ended by either the resource being restored or commensurate return being made to the individual.

(D) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored resource or the amount of commensurate return.

(E) The restoration or commensurate return will not entitle the ~~client~~ member to benefits for the period of time that the resource remained transferred. An applicant cannot be certified for ADvantage program services for a period of resource ineligibility.

(3) **Transfer of assets on or after August 11, 1993 but before February 8, 2006.** An institutionalized individual, an institutionalized individual's spouse, the guardian or legal representative of the individual or individual's spouse who disposes of assets on or after August 11, 1993 but before February 8, 2006 for less than fair market value on or after the look-back date specified in (A) of this paragraph subjects the individual to a penalty period for the disposal of such assets.

(A) For an institutionalized individual, the look-back date is 36 months before the first day the individual is both institutionalized and has applied for ~~Medicaid~~ SoonerCare. However, in the case of payments from a trust or portions of a trust that are treated as transfers of assets, the look back date is 60 months.

(B) For purposes of this paragraph, an "institutionalized" individual is one who is receiving ADvantage program services.

(C) The penalty period begins the first day of the first month during which assets have been transferred and which does not occur in any other period of ineligibility due to an asset transfer. When there have been multiple transfers, all transferred assets are added together to determine the penalty.

(D) The penalty period consists of a period of ineligibility (whole number of months) determined by dividing the total uncompensated value of the asset by the average monthly cost ($2,000) to a private patient in an NF level of care in Oklahoma. In this calculation, any partial month is dropped. There is no limit to the length of the penalty period for these transfers. Uncompensated value is defined as the difference between the fair market value at the time of transfer less encumbrances and the amount received for the resource.

(E) Assets are defined as all income and resources of the individual and the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action:

(i) by the individual or such individual's spouse;

(ii) by a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse; or

(iii) by any person, including any court or administrative body acting at the direction or upon the request of the individual or such individual's spouse.

(F) A penalty would not apply if:

(i) the title to the individual's home was transferred to:

(I) the spouse;

(II) the individual's child who is under age 21 or is blind or totally disabled as determined by Social Security;

(III) a sibling who has equity interest in the home and resided in the home for at least one year immediately prior to the institutionalization of the individual; or

(IV) the individual's son or daughter who resided in the home and provided care for at least two years immediately prior to the individual's institutionalization.

(ii) the individual can show satisfactorily that the intent was to dispose of assets at fair market value or that the transfer was exclusively for a purpose other than eligibility. It is presumed that any transfer of assets made for less than fair market value was made in order to qualify the individual for ~~Medicaid~~ SoonerCare. In order to rebut this presumption, the individual must present compelling evidence that a transfer was made for reasons other than to qualify for ~~Medicaid~~ SoonerCare. It is not sufficient for an individual to claim that assets were transferred solely for the purposes of allowing another to have them with ostensibly no thought of ~~Medicaid~~ SoonerCare if the individual qualifies for ~~Medicaid~~ SoonerCare as a result of the transfer.

(iii) the transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's asset allowance.

(iv) the asset was transferred to the individual's ~~minor~~ child who is blind or totally disabled as determined by Social Security. The transfer may be to a trust established for the benefit of the individual's child.

(v) the asset was transferred to or from the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the assets are not subsequently transferred to still another person for less than fair market value.

(vi) the asset is transferred to a trust established solely for the benefit of a disabled individual under the age of 65.

(vii) the denial would result in undue hardship. Such determination should be referred to OKDHS State Office for a decision.

(G) The individual is advised by a written notice of a period of ineligibility due to transfer of assets. The notice explains the period of ineligibility for payment of ADvantage program services and the continuance of eligibility for other ~~Medicaid~~ SoonerCare services.

(H) The penalty period can be ended by either all assets being restored or commensurate return being made to the individual.

(I) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored asset or the amount of commensurate return.

(J) The restoration or commensurate return will not entitle the ~~client~~ member to benefits for the period of time that the asset remained transferred. An applicant cannot be certified for ADvantage program services for a period of asset ineligibility.

(K) Assets which are held by an individual with another person or persons, whether held in joint tenancy or tenancy in common or similar arrangement, and the individual's ownership or control of the asset is reduced or eliminated shall be considered a transfer.

(L) When a transfer of assets by the spouse of an individual results in a period of ineligibility and the spouse who made such transfer subsequently becomes institutionalized, the period of ineligibility will be apportioned between the two institutionalized spouses.

(4) **Transfer of assets on or after February 8, 2006.** An institutionalized individual, an institutionalized individual's spouse, the guardian or legal representative of the individual or individual's spouse who disposes of assets on or after February 8, 2006 for less than fair market value on or after the look-back date specified in (A) of this paragraph subjects the individual to a penalty period for the disposal of such assets.

(A) For an institutionalized individual, the look-back date is 60 months before the first day the individual is both institutionalized and has applied for SoonerCare.

(B) For purposes of this paragraph, an "institutionalized" individual is one who is receiving ADvantage program services.

(C) The penalty period will begin with the later of:

(i) the first day of a month during which assets have been transferred for less than fair market value; or

(ii) the date on which the individual is:

(I) eligible for medical assistance; or

(II) receiving institutional level of care services that, were it not for the imposition of the penalty period, would be covered by SoonerCare.

(D) The penalty period:

(i) cannot begin until the expiration of any existing period of ineligibility;

(ii) will not be interrupted or temporarily suspended once it is imposed;

(iii) when there have been multiple transfers, all transferred assets are added together to determine the penalty.

(E) The penalty period consists of a period of ineligibility determined by dividing the total uncompensated value of the asset by the average monthly cost to a private patient in a nursing facility in Oklahoma shown on OKDHS Appendix C-1. In this calculation, the penalty must include a partial month disqualification based upon the relationship between that fractional amount and the average monthly cost to a private patient in a nursing facility in Oklahoma. There is no limit to the length of the penalty period for these transfers. Uncompensated value is defined as the difference between the fair market value at the time of transfer less encumbrances and the amount received for the resource.

(F) Assets are defined as all income and resources of the individual and the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action:

(i) by the individual or such individual's spouse;

(ii) by a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse; or

(iii) by any person, including any court or administrative body acting at the direction or upon the request of the individual or such individual's spouse.

(G) Special Situations.

(i) Separate Maintenance or Divorce.

(I) There shall be presumed to be a transfer of assets if an applicant or member receives less than half of the couple's resources pursuant to a Decree of Separate Maintenance or a Decree of Divorce.

(II) There shall be presumed to be a transfer of assets if the income is reduced to an amount lower than the individual's own income plus half of the joint income. The transfer penalty shall be calculated monthly.

(III) Assets which were exempt lose the exempt character when not retained by the applicant or member in the divorce or separate maintenance. These assets, if received by the other spouse, are counted when determining the penalty.

(IV) The applicant or member may rebut the presumption of transfer by showing compelling evidence that the uneven division of income or resources was the result of factors unrelated to SoonerCare eligibility.

(ii) Inheritance from a spouse.

(I) Oklahoma law provides that a surviving spouse is entitled to a minimum portion of a deceased spouse's probate estate. The amount depends on several factors.

(II) It is considered a transfer if the deceased spouse's will places all, or some, of the statutory share the applicant or member is entitled to receive in a trust which the applicant or member does not have unfettered access to or leaves less than the statutory amount to the applicant or member, who does not then elect to receive the statutory share in probate proceedings.

(H) A penalty would not apply if:

(i) the title to the individual's home was transferred to:

(I) the spouse; or

(II) the individual's child who is under age 21 or is blind or totally disabled as determined by Social Security; or

(III) a sibling who has equity interest in the home and resided in the home for at least one year immediately prior to the institutionalization of the individual; or

(IV) the individual's son or daughter who resided in the home and provided care for at least two years immediately prior to the individual's institutionalization.

(ii) the individual can show satisfactorily that the intent was to dispose of assets at fair market value or that the transfer was exclusively for a purpose other than eligibility. It is presumed that any transfer of assets made for less than fair market value was made in order to qualify the individual for SoonerCare. In order to rebut this presumption, the individual must present compelling evidence that a transfer was made for reasons other than to qualify for SoonerCare. It is not sufficient for an individual to claim that assets were transferred solely for the purposes of allowing another to have them with ostensibly no thought of SoonerCare if the individual qualifies for SoonerCare as a result of the transfer.

(iii) the transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's asset allowance. "Sole benefit" means that the amount transferred will be used for the benefit of the community spouse during his or her expected life.

(iv) the asset was transferred to the individual's child who is blind or totally disabled as determined by Social Security. The transfer may be to a trust established for the benefit of the individual's child.

(v) the asset was transferred to or from the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the assets are not subsequently transferred to still another person for less than fair market value. "Sole benefit" means that the amount transferred will be used for the benefit of the spouse (either community or institutionalized) during his or her expected life.

(vi) the asset is transferred to a trust established solely for the benefit of a disabled individual under the age of 65.

(vii) the denial would result in undue hardship. Undue hardship exists when application of a transfer of assets penalty would deprive the individual of medical care such that the individual's health or life would be endangered; or of food, clothing, shelter, or other necessities of life.

(I) An undue hardship does not exist if the individual willingly transferred assets for the purpose of qualifying for SoonerCare services through the use of the undue hardship exemption.

(II) Such determination should be referred to OKDHS State Office for a decision.

(III) If the undue hardship exists because the applicant was exploited, legal action must be pursued to return the transferred assets to the applicant before a hardship waiver will be granted. Pursuing legal action means an APS referral has been made to the district attorney's office or a lawsuit has been filed and is being pursued against the perpetrator.

(I) The individual is advised by a written notice of a period of ineligibility due to transfer of assets, a timely process for determining whether an undue hardship waiver will be granted and a process for an adverse determination appeal. The notice explains the period of ineligibility for payment of ADvantage program services and the continuance of eligibility for other SoonerCare services.

(J) The penalty period can be ended by either all assets being restored or commensurate return being made to the individual.

(K) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored asset or the amount of commensurate return.

(L) The restoration or commensurate return will not entitle the member to benefits for the period of time that the asset remained transferred. An applicant cannot be certified for ADvantage program services for a period of asset ineligibility.

(M) Assets which are held by an individual with another person or persons, whether held in joint tenancy or tenancy in common or similar arrangement, and the individual's ownership or control of the asset is reduced or eliminated shall be considered a transfer. The exception to this rule is if ownership of a joint account is divided according to the amount contributed by each owner.

(i) Documentation must be provided to show each co-owner's contribution;

(ii) The funds contributed by the applicant or SoonerCare member end up in an account owned solely by the applicant or member.

(N) When a transfer of assets by the spouse of an individual results in a period of ineligibility and the spouse who made such transfer subsequently becomes institutionalized, the period of ineligibility will be apportioned between the two institutionalized spouses.

(~~4~~5) **Commensurate return.** Commensurate return for purposes of this Section is defined as actual money payment or documentation of money spent on the ~~client's~~ member's behalf; i.e., property taxes, medical debts, nursing care expenses, etc., corresponding to the market value of the transferred property. The definition does not include personal services, labor or provision of rent-free shelter. It also does not include a monetary value assigned and projected for future payment either by cash or provision of services. Any transfer of property within the five years prior to application or during receipt of assistance must be analyzed in regard to commensurate return as well as determination of intent.

SUBCHAPTER 19. NURSING FACILITY SERVICES

317:35-19-4. Medicaid recovery

(a) **General overview.** The Omnibus Budget Reconciliation Act of 1993 mandates the state to seek recovery against the estate of certain Title XIX ~~recipients~~ members who received medical care on or after July 1, 1994, and who were 55 years of age or older when the care was received. The payment of Title XIX by the Oklahoma Health Care Authority on behalf of a ~~recipient~~ member who is an inpatient of a nursing facility, intermediate care facility for the mentally retarded or other medical institution creates a debt to the Authority subject to recovery by legal action either in the form of a lien filed against the real property of the ~~recipient~~ member and/or a claim made against the estate of the ~~recipient~~ member. Only Title XIX received on or after July 1, 1994, will be subject to provisions of this part. Recovery for payments made under Title XIX for nursing care is limited by several factors, including the family composition at the time the lien is imposed and/or at the time of the ~~recipient's~~ member's death and by the creation of undue hardship at the time the lien is imposed or the claim is made against the estate. ~~(~~ [See OAC 317:35-5-41(c)(6)(H) for consideration of home property as a countable resource.~~)~~] State

Supplemental Payments are not considered when determining the countable income. The types of medical care for which recovery can be sought include:

(1) nursing facility services,
(2) home and community based services,
(3) related hospital services,
(4) prescription drug services,
(5) physician services, and
(6) transportation services.

(b) **Recovery through lien.** The Oklahoma Health Care Authority (OHCA) may file and enforce a lien, after notice and opportunity for a hearing, (~~DHS~~ OKDHS will conduct hearings) against the real property of a ~~recipient~~ member who is an inpatient in a nursing facility, ICF/MR or other medical institution in certain instances.

(1) **Exceptions to filing a lien.** A lien may not be filed on the home property if the ~~client's~~ member's family includes:

(A) a surviving spouse residing in the home, or
(B) a child or children age 20 or less lawfully residing in the home, or
(C) a disabled child or children of any age lawfully residing in the home, or
(D) a brother or sister of the ~~recipient~~ member who has an equity interest in the home and has been residing in the home for at least one year immediately prior to the ~~recipient's~~ member's admission to the nursing facility and who has continued to live there on a continuous basis since that time.

(2) **Reasonable expectation to return home.** A lien may be filed only after it has been determined, after notice and opportunity for a hearing, that the ~~recipient~~ member cannot reasonably be expected to be discharged and return to the home. To return home means the ~~recipient~~ member leaves the nursing facility and resides in the home on which the lien has been placed for a period of at least 90 days without being re-admitted as an inpatient to a facility providing nursing care. Hospitalizations of short duration that do not include convalescent care are not counted in the 90 day period. Upon certification for Title XIX for nursing care, ~~DHS~~ OKDHS provides written notice to the ~~recipient~~ member that a one-year period of inpatient care shall constitute a determination by the ~~Department~~ OKDHS that there is no reasonable expectation that the ~~recipient~~ member will be discharged and return home for a period of at least three months. The ~~recipient~~ member or the ~~recipient's~~ member's representative is asked to declare intent to return home by signing the Acknowledgment of Intent to Return Home/Medicaid Recovery Program form. Intent is defined here as a clear statement of plans in addition to other evidence and/or corroborative statements of others. Should the intent be to return home, the ~~recipient~~ member must be informed that a one-year period of care at a nursing facility or facilities constitutes a determination that the ~~recipient~~ member cannot reasonably be expected to be discharged and return home. When this determination has been made, the ~~recipient~~ member receives a notice and opportunity for hearing. This notification occurs prior to filing of a lien. At the end of the 12-month period, a lien may be filed against the ~~recipient's~~ member's real property unless medical evidence is provided to support the feasibility of his/her returning to the home within a reasonable period of time (90 days). This 90-day period is allowed only if sufficient medical evidence is presented with an actual date for the return to the home.

(3) **Undue hardship waiver.** When enforcing a lien or a recovery from an estate ~~(~~ [see (C) of this Section~~)~~] would create an undue hardship, a waiver may be granted. Undue hardship exists when enforcing the lien would deprive the individual of medical care such that ~~his/her~~ the individual's health or life would be endangered. Undue hardship exists when application of the rule would deprive the individual or family members who are financially dependent on him/her for food, clothing, shelter, or other necessities of life. Undue hardship does not exist, however, where the individual or his/her family is merely inconvenienced or where their life style is restricted because of the lien or estate recovery being enforced. Decisions on undue hardship waivers are made at ~~DHS~~ OKDHS State Office, Family Support Services Division, Health Related and Medical Services Section. Upon applying for an undue hardship waiver, an individual will receive written notice, in a timely process, whether an undue hardship waiver will be granted. If an undue hardship waiver is not granted, the individual will receive written notice of the process under which an adverse determination can be appealed. The OHCA Legal Division staff will receive notification on all undue hardship waiver decisions.

(4) **Filing the lien.** After it has been determined that the ~~recipient~~ member cannot reasonably be expected to be discharged from the nursing facility and return home and the ~~recipient~~ member has been given notice of the intent to file a lien against the real property and an opportunity for a hearing on the matter, a lien is filed by the Oklahoma Health Care Authority, Third Party Liability Unit, for record against the legal description of the real property in the office of the county clerk of the county in which the property is located. A copy of the lien is sent by OHCA to the ~~client~~ member or his/her representative by certified mail. The lien must contain the following information:

(A) the name and mailing address of the ~~recipient~~ member, ~~recipient's~~ member's spouse, legal guardian, authorized representative, or individual acting on behalf of the ~~recipient~~ member,
(B) the amount of Title XIX paid at the time of the filing of the lien and a statement that the lien amount will continue to increase by any amounts paid thereafter for XIX ~~to the recipient~~ on the member's behalf,
(C) the date the ~~recipient~~ member began receiving compensated inpatient care at a nursing facility or nursing facilities, intermediate care facility for the mentally retarded or other medical institution,
(D) the legal description of the real property against which the lien will be recorded, and
(E) the address of the Oklahoma Health Care Authority.

(5) **Enforcing the lien.** The lien filed by the OHCA for Title XIX correctly received may be enforced before or after the death of the ~~recipient~~ member. But it may be enforced only:

(A) after the death of the surviving spouse of the ~~recipient~~ member or until such time as the surviving spouse abandons the homestead to reside elsewhere;

(B) when there is no child of the ~~recipient~~ member, natural or adopted, who is 20 years of age or less residing in the home;

(C) when there is no adult child of the ~~recipient~~ member, natural or adopted, who is blind or disabled as defined in, OAC 317:35-1-2 residing in the home;

(D) when no brother or sister of the ~~recipient~~ member is lawfully residing in the home, who has resided there for at least one year immediately before the date of the ~~recipient's~~ member's admission to the nursing facility, and has resided there on a continuous basis since that time; and

(E) when no son or daughter of the ~~recipient~~ member is lawfully residing in the home who has resided there for at least two years immediately before the date of the ~~recipient's~~ member's admission to the nursing facility, and establishes to the satisfaction of the ~~DHS~~ OKDHS that he or she provided care to the ~~recipient~~ member which permitted the ~~recipient~~ member to reside at home rather than in an institution and has resided there on continuous basis since that time.

(6) **Dissolving the lien.** The lien remains on the property even after transfer of title by conveyance, sale, succession, inheritance or will unless one of the following events occur:

(A) The lien is satisfied. The ~~recipient~~ member or ~~recipient's~~ member's representative may discharge the lien at any time by paying the amount of lien to the OHCA. Should the payment of the debt secured by the lien be made to the county office, the payment is forwarded to OHCA/Third Party Liability, so that the lien can be released within 50 days. After that time, the ~~recipient~~ member or the ~~recipient's~~ member's representative may request in writing that it be done. This request must describe the lien and the property with reasonable certainty. By statute, a fine may be levied against the lien holder if it is not released in a timely manner.

(B) The ~~client~~ member leaves the nursing facility and resides in a property to which the lien is attached, for a period of more than 90 days without being re-admitted to a facility providing nursing care, even though there may have been no reasonable expectation that this would occur. If the ~~recipient~~ member is re-admitted to a nursing facility during this period, and does return to his/her home after being released, another 90 days must be completed before the lien can be dissolved.

(7) **Capital resources.** Rules on the determination of capital resources for individuals related to the aged, blind, or disabled (OAC 317:35-5-41) apply to the proceeds received for the property in excess of the amount of the lien after the lien is satisfied.

(c) **Recovery From Estates from estates.**

(1) If the ~~recipient~~ member was age 55 or older when the nursing care was received, adjustment or recovery may be made only after the death of the individual's spouse, if any, and at a time when there are no surviving children age 20 or less and no surviving disabled children of any age living in the home. Oklahoma Statutes contain stringent time frames concerning when and how claims against an estate in probate are filed and paid. Therefore, timely updating of computer input forms indicating the death of the ~~recipient~~ member is crucial to insure the OHCA's ability to file timely against the estate.

(2) The estate consists of all real and personal property and other assets included in ~~recipient's~~ member's estate as defined by Title 58 of the Oklahoma Statutes. Although county staff ordinarily will not be responsible for inventorying or assessing the estate, assets and property that are not considered in determining eligibility should be documented in the case record.

(3) After updating of computer input form indicating ~~recipient's~~ member's death, a computer generated report is sent to OHCA/Third Party Liability (TPL). This report will serve as notification to OHCA/TPL to initiate estate recovery.

(4) Undue hardship waivers may be granted for estate recovery as provided in (b)(3) of the Section.

317:35-19-20. Determining financial eligibility of categorically needy individuals

Financial eligibility for NF medical care is determined as follows:

(1) **Financial eligibility/categorically related to AFDC.**

(A) In determining income for the individual related to AFDC, all family income is considered. The "family", for purposes of determining need, includes the following persons if living together (or if living apart but there has been no break in the family relationship):

(i) spouse; and

(ii) parent(s) and minor children of their own.

(I) For adults, to be categorically needy, the net income must be less than the categorically needy standard as shown on the OKDHS Appendix C-1, Schedule X.

(II) For individuals under 19, to be categorically needy, the net income must be equal to or less than the categorically needy standard as shown on the OKDHS Appendix C-1, Schedule I. A.

(B) Individuals related to AFDC but not receiving a money payment are not entitled to one-half income disregard following the earned income deduction.

(2) **Financial eligibility/categorically related to ABD.** In determining income and resources for the individual related to ABD, the "family" includes the individual and spouse, if any. If an individual and spouse cease to live together for reasons other than institutionalization, income and resources are considered available to each other through the month in which they are separated. Mutual consideration ceases with the month after the month in which the separation occurs. Any amounts which are actually contributed to the spouse after the mutual consideration has ended are considered. If the individual and spouse cease to live together because of the individual entering a nursing facility, see paragraph ~~(2)~~ (3) of OAC ~~317:35-19-20~~ 317:35-19-21 to determine financial eligibility.

(A) The categorically needy standard on OKDHS Appendix C-1, Schedule VI., is applicable for individuals related to ABD. If the individual is in an NF and has received services for 30 days or longer, the categorically needy standard in OKDHS Appendix C-1, Schedule VIII. B.1., is used. If the individual leaves the facility prior to the 30 days, or does not require services past the 30 days, the categorically needy standard in OKDHS Appendix C-1, Schedule VI., is used. The rules on determination of income and resources are applicable only when an individual has entered a NF and is likely to remain under care for 30 consecutive days. The 30-day requirement is considered to have been met even if it is interrupted by a hospital stay or the individual is deceased before the 30-day period ends.

(B) An individual who is a patient in an extended care facility may have SSI continued for a three month period if he/she meets conditions described in Subchapter 5 of this Chapter. The continuation of the payments is intended for use of the ~~recipient~~ member and does not affect the vendor payment. If the institutional stay exceeds the three month period, SSI will make the appropriate change.

(3) **Transfer of capital resources on or before August 10, 1993.** Individuals who have transferred capital resources on or before August 10, 1993 and applying for or receiving NF, ICF/MR, or receiving HCBW/MR services are subject to penalty if the individual, the individual's spouse, the guardian, or legal representative of the individual or individual's spouse, disposes of resources for less than fair market value during the 30 months immediately prior to eligibility for ~~Medicaid~~ SoonerCare if the individual is eligible at institutionalization. If the individual is not eligible for ~~Medicaid~~ SoonerCare at institutionalization, the individual is subject to penalty if a resource was transferred during the 30 months immediately prior to the date of application for ~~Medicaid~~ SoonerCare. Any subsequent transfer is also subject to this policy. When there have been multiple transfers of resources without commensurate return, all transferred resources are added together to determine the penalty period. The penalty consists of a period of ineligibility (whole number of months) determined by dividing the total uncompensated value of the resource by the average monthly cost ($2,000) to a private patient in a nursing facility in Oklahoma. The penalty period begins with the month the resource or resources were first transferred and cannot exceed 30 months. Uncompensated value is defined as the difference between the equity value and the amount received for the resource.

(A) However, the penalty would not apply if:

(i) The transfer was prior to July 1, 1988.

(ii) The title to the individual's home was transferred to:

(I) the spouse;

(II) the individual's child under age 21 or who is blind or totally disabled;

(III) a sibling who has equity interest in the home and resided in the home for at least one year prior to the individual's admission to the nursing facility; or

(IV) the individual's son or daughter who resided in the home and provided care for at least two years prior to the individual's admission to the nursing facility.

(iii) The individual can show satisfactorily that the intent was to dispose of resources at fair market value or that the transfer was for a purpose other than eligibility.

(iv) The transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's resource allowance.

(v) The resource was transferred to the individual's minor child who is blind or totally disabled.

(vi) The resource was transferred to the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the resources are not subsequently transferred to still another person for less than fair market value.

(vii) The denial would result in undue hardship. Such determination should be referred to OKDHS State Office for a decision.

(B) The individual is advised by a written notice of a period of ineligibility due to transfer of assets. The notice explains the period of ineligibility for payment of NF and the continuance of eligibility for other ~~Medicaid~~ SoonerCare services.

(C) The penalty period can be ended by either the resource being restored or commensurate return being made to the individual.

(D) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored resource or the amount of commensurate return.

(E) The restoration or commensurate return will not entitle the ~~client~~ member to benefits for the period of time that the resource remained transferred. An applicant cannot be certified for NF, HCBWS/MR, or ADvantage waiver services for a period of resource ineligibility.

(4) **Transfer of assets on or after August 11, 1993 but before February 8, 2006.** An institutionalized individual, an institutionalized individual's spouse, the guardian or legal representative of the individual or individual's spouse who disposes of assets on or after August 11, 1993 but before February 8, 2006 for less than fair market value on or after the look-back date specified in (A) of this paragraph subjects the individual to a penalty period for the disposal of such assets.

(A) For an institutionalized individual, the look-back date is 36 months before the first day the individual is both institutionalized and has applied for medical assistance. However, in the case of payments from a trust or portions of a trust that are treated as transfers of assets, the look back date is 60 months.

(B) For purposes of this paragraph, an "institutionalized" individual is one who is residing in an NF.

(C) The penalty period begins the first day of the first month during which assets have been transferred and which does not occur in any other period of ineligibility due to an asset transfer. When there have been multiple transfers, all transferred assets are added together to determine the penalty.

(D) The penalty period consists of a period of ineligibility (whole number of months) determined by dividing the total uncompensated value of the asset by the average monthly cost ($2,000) to a private patient in a nursing facility in Oklahoma. In this calculation, any partial month is dropped. There is no limit to the length of the penalty period for these transfers. Uncompensated value is defined as the difference between the fair market value at the time of transfer less encumbrances and the amount received for the resource.

(E) Assets are defined as all income and resources of the individual and the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action:

(i) by the individual or such individual's spouse;

(ii) by a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse; or

(iii) by any person, including any court or administrative body acting at the direction or upon the request of the individual or such individual's spouse.

(F) A penalty would not apply if:

(i) the title to the individual's home was transferred to:

(I) the spouse;

(II) the individual's child under age 21 or who is blind or totally disabled as determined by Social Security;

(III) a sibling who has equity interest in the home and resided in the home for at least one year immediately prior to the institutionalization of the individual; or

(IV) the individual's son or daughter who resided in the home and provided care for at least two years immediately prior to the individual's institutionalization.

(ii) the individual can show satisfactorily that the intent was to dispose of assets at fair market value or that the transfer was exclusively for a purpose other than eligibility. It is presumed that any transfer of assets made for less than fair market value was made in order to qualify the individual for ~~Medicaid~~ SoonerCare. In order to rebut this presumption, the individual must present compelling evidence that a transfer was made for reasons other than to qualify for ~~Medicaid~~ SoonerCare. It is not sufficient for an individual to claim that assets were transferred solely for the purposes of allowing another to have them with ostensibly no thought of ~~Medicaid~~ SoonerCare if the individual qualifies for ~~Medicaid~~ SoonerCare as a result of the transfer.

(iii) the transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's asset allowance.

(iv) the asset was transferred to the individual's ~~minor~~ child who is blind or totally disabled as determined by Social Security. The transfer may be to a trust established for the benefit of the individual's child.

(v) the asset was transferred to or from the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the assets are not subsequently transferred to still another person for less than fair market value.

(vi) the asset is transferred to a trust established solely for the benefit of a disabled individual under the age of 65.

(vii) the denial would result in undue hardship. Such determination should be referred to OKDHS State Office for a decision.

(G) The individual is advised by a written notice of a period of ineligibility due to transfer of assets. The notice explains the period of ineligibility for payment of NF and the continuance of eligibility for other ~~Medicaid~~ SoonerCare services.

(H) The penalty period can be ended by either all assets being restored or commensurate return being made to the individual.

(I) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored asset or the amount of commensurate return.

(J) The restoration or commensurate return will not entitle the ~~client~~ member to benefits for the period

of time that the asset remained transferred. An applicant cannot be certified for nursing care services for a period of asset ineligibility.

(K) Assets which are held by an individual with another person or persons, whether held in joint tenancy or tenancy in common or similar arrangement, and the individual's ownership or control of the asset is reduced or eliminated shall be considered a transfer.

(L) When a transfer of assets by the spouse of an individual results in a period of ineligibility and the spouse who made such transfer subsequently becomes institutionalized, the period of ineligibility will be apportioned between the two institutionalized spouses.

(5) **Transfer of assets on or after February 8, 2006.** An institutionalized individual, an institutionalized individual's spouse, the guardian or legal representative of the individual or individual's spouse who disposes of assets on or after February 8, 2006 for less than fair market value on or after the look-back date specified in (A) of this paragraph subjects the individual to a penalty period for the disposal of such assets.

(A) For an institutionalized individual, the look-back date is 60 months before the first day the individual is both institutionalized and has applied for medical assistance.

(B) For purposes of this paragraph, an "institutionalized" individual is one who is residing in an NF.

(C) The penalty period will begin with the later of:

(i) the first day of a month during which assets have been transferred for less than fair market value; or

(ii) the date on which the individual is:

(I) eligible for medical assistance; or

(II) receiving institutional level of care services that, were it not for the imposition of the penalty period, would be covered by SoonerCare.

(D) The penalty period:

(i) cannot begin until the expiration of any existing period of ineligibility;

(ii) will not be interrupted or temporarily suspended once it is imposed;

(iii) When there have been multiple transfers, all transferred assets are added together to determine the penalty.

(E) The penalty period consists of a period of ineligibility determined by dividing the total uncompensated value of the asset by the average cost to a private patient in a nursing facility in Oklahoma shown on OKDHS Appendix C-1. In this calculation, the penalty must include a partial month disqualification based upon the relationship between that fractional amount and the average cost to a private patient in a nursing facility in Oklahoma. There is no limit to the length of the penalty period for these transfers. Uncompensated value is defined as the difference between the fair market value at the time of transfer less encumbrances and the amount received for the resource.

(F) Assets are defined as all income and resources of the individual and the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action:

(i) by the individual or such individual's spouse;

(ii) by a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse; or

(iii) by any person, including any court or administrative body acting at the direction or upon the request of the individual or such individual's spouse.

(G) Special Situations.

(i) Separate Maintenance or Divorce.

(I) There shall be presumed to be a transfer of assets if an applicant or member receives less than half of the couple's resources pursuant to a Decree of Separate Maintenance or a Decree of Divorce.

(II) There shall be presumed to be a transfer of assets if the income is reduced to an amount lower than the individual's own income plus half of the joint income. The transfer penalty shall be calculated monthly.

(III) Assets which were exempt lose the exempt character when not retained by the applicant or member in the divorce or separate maintenance. These assets, if received by the other spouse, are counted when determining the penalty.

(IV) The applicant or member may rebut the presumption of transfer by showing compelling evidence that the uneven division of income or resources was the result of factors unrelated to SoonerCare eligibility.

(ii) Inheritance from a spouse.

(I) Oklahoma law provides that a surviving spouse is entitled to a minimum portion of a deceased spouse's probate estate. The amount depends on several factors.

(II) It is considered a transfer if the deceased spouse's will places all, or some, of the statutory share the applicant or member is entitled to receive in a trust which the applicant or member does not have unfettered access to or leaves less than the statutory amount to the applicant or member, who does not then elect to receive the statutory share in probate proceedings.

(H) A penalty would not apply if:

(i) the title to the individual's home was transferred to:

(I) the spouse;

(II) the individual's child under age 21 or who is blind or totally disabled as determined by Social Security;

(III) a sibling who has equity interest in the home and resided in the home for at least one year immediately prior to the institutionalization of the individual; or

(IV) the individual's son or daughter who resided in the home and provided care for at least two years immediately prior to the individual's institutionalization.

(ii) the individual can show satisfactorily that the intent was to dispose of assets at fair market value or that the transfer was exclusively for a purpose other than eligibility. It is presumed that any transfer of assets made for less than fair market value was made in order to qualify the individual for SoonerCare. In order to rebut this presumption, the individual must present compelling evidence that a transfer was made for reasons other than to qualify for SoonerCare. It is not sufficient for an individual to claim that assets were transferred solely for the purposes of allowing another to have them with ostensibly no thought of SoonerCare if the individual qualifies for SoonerCare as a result of the transfer.

(iii) the transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's asset allowance. "Sole benefit" means that the amount transferred will be used for the benefit of the community spouse during his or her expected life.

(iv) the asset was transferred to the individual's child who is blind or totally disabled as determined by Social Security. The transfer may be to a trust established for the benefit of the individual's child.

(v) the asset was transferred to or from the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the assets are not subsequently transferred to still another person for less than fair market value. "Sole benefit" means that the amount transferred will be used for the benefit of the spouse (either community or institutionalized) during his or her expected life.

(vi) the asset is transferred to a trust established solely for the benefit of a disabled individual under the age of 65.

(vii) the denial would result in undue hardship. Undue hardship exists when application of a transfer of assets penalty would deprive the individual of medical care such that the individual's health or life would be endangered; or of food, clothing, shelter, or other necessities of life.

(I) An undue hardship does not exist if the individual willingly transferred assets for the purpose of qualifying for SoonerCare services through the use of the undue hardship exemption.

(II) Such determination should be referred to OKDHS State Office for a decision.

(III) If the undue hardship exists because the applicant was exploited, legal action must be pursued to return the transferred assets to the applicant before a hardship waiver will be granted. Pursuing legal action means an APS referral has been made to the district attorney's office or a lawsuit has been filed and is being pursued against the perpetrator.

(I) The individual is advised by a written notice of a period of ineligibility due to transfer of assets, a timely process for determining whether an undue hardship waiver will be granted and a process for an adverse determination appeal. The notice explains the period of ineligibility for payment of NF and the continuance of eligibility for other SoonerCare services.

(J) The penalty period can be ended by either all assets being restored or commensurate return being made to the individual.

(K) Once the restoration or commensurate return is made, eligibility is redetermined considering the value of the restored asset or the amount of commensurate return.

(L) The restoration or commensurate return will not entitle the member to benefits for the period of time that the asset remained transferred. An applicant cannot be certified for nursing care services for a period of asset ineligibility.

(M) Assets which are held by an individual with another person or persons, whether held in joint tenancy or tenancy in common or similar arrangement, and the individual's ownership or control of the asset is reduced or eliminated shall be considered a transfer. The exception to this rule is if ownership of a joint account is divided according to the amount contributed by each owner.

(i) Documentation must be provided to show each co-owner's contribution;

(ii) The funds contributed by the applicant or SoonerCare member end up in an account owned solely by the applicant or member.

(N) When a transfer of assets by the spouse of an individual results in a period of ineligibility and the spouse who made such transfer subsequently becomes institutionalized, the period of ineligibility will be apportioned between the two institutionalized spouses.

(~~5~~ 6) **Commensurate return.** Commensurate return for purposes of this Section is defined as actual money payment or documentation of money spent on the ~~client's~~ member's behalf; i.e., property taxes, medical debts, nursing care expenses, etc., corresponding to the market value of the transferred property. The definition does not include personal services, labor or provision of rent-free shelter. It also does not include a monetary value assigned

and projected for future payment either by cash or provision of services. Any transfer of property within the five years prior to application or during receipt of assistance must be analyzed in regard to commensurate return as well as determination of intent.

[OAR Docket #07-1058; filed 5-16-07]

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

[OAR Docket #07-1049]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 10. Medical Aid to Families with Dependent Children
Part 5. Income
317:35-10-26. [AMENDED]
(Reference APA WF# 06-53A)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 435.601
DATES:
Comment period:
February 1, 2007 through March 5,2007
Public hearing:
March 5, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 15, 2007
Submitted to House:
March 15, 2007
Submitted to Senate:
March 15, 2007
Gubernatorial approval:
April 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 10, 2007
Final adoption:
May 10,2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 10. Medical Aid to Families with Dependent Children
Part 5. Income
317:35-10-26. [AMENDED]
Gubernatorial approval:
January 30, 2007
Register publication:
24 Ok Reg 694
Docket number:
07-332
(Reference APA WF# 06-53A)
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Rules are revised to reflect a $240 earned income disregard for work related expenses when determining SoonerCare eligibility for certain populations. Currently, individuals related to AFDC or Pregnancy receive a monthly $120 deduction from earned income for work related expenses when calculating the benefit group's income for SoonerCare eligibility. Recently, the Oklahoma Department of Human Services increased the monthly earned income disregard for Temporary Assistance to Needy Families (TANF, formerly known as AFDC) recipients from $120 to $240. In order for SoonerCare to continue to be linked with TANF, OHCA must apply the financial methodologies and requirements of the cash assistance program that are most closely categorically related to the individual's status. In addition, individuals participating in the Oklahoma Employer and Employee Partnership for Insurance Coverage (O-EPIC) and those eligible for family planning services only (SoonerPlan), presently do not receive any deduction from earned income for work related expenses. These revisions will give all working individuals in these groups the same monthly work related expense deduction of $240.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 10. MEDICAL AID TO FAMILIES WITH DEPENDENT CHILDREN

PART 5. INCOME

317:35-10-26. Income

(a) **General provisions regarding income.**

(1) The income of categorically needy individuals who are related to AFDC or Pregnancy does not require verification, unless questionable. If the income is questionable the worker must verify the income. The worker views all data exchange screens on all individuals included in the household size. If the data exchange screen reveals conflicting information, the worker must resolve the conflicting information and if necessary, request verification.

(2) All available income, except that required to be disregarded by law or OHCA's policy, is taken into consideration in determining need. Income is considered available both when actually available and when the applicant or ~~recipient~~ member has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance. When an individual's income is reduced due to recoupment of an overpayment or garnishment, the gross amount before the recoupment or garnishment is counted as income. The ~~client~~ member is responsible for reporting all income, the source, amount and how often received.

(A) Income received on behalf of a member of the benefit group by another individual such as, but not limited to, a guardian or conservator, is considered available to the benefit group.

(B) Money received and used for the care and maintenance of a third party who is not included in the benefit group is not counted as income if it can be identified and verified as intended for third party use.

(C) If it appears any member of the benefit group or an individual whose income is considered when determining eligibility is eligible for any type of income

or benefits, the benefit group must be notified in writing by the Oklahoma Department of Human Services (OKDHS). The notice must contain the information that failure to apply for and take all appropriate steps to obtain such benefits within 30 days from the date of the notice will result in a determination of ineligibility. An application for Supplemental Security Income (SSI) is not required.

(D) If the ~~recipient~~ member and spouse are living together or they are living apart but there has not been a clear break in the family relationship, income received by either spouse and income received jointly is considered as family income. Income cannot be diverted to a household member who is not included in the household size for health benefits. Consideration is not given to a SSI recipient's income in computing eligibility for the AFDC related unit.

(E) Income which can reasonably be anticipated to be received is considered to be available for the month its receipt is anticipated.

(F) Income produced from resources must be considered as unearned income.

(3) Income that must be verified is verified by the best available information such as pay stubs presented by the ~~client~~ member or an interview with the employer. Pay stubs may only be used for verification if they have the ~~client's~~ member's name and/or social security number indicating that the pay stubs are in fact the ~~client's~~ member's wages. The stubs should also include the date(s) of the pay period and the amount of income before deductions. If this information is not included, employer verification is required. The worker verifies medical insurance which may be available at the same time that income is verified. When a member of the benefit group accepts employment and has not received any wages, verification (if necessary) of the amount of income to be considered and the anticipated date of receipt must be obtained from the employer. Income which is expected to be received during a month is considered available to the benefit group and is counted in determining eligibility for the month of receipt.

(4) Monies received in a lump sum from any source are considered income in the month received. Changing a resource from one form to another, such as converting personal property to cash, is not considered a lump sum payment. Exception: lump sum payments used to establish dedicated bank accounts by representative payees in order to receive and maintain retroactive SSI benefits for disabled/blind children under age 18 are excluded as income. The interest income generated from dedicated bank accounts is also excluded.

(A) A nonrecurring lump sum payment considered as income includes payments based on accumulation of income and payments which may be considered windfall in nature and may include but are not limited to TANF grant diversion, VA or Social Security lump sum payments, inheritance, gifts, worker's compensation payments, cash winnings, personal injury awards, etc. Retirement benefits received in a lump-sum are considered as unearned income. A non-recurring lump sum SSI retroactive payment, made to an AFDC or pregnancy related recipient who is not currently eligible for SSI, is not counted as income.

(B) The worker must ask applicants if they have received a lump sum payment during the month of application, any month during the application process or anticipate to receive a lump sum in the future. ~~Recipients~~ Members are asked at the time of periodic redetermination if the benefit group has received or is expecting to receive a lump sum. The worker provides an oral explanation, including examples of lump sum payments, how the rule affects other benefits and the importance of reporting anticipated receipt of a lump sum payment. The worker also offers counseling when there is indication of anticipated receipt, including voluntary withdrawal of the application or case closure and availability of free legal advice.

(C) Lump sum payments (minus allowable deductions related to establishing the lump sum payment) which are received by AFDC/Pregnancy related individuals or applicants are considered as income. Allowable deductions are expenses earmarked in the settlement or award to be used for a specific purpose which may include, but are not limited to, attorney's fees and court costs that are identified in the lump sum settlement, medical or funeral expenses for the immediate family, etc. "Earmarked" means that such expense is specifically set forth in the settlement or award.

(D) When a lump sum is received by a stepparent not included in the household size, only the stepparent's contribution is considered in accordance with the stepparent's liability policy.

(E) When a third party reveals that a lump sum payment has been received or is expected to be received by the applicant or ~~recipient~~ member, adverse action notification is given or mailed to the ~~applicant/recipient~~ applicant/member and appropriate action taken.

(F) Recurring lump sum income received from any source for a period covering more than one month, that is received in a lump sum recurrently (such as annual rentals from surface or minerals, Windfall Profits tax refund, etc.) is prorated over a period of time it is intended to cover, beginning with the month of receipt of a lump sum payment.

(G) Net income from oil and gas production (gross minus production taxes withheld), received in varying amounts on a regular or irregular basis for the past six months, will be averaged and considered as income for the next six months. In instances where an applicant or a ~~recipient~~ member receives new income from oil and gas production and verification for the past six months is not available, the worker accepts the available verification and averages over the period of time intended to cover. Net income may be verified by seeing the individual's production check stub, or by contacting the oil and gas company.

(5) Income that is based on the number of hours worked, as opposed to income based on regular monthly wages, must be computed as irregular income. The income received irregularly or in varying amounts will be averaged using the past two months to establish the amount to be anticipated and considered for prospective budgeting.

(6) A caretaker relative can only be included in the benefit group when the biological or adoptive parent is not in the home. A stepparent can be included when the natural or biological parent is either incapacitated or not in the home.

(A) Consideration is not given to the income of the caretaker relative or the income of his or her spouse in determining the eligibility of the children regardless of whether the caretaker relative's needs are or are not included. However, if that person is the stepparent, the policy on stepparent liability is applicable.

(B) If a caretaker relative is married and living with the spouse who is an SSI or SSP recipient, the spouse or spouse's income is not considered in determining the eligibility of the relative caretaker. The income of the caretaker relative and the spouse who is not an SSI or SSP recipient must be considered. Only one caretaker relative is eligible to be included in any one month.

(7) A stepparent can be included when the natural or biological parent is either incapacitated or not in the home. The income of the stepparent is counted if the stepparent's needs are being included.

(8) When there is a stepparent or person living in the home with the natural or adoptive parent who is not a spouse by legal marriage to or common-law relationship with the own parent but who is acting in the role of a spouse, the worker determines the amount of income that will be made available to meet the needs of the child(ren) and the parent. Only contributions made in cash directly to the benefit group can be counted as income. In-kind contributions are disregarded as income. When the individual and the ~~client~~ member state the individual does not make a cash contribution, further exploration is necessary. This statement can only be accepted after clarifying that the individual's contributions are only in-kind.

(b) **Earned income.** The term "earned income" refers to monies earned by an individual through the receipt of wages, salary, commission or profit from activities in which the individual is engaged as self-employed or as an employee. Payments made for accumulated annual leave/vacation leave, sick leave or as severance pay are considered as earned income whether paid during employment or at termination of employment. Temporary disability insurance payment(s) and temporary worker's compensation payments are considered as earned income if payments are employer funded and the individual remains employed. Income received as a one-time nonrecurring payment is considered as a lump sum payment. Earned income includes in-kind benefits received by an employee from an employer in lieu of wages or in conjunction with wages. An exchange of labor or services, e.g., barter, is considered as an in-kind benefit. Such benefits received in-kind are considered as earned income only when the employee/employer relationship has been established. Income from self-employment also includes in-kind benefits for a work activity or service for which the self-employed person ordinarily receives payment in the business enterprise. Medical insurance secured through the employer, whether purchased or as a benefit, is not considered in-kind income. Gross earned income is used to determine eligibility. Gross earned income is defined as the "true wage" prior to payroll deductions and/or withholdings.

(1) **Earned income from self-employment.** If the income results from the individuals's activities primarily as a result of the individuals's own labor from the operation of a business enterprise, the "earned income" is the total profit after deducting the business expenses (cost of the production). Money from the sale of whole blood or blood plasma is also considered as self-employment income subject to necessary business expense and appropriate earned income exemptions.

(A) Allowable costs of producing self-employment income include, but are not limited to, the identifiable cost of labor, stock, raw material, seed and fertilizer, interest payments to purchase income-producing property, insurance premiums, and taxes paid on income-producing property.

(i) The federal or state income tax form for the most recent year is used for calculating the income, if necessary, only if it is representative of the individual's current situation. The individual's business records beginning the month income became representative of the individual's current situation is used if the income tax information does not represent the individual's current situation.

(ii) If the self-employment enterprise has been in existence for less than a year, the income is averaged over the period of time the business has been in operation to establish the monthly income amount.

(iii) Self-employment income which represents an annual support is prorated over a 12-month period, even if the income is received in a short period of time. For example, self-employment income received by crop farmers is averaged over a 12-month period if the income represents the farmer's annual support.

(B) **Items not considered.** The following items are not considered as a cost of producing self-employed income:

(i) The purchase price and/or payments on the principal of loans for capital assets, equipment, machinery, and other durable goods;

(ii) Net losses from previous periods;

(iii) Depreciation of capital assets, equipment, machinery, and other durable goods; and

(iv) Federal, state and local income taxes, FICA, money set aside for retirement purposes, and other work related personal expenses, such

as meals and necessary transportation. These expenses are accounted for by the work related expense deduction.

(C) **Room and/or board.** Earned income from a room rented in the home is determined by considering 25% of the gross amount received as a business expense. If the earned income includes payment for room and board, 50% of the gross amount received is considered as a business expense.

(D) **Rental property.** Income from rental property is to be considered income from self employment if none of the activities associated with renting the property is conducted by an outside-person or agency.

(2) **Earned income from wages, salary or commission.** If the income is from wages, salary or commission, the "earned income" is the gross income prior to payroll deductions and/or withholdings. Income from the Older American Community Service Employment Act (Title V), including AARP and Green Thumb organizations as well as employment positions allocated at the discretion of the Governor of Oklahoma, is counted as any other earned income.

(3) **Earned income from work and training programs.** Earned income from work and training programs such as the Job Training Partnership Act (JTPA) received by an adult as wages is considered as any other earned income. Also, JTPA earned income of a dependent child is considered when received in excess of six months in any calendar year.

(4) **Individual earned income exemptions.** Exemptions from each individual's earned income include a monthly standard work related expense and child care expenses the individual is responsible for paying. Expenses cannot be exempt if paid through state or federal funds or the care is not in a licensed facility or home. Exempt income is that income which by law may not be considered in determining need.

(A) **Work related expenses.** The standard deduction for work related expenses such as income tax payments, Social Security taxes, and transportation to and from work, is ~~$120~~ $240 per each full-time or part-time employed member of the benefit group.

(B) **Child care expenses.** Disregard of child care expense is applied after all other income disregards.

(i) Child care expense may be deducted when:

(I) suitable care for a child included in the benefit group is not available from responsible persons living in the home or through other alternate sources; and

(II) the employed member whose income is considered must purchase care.

(ii) Child care expenses must be verified and the actual amount per month, as paid, up to a maximum of $200 for a child under the age of two or $175 for a child age two or older may be deducted. In considering the care expense, only actual work hours and travel time between work and the child care facility or child care home will be allowed.

(iii) In explaining child care expenses, the worker informs the individual that payment for care is the responsibility of the ~~client~~ member and any changes in the plan for care must be reported immediately.

(iv) Oklahoma law requires all child care centers and homes be properly approved or licensed; therefore, child care expenses can only be deducted if the child is in a properly licensed facility or receiving care from an approved in-home provider. However, in cases where licensed dependent care facilities and/or approved in-home providers are not available (e.g, night employment), and the ~~client~~ member arranges for care outside the home, an immediate referral is made by OKDHS Form K-13 to the licensing worker for a licensing decision. The cost of child care can be considered until the worker receives notification from the licensing worker that the home does not meet licensing standards or registration. If licensing or registration is denied, the ~~client~~ member will be allowed 30 days after notification to make other child care arrangements, during which time the child care exemption will continue to be allowed.

(v) Child care provided by another person in the household who is not a member of the benefit group may be considered as child care expenses as long as the case meets applicable standards of State, local or Tribal law.

(vi) Documentation is made of the child care arrangement indicating the name of the child care facility or the name of the in-home provider, and the documentation used to verify the actual payment of child care per month.

(5) **Formula for determining the individual's net earned income.** Formulas used to determine net earned income to be considered are:

(A) **Net earned income from employment other than self-employment.** Gross Income minus work related expense minus child care expense equals net income.

(B) **Net earned income from self-employment.** Gross income minus allowable business expenses minus work related expense and child care expense equals net income.

(c) **Unearned income.**

(1) **Capital investments.** Proceeds, i.e., interest or dividends from capital investments, such as savings accounts, bonds (other than U.S. Savings Bonds, Series A through EE), notes, mortgages, etc., received constitute income.

(2) **Life estate and homestead rights.** Income from life estate or homestead rights, constitute income after deducting actual business expenses.

(3) **Minerals.** If the ~~client~~ member owns mineral rights, only actual income from minerals, delayed rentals, or production is considered. Evidence is obtained from documents which the ~~client~~ member has in hand. When

the ~~client~~ member has no documentary evidence of the amount of income, the evidence, if necessary, is secured from the firm or person who is making the payment.

(4) **Contributions.** Monetary contributions are considered as income except in instances where the contribution is not made directly to the ~~recipient~~ member.

(5) **Retirement and disability benefits.** Income received monthly from retirement and disability benefits are considered as unearned income. Information as to receipt and amount of OASDI benefits is obtained, if necessary, from BENDEX, the ~~client's~~ member's award letter, or verification from SSA. If the individual states that he/she does not receive OASDI, has a pending application or has been denied OASDI, this can be verified, if necessary, by use of TPQYC computer transaction. Retirement benefits received as a lump sum payment at termination of employment are considered as income. Supplemental Security Income (SSI) does not fall under these types of benefits.

(6) **Unemployment benefits.** Unemployment benefits are considered as unearned income.

(7) **Military benefits.** Life insurance, pensions, compensation, servicemen dependents' allowances and the like, are all sources of income which the ~~recipient~~ member and/or dependents may be eligible to receive. In each case under consideration, information is obtained as to whether the ~~client's~~ member's son, daughter, husband or parent, has been in any military service. Clearance is made with the proper veterans' agency, both state and federal, to determine whether the benefits are available.

(8) **Casual and inconsequential gifts.** Monetary gifts which do not realistically represent income to meet living expenses, e.g., Christmas, graduation and birthday gifts, not to exceed $30 per calendar quarter for each individual, are disregarded as income. The amount of the gifts are disregarded as received during the quarter until the aggregate amount has reached $30. At that time the portion exceeding $30 is counted as lump sum income. If the amount of a single gift exceeds $30, it is not inconsequential and the total amount is therefore counted. If the ~~recipient~~ member claims that the gift is intended for more than one person in the family unit, it is allowed to be divided. Gifts between members of the family unit are not counted.

(9) **Grants.** Grants which are not based on financial need are considered income.

(10) **Funds held in trust by Bureau of Indian Affairs (BIA).** The BIA frequently puts an individual's trust funds in an Individual Indian Money (IIM) account. To determine the availability of funds held in trust in an IIM account, the social worker must contact the BIA in writing and ascertain if the funds, in total or any portion, are available to the individual. If any portion of the funds is disbursed to the individual ~~client~~ member, guardian or conservator, such funds are considered as available income. If the BIA determines the funds are not available, they are not considered. Funds held in trust by the BIA and not disbursed are considered unavailable.

(A) In some instances, BIA may determine the account is unavailable; however, they release a certain amount of funds each month to the individual. In this instance the monthly disbursement is considered as income.

(B) When the BIA has stated the account is unavailable and the account does not have a monthly disbursement plan, but a review reveals a recent history of disbursements to the individual ~~client~~ member, guardian or conservator, these disbursements must be resolved with the BIA. These disbursements indicate all or a portion of the account may be available to the individual ~~client~~ member, guardian or conservator.

(C) When disbursements have been made, the worker verifies whether such disbursements were made to the ~~client~~ member or to a third party vendor in payment for goods or services. Payments made directly from the BIA to vendors are not considered as income to the ~~client~~ member. Workers obtain documentation to verify services rendered and payment made by BIA.

(D) Amounts disbursed directly to the ~~clients~~ members are counted as non-recurring lump sum payments in the month received. Some trusts generate income on a regular basis and the income is sent to the beneficiary. In those instances, the income is counted in the month received.

(d) **Income disregards.** Income that is disregarded in determining eligibility includes:

(1) Food Stamp benefits;

(2) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(3) Education Grants (including work study), scholarships, etc., that are contingent upon the student regularly attending school. The student's classification (graduate or undergraduate) is not a factor;

(4) Loans (regardless of use) if a bona fide debt or obligation to pay can be established. Criteria to establish a loan as bona fide includes an ~~acknowledgement~~ acknowledgment of obligation to repay or evidence that the loan was from an individual or financial institution in the loan business. If the loan was from a person(s) not in the loan business, the borrower's acknowledgment of obligation to repay (with or without interest) is required to indicate that the loan is bona fide. If the loan agreement is not written, OKDHS Form Adm-103, Loan Verification, should be completed by the borrower attesting that the loan is bona fide and signed by the lender verifying the date and amount of loan. When copies of written agreements or OKDHS Form Adm-103 are not available, detailed case documentation must include information that the loan is bona fide and how the debt amount and date of receipt was verified;

(5) Indian payments (including judgement funds or funds held in trust) which are distributed per capita by the Secretary of the Interior (BIA) or distributed by the tribe subject to approval by the Secretary of the Interior. Also, any interest or investment income accrued on such funds while held in trust or any purchases made with judgement

funds, trust funds, interest or investment income accrued on such funds. Any income from mineral leases, from tribal business investments, etc., as long as the payments are paid per capita. For purposes of this paragraph, per capita is defined as each tribal member receiving an equal amount. However, any interest or income derived from the principal or produced by purchases made with the funds after distribution is considered as any other income;

(6) Special allowance for school expenses made available upon petition in writing from trust funds of the student;

(7) Benefits from State and Community Programs on Aging under Title III of the Older Americans Act of 1965 amended by PL 100-175 to become the Older Americans Act amendments of 1987;

(8) Unearned income received by a child, such as a needs based payment, cash assistance, compensation in lieu of wages, allowance, etc., from a program funded by the Job Training and Partnership Act (JTPA) including Job Corps income. Also, JTPA earned income received as wages, not to exceed six months in any calendar year;

(9) Payments for supportive services or reimbursement for out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aids, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE);

(10) Payments to volunteers under the Domestic Volunteer Service Act of 1973 (VISTA), unless the gross amount of VISTA payments equals or exceeds the state or federal minimum wage, whichever is greater;

(11) The value of supplemental food assistance received under the Child Nutrition Act or the special food service program for children under the National School Lunch Act;

(12) Any portion of payments, made under the Alaska Native Claims Settlement Act to an Alaska Native, which are exempt from taxation under the Settlement Act;

(13) If an adult or child from the family group is living in the home and is receiving SSI, his/her individual income is considered by the Social Security Administration in determining eligibility for SSI. Therefore, that income cannot be considered as available to the benefit group;

(14) Experimental Housing Allowance Program (EHAP) payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended;

(15) Earnings of a child who is a full-time student are disregarded;

(16) The first $50 of the current monthly child support paid by an absent parent. Only one disregard is allowed regardless of the number of parents paying or amounts paid. An additional disregard is allowed if payments for previous months were paid when due but not received until the current month;

(17) Government rental or housing subsidies by governmental agencies, e.g., HUD (received in-kind or in cash) for rent, mortgage payments or utilities;

(18) Reimbursements from an employer for out-of-pocket expenditures and allowances for travel or training to the extent the funds are used for expenses directly related to such travel or training, and uniform allowances if the uniform is uniquely identified with company name or logo;

(19) Low Income Home and Energy Assistance Program (LIHEAP) and Energy Crisis Assistance Program (ECAP) payments;

(20) Advance payments of Earned Income Tax Credit (EITC) or refunds of EITC as a result of filing a federal income tax return;

(21) Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

(22) Payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;

(23) Federal major disaster and emergency assistance provided under the Disaster Relief Act of 1974, and comparable disaster assistance provided by states, local governments and disaster assistance organizations;

(24) Interests of individual Indians in trust or restricted lands;

(25) Income up to $2,000 per year received by individual Indians, which is derived from leases or other uses of individually-owned trust or restricted lands;

(26) Any home produce from garden, livestock and poultry utilized by the ~~recipient~~ member and his/her household for their consumption (as distinguished from such produce sold or exchanged);

(27) Any payments made directly to a third party for the benefit of a member of the benefit group;

(28) Financial aid provided to individuals by agencies or organizations which base their payment on financial need;

(29) Assistance or services received from the Vocational Rehabilitation Program, such as transportation expenses to a rehabilitation center, extra clothing, lunches, grooming needed for a training program and an other such complimentary payments; and

(30) Payments made by a public or private non-profit child care agency for a child placed in foster care or subsidized adoption.

(e) In computing monthly income, cents will be carried at all steps until the monthly amount is determined and then will be rounded to the nearest dollar. These rounding procedures apply to each individual and each type of income. Income which is received monthly but in irregular amounts is averaged using two month's income, if possible, to determine income eligibility. Less than two month's income may be used when circumstances (e.g., new employment, unpaid sick leave, etc.) would indicate that previous income amounts would not be appropriate to use in determining future income amounts. Income received more often than monthly is converted to monthly amounts as follows:

(1) **Daily.** Income received on a daily basis is converted to a weekly amount then multiplies by 4.3.
(2) **Weekly.** Income received weekly is multiplied by 4.3.
(3) **Twice a month.** Income received twice a month is multiplied by 2.
(4) **Biweekly.** Income received every two weeks is multiplied by 2.15.

[OAR Docket #07-1049; filed 5-16-07]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 45. OKLAHOMA EMPLOYER AND EMPLOYEE PARTNERSHIP FOR INSURANCE COVERAGE

[OAR Docket #07-1059]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. O-EPIC PA Employer Eligibility
317:45-7-1. through 317:45-7-2. [AMENDED]
317:45-7-8. [AMENDED]
(Reference APA WF # 06-55)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; O.S. §68-302-5 et seq.
DATES:
Comment period:
February 1, 2007 through March 5,2007
Public hearing:
March 5, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 15, 2007
Submitted to House:
March 15, 2007
Submitted to Senate:
March 15, 2007
Gubernatorial approval:
April 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 10, 2007
Final adoption:
May 10,2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 7. O-EPIC PA Employer Eligibility
317:45-7-1. through 317:45-7-2. [AMENDED]
317:45-7-8. [AMENDED]
Gubernatorial approval:
January 30, 2007
Register publication:
Ok Reg 700
Docket number:
07-335
(Reference APA WF # 06-55)
INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
O-EPIC program rules are revised to clarify employer eligibility procedures for the O-EPIC Premium Assistance (PA) program. In addition to the OES-3 form, employers will be able to provide documentation regarding terminated or part time employees to determine the number of company employees. O-EPIC is funded through a portion of monthly proceeds from the Tobacco Tax that are collected and dispersed through the Health Employee and Economy Improvement Act (HEEIA) Revolving Fund. Rule revisions are needed to clarify employer eligibility procedures for the O-EPIC PA program.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 7. O-EPIC PA EMPLOYER ELIGIBILITY

317:45-7-1. Employer application and eligibility requirements for O-EPIC

(a) In order for an employer to be eligible to participate in the O-EPIC program the employer must:
(1) have no more than a total of ~~25~~ 50 employees on its payroll. The number of employees is determined based on the third month employee count of the most recently filed OES-3 form with the Oklahoma Employment Security Commission (OESC) and that is in compliance with all requirements of the OESC. Employers may provide additional documentation confirming terminated or part time employees that will be excluded from the OESC employee count. If the employer is exempt from filing an OES-3 form or is contracted with a PEO or is a Child Care Center, in accordance with OHCA rules, this determination is based on appropriate supporting documentation, such as the W-2 Summary Wage and Tax form as required under OAC 365:10-5-156 to verify employee count;
(2) have a business that is physically located in Oklahoma;
(3) be currently offering or intending to offer within ~~60~~ 90 calendar days an O-EPIC Qualified Health Plan. The Qualified Health Plan coverage must begin on the first day of the month and continue through the last day of the month;
(4) offer Qualified Health Plan coverage to employees in accordance with Oklahoma Small Business Statutes, Oklahoma Department of Insurance, and all other regulatory agencies;
(5) contribute a minimum 25 percent of the eligible employee monthly health plan premium;

(b) An employer who meets all requirements listed in subsection (a) of this Section must complete and submit an employer enrollment packet to the TPA.
(c) The employer must provide its Federal Employee Identification Number (FEIN).
(d) The employer must notify the TPA, within 5 working days from occurrence, of any O-EPIC employee's termination

or resignation. ~~Additionally, the employer must notify the TPA of new hires within 30 days of eligibility for the health plan.~~

317:45-7-2. Employer eligibility determination

Eligibility for employers is determined by the TPA using the eligibility requirements listed in OAC 317:45-7-1. An employer determined eligible for O-EPIC is approved for up to a 12 month period. The eligibility period begins on the first day of the month following the date of approval. The eligibility period ends the last day of the 12th month ~~or when coverage through a health plan requires renewal or an open enrollment period occurs~~. The eligibility period will renew automatically unless the employer's eligibility has been closed (refer to OAC 317:45-7-8). The TPA notifies the employer of the eligibility decision for employer and employees.

317:45-7-8. Closure

Eligibility provided under the O-EPIC program ends during the eligibility period when:

(1) the employer terminates its contract with all Qualified Health ~~Plan~~ Plans;

(2) the employer fails to pay premiums to the Carrier;

(3) the employer fails to provide an invoice verifying the monthly health plan premium has been paid;

(4) an audit indicates a discrepancy that makes the employer ineligible;

(5) the employer no longer has a business location in Oklahoma; or

(6) the Qualified Health Plan or Carrier no longer qualifies for O-EPIC~~; or~~.

~~(7) the employer's eligibility period ends and is not renewed; or~~

[OAR Docket #07-1059; filed 5-16-07]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 45. OKLAHOMA EMPLOYER AND EMPLOYEE PARTNERSHIP FOR INSURANCE COVERAGE

[OAR Docket #07-1050]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. O-EPIC PA Employee Eligibility
317:45-9-1. [AMENDED]
Subchapter 11. O-EPIC IP [NEW]
Part 5. O-EPIC Individual Plan Member Eligibility [NEW]
317:45-11-20. [NEW]
(Reference APA WF# 06-53B)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 435.601
DATES:
Comment period:
February 1, 2007 through March 5,2007
Public hearing:
March 5, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 15, 2007
Submitted to House:
March 15, 2007
Submitted to Senate:
March 15, 2007
Gubernatorial approval:
April 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 10, 2007
Final adoption:
May 10,2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 9. O-EPIC PA Employee Eligibility
317:45-9-1. [AMENDED]
Subchapter 11. O-EPIC IP [NEW]
Part 5. O-EPIC Individual Plan Member Eligibility [NEW]
317:45-11-20. [NEW]
Gubernatorial approval:
January 30, 2007
Register publication:
24 Ok Reg 703
Docket number:
07-333
(Reference APA WF# 06-53B)
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Rules are revised to reflect a $240 earned income disregard for work related expenses when determining SoonerCare eligibility for certain populations. Currently, individuals related to AFDC or Pregnancy receive a monthly $120 deduction from earned income for work related expenses when calculating the benefit group's income for SoonerCare eligibility. Recently, the Oklahoma Department of Human Services increased the monthly earned income disregard for Temporary Assistance to Needy Families (TANF, formerly known as AFDC) recipients from $120 to $240. In order for SoonerCare to continue to be linked with TANF, OHCA must apply the financial methodologies and requirements of the cash assistance program that are most closely categorically related to the individual's status. In addition, individuals participating in the Oklahoma Employer and Employee Partnership for Insurance Coverage (O-EPIC) and those eligible for family planning services only (SoonerPlan), presently do not receive any deduction from earned income for work related expenses. These revisions will give all working individuals in these groups the same monthly work related expense deduction of $240.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 9. O-EPIC PA EMPLOYEE ELIGIBILITY

317:45-9-1. Employee eligibility requirements

(a) Employee premium assistance applications are made with the TPA. ~~Employees of an O-EPIC eligible employer~~

~~must apply within 30 days from the date the employer is approved for O-EPIC or within 30 days from the date they are hired to work for a participating employer and are eligible for enrollment in the health plan. Employees may also apply during the employer's health plan open enrollment period.~~

(b) The TPA electronically submits the application to the Oklahoma Department of Human Services (OKDHS) for a determination of eligibility. The eligibility determination is processed within 30 days from the date the application is received by the TPA. The employee is notified in writing of the eligibility decision.

(c) All O-EPIC eligible employees described in this Section are enrolled ~~through~~ in their ~~Employer Sponsored Health Plan (ESHP)~~ Employer's QHP. Employees eligible for O-EPIC must:

(1) have a countable household income at or below 185% of the Federal Poverty Level. The standard deduction for work related expenses such as income tax payments, Social Security taxes, and transportation to and from work, is $240 per each full-time or part-time employed member;

(2) be a US citizen or alien as described in OAC ~~317:35-5-27~~ 317:35-5-25;

(3) be Oklahoma residents;

(4) provide his/her social security number;

(5) be not currently enrolled in, or have ~~applied for~~ an open application for, Medicaid/Medicare;

(6) be employed with a qualified employer at a business location in Oklahoma;

(7) be age 19 through age 64;

(8) be eligible for enrollment in the employer's Qualified Health Plan;

(9) be working for primary ~~employers~~ employer(s) ~~(if multiple)~~ who all meet the eligible employer guidelines listed in OAC 317:45-7-1(a)(1)-(2); and

(10) select one of the Qualified Health Plans the employer is offering~~; and~~.

~~(11) make application within 30 days of the employer being approved or have a Qualifying Event.~~

(d) An employee's spouse is eligible for O-EPIC if:

(1) the employer's health plan includes coverage for spouses;

(2) the employee is eligible for O-EPIC;

(3) if employed, the spouse's primary ~~employer~~ employer(s) meets ~~O-EPIC~~ employer guidelines listed in OAC 317:45-7-1(a)(1)-(2); and

(4) the spouse is enrolled in the same health plan as the employee.

(e) If an employee or spouse is eligible for multiple O-EPIC Qualified Health Plans, each may receive a subsidy under only one health plan.

SUBCHAPTER 11. O-EPIC IP

PART 5. O-EPIC INDIVIDUAL PLAN MEMBER ELIGIBILITY

317:45-11-20. O-EPIC Individual Plan eligibility requirements

(a) Employees not eligible for participating in an employer's Qualified Health Plan (QHP), employees of non-participating employers, self-employed, unemployed seeking work, and workers with a disability may apply for the O-EPIC Individual Plan. Applicants cannot obtain O-EPIC IP coverage if they are eligible for O-EPIC PA.

(b) Applications may be found on the World Wide Web or may be requested by calling the O-EPIC helpline. Completed applications are submitted to the TPA.

(c) The TPA electronically submits the application to the Oklahoma Department of Human Services (OKDHS) for a determination of eligibility. The eligibility determination is processed within 30 days from the date the complete application is received by the TPA. The applicant is notified in writing of the eligibility decision.

(d) In order to be eligible for the IP, the applicant must:

(1) choose a valid PCP according to the guidelines listed in OAC 317:45-11-22, at the time they make application;

(2) be a US citizen or alien as described in OAC 317:35-5-25;

(3) be an Oklahoma resident;

(4) provide his/her social security number;

(5) be not currently enrolled in, or have an open application for, Medicaid/Medicare;

(6) be age 19 through 64; and

(7) make premium payments by the due date on the invoice.

(e) If employed and working for an approved O-EPIC employer who offers a QHP, the applicant must meet the requirements in subsection (d) of this Section and:

(1) have household income at or below 185% of the Federal Poverty Level.

(2) be ineligible for participation in their employer's QHP due to number of hours worked.

(3) have received notification from O-EPIC indicating their employer has applied for O-EPIC and has been approved.

(f) If employed and working for an employer who doesn't offer a QHP, the applicant must meet the requirements in subsection (d) of this Section and:

(1) have a countable household income at or below 185% of the Federal Poverty Level. The standard deduction for work related expenses such as income tax payments, Social Security taxes, and transportation to and from work, is $240 per each full-time or part-time employed member; and

(2) have received notification from O-EPIC indicating their employer has applied and has been approved with the attestation that they are not offering a QHP.

(g) If self-employed, the applicant must meet the requirements in subsection (d) of this Section and:

(1) must have household income at or below 185% of the Federal Poverty Level;

(2) verify self-employment by providing the most recent federal tax return with all supporting schedules and copies of all 1099 forms; and

(3) verify current income by providing appropriate supporting documentation.

(h) If unemployed seeking work, the applicant must meet the requirements in subsection (d) of this Section and:

(1) must have household income at or below 185% of the Federal Poverty Level; and

(2) verify eligibility by providing a most recent copy of their monetary OESC determination letter and a most recent copy of at least one of the following:

(A) OESC eligibility letter,

(B) OESC weekly unemployment payment statement, or

(C) bank statement showing state treasurer deposit.

(i) If working with a disability, the applicant must meet the requirements in subsection (d) of this Section and:

(1) must have household income at or below 200% of the Federal Poverty Level based on a family size of one; and

(2) verify eligibility by providing a copy of their:

(A) ticket to work, or

(B) ticket to work offer letter.

[OAR Docket #07-1050; filed 5-16-07]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 45. OKLAHOMA EMPLOYER AND EMPLOYEE PARTNERSHIP FOR INSURANCE COVERAGE

[OAR Docket #07-1052]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 11. O-EPIC IP [NEW]
Part 3. O-EPIC IP Member Health Care Benefits [NEW]
317:45-11-10. through 317:45-11-11. [NEW]
(Reference APA WF # 06-65)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; O.S. §68-302-5 et seq.
DATES:
Comment period:
February 1, 2007 through March 5,2007
Public hearing:
March 5, 2007
Adoption:
March 8, 2007
Submitted to Governor:
March 15, 2007
Submitted to House:
March 15, 2007
Submitted to Senate:
March 15, 2007
Gubernatorial approval:
April 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 10, 2007
Final adoption:
May 10,2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 11. O-EPIC IP [NEW]
Part 3. O-EPIC IP Member Health Care Benefits [NEW]
317:45-11-10. through 317:45-11-11. [AMENDED]
Gubernatorial approval:
March 2, 2007
Register publication:
24 Ok Reg 811
Docket number:
07-683
(Reference APA WF # 06-65)
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
O-EPIC rules are revised to update and clarify the covered benefits, limits, and applicable co-payments for the Individual Plan benefit package. Last fall, the agency initiated the O-EPIC Premium Assistance program for small business employers. The O-EPIC Individual Plan extends affordable health coverage to low income employees who cannot afford to participate in their employer's health plan, employees of non-participating employers, self-employed, unemployed seeking work, and workers with a disability. Revisions are needed to clarify the covered benefits, limits, and applicable co-payments for the O-EPIC Individual Plan.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 11. O-EPIC IP

PART 3. O-EPIC IP MEMBER HEALTH CARE BENEFITS

317:45-11-10. O-EPIC IP benefits

(a) All O-EPIC IP benefits are subject to rules delineated in OAC 317:30 except as specifically set out in this Section.

(b) A PCP referral is required to see any other provider with the exception of the following services:

(1) behavioral health services;

(2) prenatal and obstetrical supplies and services, meaning prenatal care, delivery and 60 days of postpartum care;

(3) family planning supplies and services, meaning an office visit for a comprehensive family planning evaluation, including obtaining a Pap smear;

(4) women's routine and preventive health care services;

(5) emergency medical condition as defined in OAC 317:30-3-1; and

(6) services delivered to American Indians at Indian Health Service, tribal, or urban Indian clinics.

(c) O-EPIC IP covered benefits, limits, and applicable co-payments are listed in this subsection. In addition to the

benefit-specific limits, there is a maximum lifetime benefit of $1,000,000. Coverage includes:

(1) Anesthesia / Anesthesiologist Standby. Covered in accordance with OAC 317:30-5-7. Eligible services are covered for covered illness or surgery including services provided by a Certified Registered Nurse Anesthetist (CRNA).

(2) Blood and Blood Products. Processing, storage, and administration of blood and blood products in inpatient and outpatient settings.

(3) Chelation Therapy. Covered for heavy metal poisoning only.

(4) Diagnostic X-ray, including Ultrasound. Covered in accordance with OAC 317:30-5-22(b)(2). PCP referral is required. Standard radiology (X-ray or Ultrasound): $0 co-pay. Specialized scanning and imaging (MRI, MRA, PET, or CAT Scan); $25 co-pay per scan.

(5) Emergency Room Treatment, services and supplies for treatment in an emergency. Contracted provider services are subject to a $30 co-pay per occurrence. The emergency room co-pay will be waived if the member is admitted to the hospital or death occurs before admission.

(6) Inpatient Hospital Benefits. Covered in accordance with OAC 317:30-5-41, 317:30-5-47 and 317:30-5-95; $50 co-pay per admission.

(7) Preventive Office Visit. For services of evaluation and medical management (wellness exam); one visit per year with a $10 co-pay. This visit counts as an office visit.

(8) Office Visits/Specialist Visits. Covered in accordance with OAC 317:30-5-9, 317:30-5-10, and 317:30-5-11. For services of evaluation and medical management; up to four visits are covered per month; PCP referral required for specialist visits; $10 co-pay per visit.

(9) Outpatient Hospital/Facility Services.

(A) Includes hospital surgery services in an approved outpatient facility including outpatient services and diagnostic services. Prior authorization required for certain procedures; $25 co-pay per visit.

(B) Therapeutic radiology or chemotherapy on an outpatient basis without limitation to the number of treatments per month for persons with proven malignancies or opportunistic infections; $10 co-pay per visit.

(10) Maternity (Obstetric). Covered in accordance with OAC 317:30-5-22. Nursery care paid separately under eligible child; $50 inpatient hospital co-pay.

(11) Laboratory/Pathology. Covered in accordance with OAC 317:30-5-20; $0 co-pay.

(12) Mammogram (Radiological or Digital). Covered in accordance with OAC 317:30-5-901; $0 co-pay.

(13) Immunizations for Adults. Covered in accordance with OAC 317:30-5-2; $10 co-pay per immunization.

(14) Assistant Surgeon. Covered in accordance with OAC 317:30-5-8.

(15) Dialysis, Kidney dialysis, and services and supplies, either at home or in a facility; $0 co-pay.

(16) Oral Surgery. Services are limited to the removal of tumors or cysts; Inpatient Hospital $50 or Outpatient Hospital/Facility; $25 co-pay applies.

(17) Mental Health Treatment (Inpatient). Covered in accordance with OAC 317:30-5-95.1; $50 co-pay per admission.

(18) Mental Health Treatment (Outpatient). Covered in accordance with OAC 317:30-5-241; $10 co-pay per visit.

(19) Substance Abuse Treatment (Outpatient). Covered in accordance with OAC 317:30-5-241; $10 co-pay per visit.

(20) Durable Medical Equipment and Supplies. Covered in accordance with OAC 317:30-5, Part 17. A PCP referral and prior authorization is required for certain items. DME/Supplies are covered up to a $15,000 annual maximum; exceptions from the annual DME limit are diabetic supplies, oxygen, home dialysis, and parenteral therapy; $5 co-pay for durable/non-durable supplies and $25 co-pay for durable medical equipment.

(21) Diabetic Supplies. Covered in accordance with OAC 317:30-5, Part 17; not subject to $15,000 annual DME limit; $5 co-pay per prescription.

(22) Oxygen. Covered in accordance with OAC 317:30-5, Part 17; not subject to $15,000 annual DME limit; $5 co-pay per month.

(23) Pharmacy. Covered in accordance with OAC 317:30-5-72.1 and 317:30-5-72. Prenatal vitamins and smoking cessation products do not count against monthly prescription limits; $5/$10 co-pay per prescription.

(24) Smoking Cessation Products. Products do not count against monthly prescription limits. Covered in accordance with OAC 317:30-5-77.2; $5/$10 co-pay per product.

(25) Nutrition Services. Covered in accordance with OAC 317:30-5-1076; $10 co-pay per visit.

(26) External Breast Prosthesis, Bras and Prosthetic Garments. Covered in accordance with OAC 317:30-5, Part 17; $25 co-pay per prosthesis.

(27) Surgery. Covered in accordance with OAC 317:30-5-8; $50 co-pay per inpatient admission and $25 co-pay per outpatient visit.

(28) Home Dialysis. Covered in accordance with OAC 317:30-5, Part 17; not subject to $15,000 annual DME limit; $0 co-pay.

(29) Parenteral Therapy. Covered in accordance with OAC 317:30-5, Part 17; not subject to $15,000 annual DME limit; $25 co-pay per month.

(30) Family Planning Services and Supplies, including Sterilizations. Covered in accordance with OAC 317:30-3-57; $0 co-pay.

(31) Home Health Medications, Intravenous (IV) Therapy and Supplies. Covered in accordance with OAC 317:30-5-211(a)(3)(D)(i) and 317:30-5-41(2)(J)(iii).

(32) Ultraviolet Treatment-Actinotherapy.

(33) Fundus photography.

(34) Perinatal dental care for pregnant women. Covered in accordance with OAC 317:30-5-696; $0 co-pay.

317:45-11-11. O-EPIC IP non-covered services

Certain health care services are not covered in the O-EPIC IP benefit package listed in OAC 317:45-11-10. These services include, but are not limited to:

(1) services that the member's PCP or O-EPIC does not consider medically necessary;
(2) any medical service when the member refuses to authorize release of information needed to make a medical decision;
(3) organ and tissue transplant services;
(4) treatment of obesity;
(5) procedures, services and supplies related to sex transformation;
(6) supportive devices for the feet (orthotics) except for the diagnosis of diabetes;
(7) cosmetic surgery, except as medically necessary and as covered in OAC 317:30-3-59(19);
(8) over-the-counter drugs, medicines and supplies except contraceptive devices and products, and diabetic supplies;
(9) experimental procedures, drugs or treatments;
(10) dental services (preventive, basic, major, orthodontia, extractions or services related to dental accident) except for pregnant women and as covered in OAC 317:30-5-696;
(11) vision care and services (including glasses), except services treating diseases or injuries to the eye;
(12) physical medicine including speech, physical, occupational, chiropractic, acupuncture and osteopathic manipulation therapy;
(13) hearing services;
(14) transportation [emergent or non-emergent (air or ground)];
(15) rehabilitation (inpatient);
(16) cardiac rehabilitation;
(17) allergy testing and treatment;
(18) home health care with the exception of medications, intravenous (IV) therapy, supplies;
(19) hospice regardless of location;
(20) Temporomandibular Joint Dysfunction (TMD) (TMJ);
(21) genetic counseling;
(22) fertility evaluation/treatment/and services;
(23) sterilization reversal;
(24) Christian Science Nurse;
(25) Christian Science Practitioner;
(26) skilled nursing facility;
(27) longterm care;
(28) stand by services;
(29) thermograms; and
(30) abortions (for exceptions, refer to OAC 317:30-5-6).

[OAR Docket #07-1052; filed 5-16-07]

TITLE 320. OKLAHOMA HISTORICAL SOCIETY
CHAPTER 10. OKLAHOMA ART IN PUBLIC PLACES DIVISION

[OAR Docket #07-1161]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [NEW]
320:10-1-1. Purpose [NEW]
320:10-1-2. Definitions [NEW]
Subchapter 3. General Course and Method of Operating [NEW]
320:10-3-1. Division office [NEW]
320:10-3-2. Division office hours [NEW]
320:10-3-3. Communications with the Art in Public Places Division [NEW]
320:10-3-4. Meetings/quorum of the Art in Public Places Division [NEW]
320:10-3-5. Art in Public Places Guidelines [NEW]
320:10-3-6. Availability of Division records, guidelines and policies [NEW]
320:10-3-7. Copies of official records [NEW]
320:10-3-8. Officers of the Division [NEW]
320:10-3-9. Oversight Committee [NEW]
320:10-3-10. Powers and duties of the Oversight Committee [NEW]
320:10-3-11. Conflict of interest of Oversight Committee [NEW]
320:10-3-12. Resignation of Oversight Committee members [NEW]
320:10-3-13. Director [NEW]
320:10-3-14. Eligible projects [NEW]
320:10-3-15. Excluded projects [NEW]
320:10-3-16. Appeal procedure [NEW]
320:10-3-17. Project agency/duties [NEW]
320:10-3-18. Public notification of calls for entries [NEW]
320:10-3-19. Materials submitted to the Division become property of the State of Oklahoma [NEW] 320:10-3-20. Artwork becomes property of the State of Oklahoma [NEW]
320:10-3-21. Prohibition of statements on behalf of the Site Committees or Art in Public Places Oversight Committee [NEW]
Subchapter 5. Site Committees [NEW]
320:10-5-1. Establishment of site committees [NEW]
320:10-5-2. Duties [NEW]
320:10-5-3. Composition of committee [NEW]
320:10-5-4. Conflict of interest [NEW]
320:10-5-5. Quorum [NEW]
320:10-5-6. Length of service [NEW]
320:10-5-7. Resignation [NEW]
Subchapter 7. Financial Provisions [NEW]
320:10-7-1. Funding by state agencies [NEW]
320:10-7-2. Basis of allocation computation [NEW]
320:10-7-3. Maximum assessment [NEW]
320:10-7-4. Allocations to Commissioning of Art in Public Places Revolving Fund [NEW]
320:10-7-5. Art in Public Places Administrative and Maintenance Revolving Fund
[NEW]
320:10-7-6. Monies donated from private sources [NEW]
320:10-7-7. Authority to make expenditures [NEW]
320:10-7-8. Monies for commissioning of art not spent [NEW]
320:10-7-9. Transfer of funds in excess of one million dollars [NEW]
320:10-7-10. Exclusion from the Oklahoma Central Purchasing Act [NEW]
Subchapter 9. Management of the Collection [NEW]
320:10-9-1. Management and care of the collection [NEW]
320:10-9-2. Maintenance and conservation procedures [NEW]
320:10-9-3. Process for deaccessioning or relocating a work of art [NEW]
AUTHORITY:
Oklahoma Historical Society; Oklahoma Art in Public Places Act; 74 O.S., Section 9030 et seq.
DATES:
Comment period:
January 17, 2007 through February 16, 2007

Public hearing:
February 19, 2007
Adoption:
February 21, 2007
Submitted to Governor:
March 5, 2007
Submitted to House:
March 5, 2007
Submitted to Senate:
March 5, 2007
Gubernatorial approval:
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 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 1. General Provisions [NEW]
320:10-1-1. Purpose [NEW]
320:10-1-2. Definitions [NEW]
Subchapter 3. General Course and Method of Operating [NEW]
320:10-3-1. Division office [NEW]
320:10-3-2. Division office hours [NEW]
320:10-3-3. Communications with the Art in Public Places Division [NEW]
320:10-3-4. Meetings/quorum of the Art in Public Places Division [NEW]
320:10-3-5. Art in Public Places Guidelines [NEW]
320:10-3-6. Availability of Division records, guidelines and policies [NEW]
320:10-3-7. Copies of official records [NEW]
320:10-3-8. Officers of the Division [NEW]
320:10-3-9. Oversight Committee [NEW]
320:10-3-10. Powers and duties of the Oversight Committee [NEW]
320:10-3-11. Conflict of interest of Oversight Committee [NEW]
320:10-3-12. Resignation of Oversight Committee members [NEW]
320:10-3-13. Director [NEW]
320:10-3-14. Eligible projects [NEW]
320:10-3-15. Excluded projects [NEW]
320:10-3-16. Appeal procedure [NEW]
320:10-3-17. Project agency/duties [NEW]
320:10-3-18. Public notification of calls for entries [NEW]
320:10-3-19. Materials submitted to the Division become property of the State of Oklahoma [NEW]
320:10-3-20. Artwork becomes property of the State of Oklahoma [NEW]
320:10-3-21. Prohibition of statements on behalf of the Site Committees or Art in Public Places Oversight Committee [NEW]
Subchapter 5. Site Committees
320:10-5-1. Establishment of site committees [NEW]
320:10-5-2. Duties [NEW]
320:10-5-3. Composition of committee [NEW]
320:10-5-4. Conflict of interest [NEW]
320:10-5-5. Quorum [NEW]
320:10-5-6. Length of service [NEW]
320:10-5-7. Resignation [NEW]
Subchapter 7. Financial Provisions [NEW]
320:10-7-1. Funding by state agencies [NEW]
320:10-7-2. Basis of allocation computation [NEW]
320:10-7-3. Maximum assessment [NEW]
320:10-7-4. Allocations to Commissioning of Art in Public Places Revolving Fund [NEW]
320:10-7-5. Art in Public Places Administrative and Maintenance Revolving Fund
[NEW]
320:10-7-6. Monies donated from private sources [NEW]
320:10-7-7. Authority to make expenditures [NEW]
320:10-7-8. Monies for commissioning of art not spent [NEW]
320:10-7-9. Transfer of funds in excess of one million dollars [NEW]
320:10-7-10. Exclusion from the Oklahoma Central Purchasing Act [NEW]
Subchapter 9. Management of the Collection [NEW]
320:10-9-1. Management and care of the collection [NEW]
320:10-9-2. Maintenance and conservation procedures [NEW]
320:10-9-3. Process for deaccessioning or relocating a work of art [NEW]
Gubernatorial approval:
October 31, 2006
Register publication:
24 Ok Reg 335
Docket number:
06-1448
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
These new rules establish the necessary organization and method of operation in order to create a functioning division pursuant to the Oklahoma Art in Public Places Act (74 O.S., Section 9030 et seq). These rules also provide state agencies, institutions and entities with clarification of eligibility of capital projects and their responsibility under the Act.
CONTACT PERSON:
Debby Williams, Director, Oklahoma Art in Public Places Division, Oklahoma History Center, 2401 North Laird Ave., Oklahoma City, Oklahoma 73105, (405) 522-8959

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

320:10-1-1. Purpose

(a) *The Legislature recognizes the responsibility of Oklahoma to foster culture and the arts and declares that a portion of expenditures for capital projects including, but not limited to, bond issues for state construction be set aside for the acquisition of works of art to be placed in public construction or on public lands.*

(b) *The purpose of the Oklahoma Art in Public Places Act is to enhance public construction and encourage state cultural development.*

(c) *The administering agency shall be the Oklahoma Historical Society which is authorized to promulgate rules to administer the Oklahoma Art in Public Places Act.* [74 O.S., Section 9030.1]

320:10-1-2. Definitions

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

"Accession" means the formal process used to accept a work of art into the Oklahoma Public Art Collection and record the artwork as a Collection item.

"Acquisition" means existing artwork bought or obtained.

"Act" means the Oklahoma Art in Public Places Act, 74 O.S., Section 9030 et seq.

"Appointing authority" *shall be the Director or designee of the Project Agency.* [74 O.S.,Section 9030.2].

*"**Art", "artwork",** or "**work of art**" means all forms of original creations of visual art, except for blasphemous material as defined by Section 901 of Title 21 of the Oklahoma Statutes or indecent or obscene material as defined by Section 1024.1 of Title 21 of the Oklahoma Statutes, including, but not limited to:*

(A) *sculpture, in any material or combination of materials, whether in the round, bas-relief, high relief, mobile, fountain, kinetic, or electronic,*

(B) *painting, including murals and frescoes,*

(C) *mosaic,*

(D) *photography,*

(E) *fine crafts made from clay, fiber and textiles, wood, glass, metal, plastics or any other material, or any combination thereof,*

(F) *drawing,*

(G) *calligraphy,*

(H) *mixed media composed of any combination of forms or media,*

(I) *unique architectural stylings or embellishments, including architectural crafts,*

(J) *ornamental gateways, and*

(K) *restoration or renovation of existing works of art of historical significance* [74 O.S., Section 9030.2].

"Art in Public Places Program Guidelines" means the written program procedures and standards as approved by the Art in Public Places Oversight Committee.

*"**Artist**" means a practitioner in the visual arts committed to producing high quality work, as recognized by the peers and critics of the artist, on a regular basis. The term "artist" shall not include the architect of a public building under construction or any member of the architectural firm of the architect.* [74 O.S., Section 9030.2]

"Commission" means a task or job awarded to a person or group, especially an order to produce a particular product or piece of work.

"Deaccession" means the process of removing an object permanently from the Collection, usually through sale or exchange or any other transaction by which title of outgoing works of art are transferred from the Collection to another institution or individual. Under certain conditions, it may also include disposal by intentional destruction.

*"**Division**" means the Art in Public Places Division.* [74 O.S., Section 9030.2]

*"**Maintenance**" means the ongoing upkeep required for artworks to retain their structural and aesthetic integrity.* [74 O.S., Section 9030.2]

"Oklahoma Public Art Collection" means all accessioned works of art that have been created or purchased for, restored or renovated in accordance with the Oklahoma Art in Public Places Act.

"Preservation" means actions taken to retard or prevent deterioration or damage in artworks by control of their environment and/or treatment of their structure; and to maintain them in as unchanging a state as possible.

*"**Project**" means any capital expenditure, including, but not limited to, bond issues, with the purpose of renovating or constructing public buildings costing Two Hundred Fifty Thousand Dollars ($250,000.00) or more.* [74 O.S., Section 9030.2]

*"**Project agency**" means institutions within The Oklahoma State System of Higher Education or the department, board, commission, institution, or agency of the state subject to the Oklahoma Art in Public Places Act. The legislative and judicial branches of the State of Oklahoma shall be subject to the procedures of the Oklahoma Art in Public Places Act or shall implement another process to include art in locations subject to the control of those branches. Provided, that the expenditure for commissioning art by the legislative and judicial branches shall be no less than that established by Section 6 of this act.* [74 O.S., Section 9030.2]

*"**Project architect**" means the person or firm designing the public construction project.* [74 O.S., Section 9030.2]

*"**Public construction**" or "**public building**" means any state building, facility, structure or park constructed, including any state-owned lands or space surrounding or integral to the building, facility, structure or park. The term "public construction" or "public building" shall not include:*

(A) *water, sewer, public utility projects, prisons, projects with the primary purpose of complying with the standards of the Americans with Disabilities Act, and data processing purchases which are not part of a public construction project and any capital projects undertaken by political subdivisions of the state as defined by paragraph 8 of Section 152 of Title 51 of the Oklahoma Statutes on buildings or land that they control, and*

(B) *capital projects subject to federal public art laws.*

Participation in the Oklahoma Art in Public Places Act shall be permissive for road, highway turnpike, and bridge construction projects of the Department of Transportation and the Oklahoma Transportation Authority. [74 O.S., Section 9030.2]

*"**Public land**" means a site owned by the State of Oklahoma with major public access and visibility that serves a business, social, or environmental need.* [74 O.S., Section 9030.2]

"Relocate" means moving a work of art and resiting it.

"Renovate" means to restore to a former state, renew or make over.

*"**Repair**" means those extraordinary activities required to repair or restore a malfunctioning or damaged work of art* [74 O.S., Section 9030.2] or to restore by replacing a part or putting together what is torn or broken.

"Replacement" means substitution.

"Restoration" means the treatment of a deteriorated or damaged artwork to approximate, as nearly as possible, its original form, design, color, and function with minimal further sacrifice of aesthetic and historic integrity.

*"**Society**" means the Oklahoma Historical Society.* [74 O.S., Section 9030.2]

*"**Work of art", "art",** or "**artwork**" means all forms of original creations of visual art, except for blasphemous material as defined by Section 901 of Title 21 of the Oklahoma Statutes or indecent or obscene material as defined by Section*

1024.1 of Title 21 of the Oklahoma Statutes, including, but not limited to:

(A) *sculpture, in any material or combination of materials, whether in the round, bas-relief, high relief, mobile, fountain, kinetic, or electronic,*

(B) *painting, including murals and frescoes,*

(C) *mosaic,*

(D) *photography,*

(E) *fine crafts made from clay, fiber and textiles, wood, glass, metal, plastics or any other material, or any combination thereof,*

(F) *drawing,*

(G) *calligraphy,*

(H) *mixed media composed of any combination of forms or media,*

(I) *unique architectural stylings or embellishments, including architectural crafts,*

(J) *ornamental gateways, and*

(K) *restoration or renovation of existing works of art of historical significance.* [74 O.S., Section 9030.2]

SUBCHAPTER 3. GENERAL COURSE AND METHOD OF OPERATING

320:10-3-1. Division office

The office of the Art in Public Places Division shall be located in Oklahoma City.

320:10-3-2. Division office hours

The office hours of the Art in Public Places Division shall be from 8:00 a.m. to 5:00 p.m. each day except Saturday and Sunday and any legal holiday established by statute or by proclamation of the Governor.

320:10-3-3. Communications with the Art in Public Places Division

Every communication in writing to the Art in Public Places Division shall be addressed to the Director at the office in Oklahoma City, unless otherwise directed.

320:10-3-4. Meetings/quorum of the Art in Public Places Division

Meetings shall be held at the call of the [Oversight Committee] chair . . . [and] a majority of the members present shall constitute a quorum. [74 O.S., Section 9030.3]

320:10-3-5. Art in Public Places Guidelines

The Art in Public Places Division shall establish guidelines to implement the enacting legislation and the mission of the Art in Public Places Act. The Art in Public Places Guidelines will be evaluated and revised as needed. Guidelines can be viewed on the Art in Public Places Web site and copies of the guidelines are available to the public by writing or calling the Division office.

320:10-3-6. Availability of Division records, guidelines and policies

All rules, regulations, guidelines and other written statements of policy or interpretations formulated, adopted and used by the Division in the discharge of its functions and all final orders and decisions will be made available upon approval of written request to the Division Director.

320:10-3-7. Copies of official records

Copies of official records of the Art in Public Places Division may be made for $ .25 per page. Any material of the Art in Public Places Division protected from publication by State law shall not be released.

320:10-3-8. Officers of the Division

The Director of the Oklahoma Historical Society shall be the initial chair of the Committee. The officers of the Committee shall be a chair, a vice-chair, and a secretary elected at the last meeting of each fiscal year. Appointments to fill officer vacancies shall be made by the chair between elections. [74 O.S., Section 9030.3]

320:10-3-9. Oversight Committee

(a) *The Oklahoma Historical Society may create an Art in Public Places Division to administer the Oklahoma Art in Public Places Act.*

(b) *There is hereby created an Art in Public Places Oversight Committee comprised of:*

(1) *The Director of the Department of Central Services, or designee;*

(2) *The Director of the Oklahoma Arts Council, or designee;*

(3) *The Director of the Oklahoma Historical Society, or designee;*

(4) *The Director of the Department of Transportation, or designee;*

(5) *The Chancellor of the Oklahoma State Regents for Higher Education or designee;*

(6) *One artist appointed by the Director of the Oklahoma Arts Council;*

(7) *One architect appointed by the Director of Central Services;*

(8) *One engineer appointed by the Director of Central Services; and*

(9) *One museum director/curator appointed by the Director of the Oklahoma Historical Society.*

(c) *All appointed members shall serve a term of three (3) years and may be reappointed for one additional three-year term. [74 O.S., Section 9030.3]*

(d) *The State Capitol Preservation Commission shall retain its administrative control over art projects for the Capitol and the Governor's Mansion as provided for in Section 4104 of Title*

74 of the Oklahoma Statutes [74 O.S., Section 9030.3] following the process as outlined in the Art in Public Places Program Guidelines. The Oklahoma Art in Public Places Oversight Committee shall request periodic notification of the progress of State Capitol Preservation Commission project(s).

(e) *The governing boards for institutions of higher education or local boards of trustees shall perform the duties of the Oversight Committee for art projects on the campuses that they oversee* [74 O.S., Section 9030.3] following the process as outlined in the Art in Public Places Program Guidelines. The entities performing those duties shall give periodic notification of the progress of the project(s) to the Oklahoma Art in Public Places Oversight Committee when requested.

320:10-3-10. Powers and duties of the Oversight Committee

[T]*he Oversight Committee is empowered with overseeing each of the following phases of the development and management of the Oklahoma Art in Public Places Act:*

(1) *Develop job specifications for a Division Director of the Art in Public Places Division, who shall not be subject to the Merit System of Personnel Administration;*

(2) *Make recommendations for the implementation of the Art in Public Places Program to the Director of the Oklahoma Historical Society; and*

(3) *Develop methods of selection of artists, criteria for selection, final approval of site projects, maintenance and repair of works of art, and periodic evaluation of the Program.* [74 O.S., Section 9030.3]

320:10-3-11. Conflict of interest of Oversight Committee

All voting Oversight Committee members must execute a conflict of interest agreement stating they will refrain from conduct which creates an appearance of impropriety or otherwise impairs their judgment in their oversight of the selection of a site, finalist or artist. If there is a conflict of interest for an Oversight Committee member on a specific project, that committee member will withdraw from participating in discussions, decision-making, or voting on that project.

320:10-3-12. Resignation of Oversight Committee members

If an appointed Oversight Committee member cannot meet his/her obligations to the Committee, the resignation of that member will be accepted and a replacement will be named as provided by Statute.

320:10-3-13. Director

The Director shall be employed by the Oklahoma Historical Society. Such other staff as is required shall be employed by the Oklahoma Art in Public Places Director who will assign their duties.

320:10-3-14. Eligible projects

(a) *All state agencies, including institutions within The Oklahoma State System of Higher Education, all state departments, boards, councils, and commissions shall allocate, as a nondeductible item out of any expenditures for capital projects including, but not limited to, bond issues for state construction excluding costs for bond issuance and related reserves, an amount of one and one-half percent (1 1/2%) of the expenditure to the Oklahoma Historical Society for the purpose of funding the Oklahoma Art in Public Places Act.* [74 O.S., Section 9030.5]

(b) This allocation shall be applicable to capital projects funded with state monies including those financed by appropriations or bonds. The cost of renovation or construction must be $250,000 or more and the maximum assessment shall not exceed $500,000. This allocation shall be applicable to all state agency capital projects when:

(1) projects are approved by the appointing authority after September 1, 2004, by a formally written action of the governing board, commission or director as evidenced by official minutes; or

(2) projects are approved in writing by execution of the initial construction contract on or after July 1, 2006.

(c) *The works of art commissioned pursuant to the Oklahoma Art in Public Places Act may be placed on public lands, integral to or attached to a public building or structure, or detached within or outside a public building or structure.* [74 O.S., Section 9030.5]

(d) For the purposes of the Art in Public Places Program, each building or structure receiving state capital improvement funds is a separate project and each separate project will be evaluated and assessed on its own. Under certain circumstances and with the prior approval of the Oversight Committee, when one project agency has two or more concurrent capital improvement projects in one general location, monies allocated for the art component may be pooled.

(e) When a building or renovation project is approved (either in official minutes or by executing the initial construction contract), the art allocation is figured on the projected costs at that time. If more state money is received but the project has not materially or substantially changed, there is not an additional assessment on those funds. In those instances, the additional funds are assumed to be for unexpected inflation, unplanned contingencies or to cover a financial deficit. If, however, the project has been altered, expanded or modified in a significant way causing the need for additional monies, then those additional state funds will be included in the Art in Public Places assessment.

(f) If a building or renovation project is completed in predetermined phases or stages with separate funding for each phase, there is an assessment on each appropriation or bond for the specific phases. However, with prior approval of the Oversight Committee, the assessments may be pooled in order to create one significant work of art.

320:10-3-15. Excluded projects

Projects not included in the assessment are those that are primarily:

(1) Water
(2) Sewer
(3) ADA or code compliance
(4) Asbestos removal
(5) Public utility projects
(6) Prisons
(7) Data processing purchases which are not part of a public construction project
(8) Capital projects of political subdivisions of the state
(9) Capital projects subject to federal public art laws
(10) Projects that are **solely** roof repair or replacement, HVAC system repair or replacement
(11) Any project deemed an emergency by the Department of Central Services and as defined in 61 O.S., Section 130.

320:10-3-16. Appeal procedure

Any state institution or agency has the right to appeal to the Art in Public Places Oversight Committee. Said institution or agency must submit a written letter of appeal to the Oversight Committee within thirty (30) days of receiving the decision by the Art in Public Places staff. The letter of appeal must be delivered to the Director at the Art in Public Places office. The Oversight Committee will consider the appeal and make a final determination within thirty days of receipt of the letter of appeal.

320:10-3-17. Project agency/duties

(a) Project agencies *shall allocate, as a nondeductible item out of any expenditures for capital projects including, but not limited to, bond issues for state construction excluding costs for bond issuance and related reserves, an amount of one and one-half percent (1 $\frac{1}{2}$%) of the expenditure to the Oklahoma Historical Society for the purpose of funding the Oklahoma Art in Public Places Act* [74 O.S., 9030.5] except as provided by the Act.

(b) Representatives from the Project Agency shall meet with the Art in Public Places Program staff to discuss the program and their project at the earliest possible date and shall provide the Art in Public Places staff with all pertinent information relative to their project as set forth in the Oklahoma Art in Public Places Program Guidelines. The Project Agency shall ensure that the project architect and general contractor work within the intent of the Art in Public Places program as described in the Oklahoma Art in Public Places Program Guidelines.

320:10-3-18. Public notification of calls for entries

All calls for entries will be posted on the Oklahoma Art in Public Places Web site, Oklahoma Arts Council Web site, other Web sites known for posting public art notices, as appropriate, and if requested, a hard copy will be forwarded to any individual or organization.

320:10-3-19. Materials submitted to the Division become property of the State of Oklahoma

All materials submitted to the Division may become the property of the State of Oklahoma unless otherwise indicated. Materials may include, but not be limited to, resumes, submissions, drawings, projection slides, CDs, models, maquettes, videos, and publications of any kind.

320:10-3-20. Artwork becomes the property of the State of Oklahoma

Upon completion of installation and final acceptance, any work of art commissioned or acquired in accordance with the Art in Public Places Act *shall become property of the State of Oklahoma.* [74 O.S., Section 9030.4] All accepted artwork shall be accessioned into the Oklahoma Public Art Collection.

320:10-3-21. Prohibition of statements on behalf of the Site Committees or Art in Public Places Oversight Committee

Individual members of the Site Committees and the Oversight Committee are not authorized to make statements on behalf of the Art in Public Places Division without prior approval of the Division Director.

SUBCHAPTER 5. SITE COMMITTEES

320:10-5-1. Establishment of site committees

(a) *A site committee shall be appointed by the appointing authority of the project agency, except for art projects on higher education campuses, for each project and, if the project involves a facility with more than one agency, a representative from each agency shall be appointed.* [74 O.S., Section 9030.4]

(b) For projects on higher education campuses, either a committee, appointed by the governing board of the institution or the local board of trustees, shall be formed to assume the duties of the Site Committee or the board itself can assume those responsibilities in addition to their statutory duties as the Oversight Committee.

(c) *The site committee for the Capitol and the Governor's Mansion shall be the State Capitol Preservation Commission.* [74 O.S., Section 9030.4]

320:10-5-2. Duties

The site committee is charged with making recommendations to the Oversight Committee, selection of the location for the artwork, media for the artwork, artist selection, development of a project-specific educational program for tourism and public school curriculum, and coordination of the dedication ceremony. The site committee shall report back to the Oversight Committee which has final approval authority. [74 O.S., Section 9030.4]

320:10-5-3. Composition of committee

Each site committee shall include the Art in Public Places Division Director, the project agency appointing authority or designee, and the project architect. The site committee shall also be comprised of not less than one local arts professional, one local artist, two community representatives, and one art educator who will be appointed by the project agency director. [74 O.S., Section 9030.4]

320:10-5-4. Conflict of interest

All voting and nonvoting Site Committee members must execute a conflict of interest agreement stating they will refrain from conduct which creates an appearance of impropriety or otherwise impairs their judgment in the selection of a site, finalist or artist and that they may be asked to withdraw from the Site Committee if they engage in such conduct.

320:10-5-5. Quorum

A majority of the Site Committee constitutes a quorum. A quorum is required for a vote and decisions will be made by a majority vote.

320:10-5-6. Length of service

The committee is limited to the duration of the project. [74 O.S., Section 9030.4]

320:10-5-7. Resignation

If a committee member cannot meet his/her obligations to the respective committee, the resignation of that committee member will be accepted and a replacement will be named by the project agency director.

SUBCHAPTER 7. FINANCIAL PROVISIONS

320:10-7-1. Funding by state agencies

All state agencies, including institutions within The Oklahoma State System of HigherEducation, all state departments, boards, councils, and commissions shall allocate, as a nondeductible item out of any expenditures for capital projects including, but not limited to, bond issues for state construction excluding costs for bond issuance and related reserves, an amount of one and one-half percent (1 1/2%) of the expenditure to the Oklahoma Historical Society for the purpose of funding the Oklahoma Art in Public Places Act, except as otherwise provided by subsection B of [74 O.S., Section 9030.5]. [74 O.S., Section 9030.5]

320:10-7-2. Basis of allocation computation

(a) For all eligible capital projects subject to the Art in Public Places Act as described herein, the Project Agency shall set aside 1 $\frac{1}{2}$% of the capital cost of construction and transfer that amount to the Oklahoma Historical Society for the use and benefit of the Art in Public Places Division as soon as the funds are available and the Total Project Budget is known. The basis of the allocation calculation is the Project Cost which is the combined cost of design and construction. The cost of land, personal property or the cost of issuance of bonds or borrowing money is not included in the Project Cost, nor does it include the cost of pre-project planning that may be necessary to determine a project budget.

(b) However, the cost of design and construction (which together set the Basis of Allocation); the 1 $\frac{1}{2}$% allocation for the Art in Public Places; the costs for obtaining funds; the cost of any land acquisition, furnishings; moving expenses; and any other incidental costs associated with planning, building, moving to and operating a new or newly renovated building normally attributed to the Project Budget are all included when calculating the Total Project Budget for planning purposes.

(c) After the art allocation is determined and transferred to the Oklahoma Historical Society for the Art in Public Places Division, the amount of that assessment will not change unless the scope of the project is materially or substantially changed and more state funds are issued or appropriated for the project.

(d) Any state institution or agency has the right to appeal to the Art in Public Places Oversight Committee following the procedure as set forth in 320:10-3-16.

320:10-7-3. Maximum assessment

The maximum assessment for any project shall not exceed Five Hundred Thousand Dollars ($500,000.00). This assessment shall not apply to any private donations for a capital project. This allocation shall be applicable to all state agency capital projects when:

(1) projects are approved by the appointing authority after September 1, 2004 by a formally written action of the governing board, commission or director as evidenced by official minutes; or

(2) projects are approved in writing by execution of the initial construction contract on or after July 1, 2006.

320:10-7-4. Allocations to Commissioning of Art in Public Places Revolving Fund

Of the assessment provided for in subsection A of [74 O.S., Section 9030.5]*, four-fifths (4/5) shall be placed in the Commissioning of Art in Public Places Revolving Fund, created in Section 7 of Enrolled Senate Bill No. 1347 of the 2nd Session of the 49th Oklahoma Legislature, for the commission of any work of art for the Oklahoma Art in Public Places Act. Institutions within The Oklahoma State System of Higher Education shall remain in complete administrative control of their four-fifths (4/5) assessment pursuant to this subsection for the acquisition of art. The remaining one-fifth (1/5) of the assessment shall be reserved for the Art in Public Places Administrative and Maintenance Revolving Fund created by Section 8 of Enrolled Senate Bill No. 1347 of the 2nd Session of the 49th Oklahoma Legislature.* [74 O.S., Section 9030.5]

320:10-7-5. Art in Public Places Administrative and Maintenance Revolving Fund

Monies deposited in the Art in Public Places Administrative and Maintenance Revolving Fund shall be divided equally between the subaccounts in the fund for:

(1) *the maintenance and repair of works of art commissioned pursuant to the Oklahoma Art in Public Places Act, and*

(2) *the administrative and educational costs incurred by the Division*. [74 O.S., Section 9030.5]

320:10-7-6. Monies donated from private sources

(a) *The Society shall establish a separate subaccount for each project. Monies in these subaccounts may be used to match monies from other private and public sources for commissioning art in accordance with the Oklahoma Art in Public Places Act.* [74 O.S., Section 9030.6] However, all private monies donated or received from sources other than the State of Oklahoma for the commissioning, designing, fabricating, installing, dedicating, conserving, repairing or any adjunct activity shall be deposited in the appropriate Oklahoma Art in Public Places Revolving Fund for disbursement through the Art in Public Places Division.

(b) The total cost of the artwork for a project cannot be donated in lieu of participation in the Art in Public Places process. One and one-half percent (1 $\frac{1}{2}$%) of the expenditures for capital projects must be dedicated to work(s) of art.

320:10-7-7. Authority to make expenditures

(a) All monies accruing to the credit of the Commissioning of Art in Public Places Revolving Fund and the Art in Public Places Administrative and Maintenance Revolving Fund may be budgeted and expended by the Oklahoma Historical Society. [74 O.S., Section 9030.6] [74 O.S., Section 9030.7]

(b) Expenditures from the funds 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. [74 O.S., Section 9030.6] [74 O.S., Section 9030.7]

320:10-7-8. Monies for commissioning of art not spent

If there are monies from a project for the commissioning of art not spent, those monies may be pooled in the fund for the commissioning of art in, on, or near other state buildings. [74 O.S., Section 9030.6]

320:10-7-9. Transfer of funds in excess of one million dollars

Whenever the unencumbered balance in [the Art in Public Places Administrative and Maintenance Revolving F]*und exceeds One Million Dollars ($1,000,000.00), the assessment shall be placed in the Commissioning of Art in Public Places Revolving Fund to the credit of the subaccount established for the project upon which the assessment was made.* [74 O.S., Section 9030.6]

320:10-7-10. Exclusion from the Oklahoma Central Purchasing Act

Artwork or art restoration projects in the administrative control of the Oversight Committee pursuant to the Oklahoma Art in Public Places Act shall not be subject to the Oklahoma Central Purchasing Act, but the projects shall be subject to a call for entries process established by the Oversight Committee. [74 O.S., Section 9030.3]

SUBCHAPTER 9. MANAGEMENT OF THE COLLECTION

320:10-9-1. Management and care of the collection

The Oklahoma Art in Public Places Division will adhere to professional standards of accessioning methodology, collection care and management at all times. Policies are consistent with those of the Oklahoma Historical Society and are set forth more specifically in the Oklahoma Art in Public Places Program Guidelines.

320:10-9-2. Maintenance and conservation procedures

Maintenance and conservation procedures are set forth in the Oklahoma Art in Public Places Program Guidelines including the required information that must be documented on every work of art in the Oklahoma Public Art Collection.

320:10-9-3. Process for deaccessioning or relocating a work of art

Deaccessioning or relocating a work of art will follow a process consistent with the collection management policies of the Oklahoma Historical Society and as described in the Oklahoma Art in Public Places Program Guidelines.

[OAR Docket #07-1161; filed 5-22-07]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 1. FUNCTION AND STRUCTURE OF THE DEPARTMENT

[OAR Docket #07-1147]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 11. Civil Rights and Nondiscrimination on Basis of Race, Color, National Origin, Sex, Age, Religion, or Disability

Part 2. Food Stamp Program Discrimination Complaint~~,~~ and Non-Compliance~~, and Rude Treatment~~ System

340:1-11-21 through 340:1-11-22 [AMENDED]

(Reference APA WF 07-06)

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; Title VI of the Civil Rights Act of 1964 (42 United States Code (U.S.C.) § 2000d to 2000d-6; Americans with Disabilities Act (28 Code of Federal Regulations (CFR) Part 35, Title II, Subtitle A); Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et. seq.); Section 504

of the Rehabilitation Act of 1973; Age Discrimination Act of 1975 (45 CFR Part 91); Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Civil Rights Restoration Act of 1987; Food Stamp Act of 1977; and FNS Instruction 113-1.

DATES:

Comment period:
February 15, 2007 through March 19, 2007

Public hearing:
None requested

Adoption:
March 27, 2007

Submitted to Governor:
March 27, 2007

Submitted to House:
March 27, 2007

Submitted to Senate:
March 27, 2007

Gubernatorial approval:
May 1, 2007

Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 22, 2007.

Final adoption:
May 22, 2007

Effective:
June 25, 2007

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
Chapter 1 Subchapter 11 proposed permanent rule amendments delete unnecessary duties as complaints of rudeness, not motivated by race, color, sex, age, disability, religion, national origin, or political opinion or affiliation, are personnel issues, not civil rights issues and reflect the current name of the Oklahoma Department of Human Services (OKDHS).

CONTACT PERSON:
Dena Thayer, Programs Manager, Policy Management Unit, OKDHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 11. CIVIL RIGHTS AND NONDISCRIMINATION ON BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AGE, RELIGION, OR DISABILITY

PART 2. FOOD STAMP PROGRAM DISCRIMINATION COMPLAINT~~,~~ AND NON-COMPLIANCE~~, AND RUDE TREATMENT~~ SYSTEM

340:1-11-21. Complaints of discrimination ~~or rude treatment~~

~~(a)~~ ~~In the event that operations~~ When operation, management, or delivery of services is alleged to be in non-compliance with ~~the~~ laws, regulations, or guidelines mandated by the federal government, the Office for Civil Rights (OCR) ~~office has been~~ is the delegated ~~the~~ authority to accept, investigate, and seek resolution of complaints of discrimination ~~or allegations of rude treatment~~ to applicants or participants of the Food Stamp Program.

~~(b)~~ All written or verbal complaints alleging discrimination ~~or rude treatment~~ are immediately forwarded to OCR.

340:1-11-22. Discrimination and non-compliance

(a) Discrimination is prohibited in all aspects of the delivery of ~~program~~ Food Stamp Program benefits. Prohibited actions include, but are not limited to:

(1) denial of a household of any services or benefits;

(2) distinction in the quality, quantity, or manner in which the benefits are provided;

(3) segregation or separate treatment of ~~individuals~~ persons in any manner related to the receipt of program benefits;

(4) use of criteria or methods of administration ~~which~~ that have the effect of defeating or impairing the objectives of the ~~Food Stamp Program~~ program; and

(5) selection of the site for certification and issuance offices that have the effect of excluding ~~individuals~~ persons.

(b) The Oklahoma Department of Human Services (OKDHS) does not condone rudeness~~,~~ or disrespect~~, or any other alleged rude treatment~~ of or toward program applicants, recipients, or the general public. Any substantiated claim of ~~rude treatment~~ disrespect of ~~these individuals~~ any person is considered as non-compliance with ~~Department~~ OKDHS policies and procedures.

[OAR Docket #07-1147; filed 5-22-07]

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

[OAR Docket #07-1148]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Human Resources Management Division (HRMD)
Part 4. Alcohol and Drug Testing ~~Policy~~ Applicable to OKDHS Employees and Applicants
340:2-1-42 through 340:2-1-43 [AMENDED]
340:2-1-45 [REVOKED]
340:2-1-47 [REVOKED]
Subchapter 15. Risk and Safety Management
Part 5. Alcohol and Drug Testing ~~Policy~~for Drivers of Commercial Vehicles
340:2-15-42 [AMENDED]
(Reference APA WF 06-28)

AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Sections 551 et seq. of Title 40 of the Oklahoma Statutes.

DATES:

Comment period:
February 15, 2007 through March 19, 2007

Public hearing:
None requested

Adoption:
March 27, 2007

Submitted to Governor:
March 27, 2007
Submitted to House:
March 27, 2007
Submitted to Senate:
March 27, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 22, 2007.
Final adoption:
May 22, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Proposed revisions to Subchapters 1 and 15 of Chapter 2 amend the rules to: (1) correct the Oklahoma Department of Human Services (OKDHS) name; (2) remove alcohol testing as a pre-employment requirement; (3) establish procedures and include forms for pre-employment drug testing; (4) amend an OKDHS form number; and (5) revoke material that is internal to OKDHS procedure.
CONTACT PERSON:
Dena Thayer, Programs Manager, Policy Management Unit, OKDHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. HUMAN RESOURCES MANAGEMENT DIVISION (HRMD)

PART 4. ALCOHOL AND DRUG TESTING ~~POLICY~~ APPLICABLE TO OKDHS EMPLOYEES AND APPLICANTS

340:2-1-42. Definitions

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

"Alcohol" means ethyl alcohol or ethanol.

"Alcohol test" means a breath or saliva test administered for the purpose of determining the presence or absence of alcohol or its metabolites in a person's bodily tissue, fluids, or products. Testing of Oklahoma Department of Human Services (OKDHS) employees is conducted and evaluated by qualified ~~individuals~~ persons and facilities licensed by the Oklahoma State Department of Health (OSDH) in accordance with Standards for Workplace Drug and Alcohol Testing Act. [40 O.S. § 551 – through 565]

"Applicant" means any person making application for initial hire, reinstatement, or transfer from a state agency, for any position within ~~the Oklahoma Department of Human Services (~~OKDHS~~)~~, or for transfer, demotion, promotion, or reinstatement into the position of direct care specialist. OKDHS, upon a conditional offer of employment, requires the applicant to undergo ~~alcohol and~~ drug testing.

"Conditional offer of employment" means an offer made to an applicant for employment with OKDHS, conditioned upon successful completion of a drug ~~and alcohol~~ test prior to the start of employment.

"Confirmation test" means an alcohol or drug test, conducted in accordance with Drug and Alcohol Testing Rules, as amended, of OSDH, per OAC 310:638, to substantiate the results of a prior alcohol or drug test. ~~[OAC 310:638-1-1 – 310:638-7-11]~~ For urine or hair, the test is performed on the same sample or a split sample.

"Direct care staff" means any employee, whether permanent, classified, unclassified, probationary, or temporary, in the job family of direct care specialist.

"Drug" means any controlled substance approved for hair or urine testing by OSDH, including amphetamines, cannabinoids, cocaine, phencyclidine (PCP), hallucinogens, methaqualone, opiates, barbiturates, benzodiazepines, synthetic narcotics, designer drugs, or a metabolite of any of ~~the~~ these substances ~~listed herein~~.

"Drug test" means a hair or urine test administered for the purpose of determining the presence or absence of a drug or its metabolites in a person's bodily tissue, fluids, or products. Testing ~~shall conform~~ conforms to the Drug and Alcohol Testing Rules, as amended, adopted by OSDH~~.~~, per ~~[~~OAC 310:638~~-1-1 – 310:638-7-11]~~. The testing of OKDHS employees is conducted and evaluated by qualified ~~individuals~~ persons and facilities licensed by OSDH in accordance with Standards for Workplace Drug and Alcohol Testing Act. [40 O.S. § 551 – through 565]

"Employee" means anyone employed by OKDHS, whether permanent, classified, unclassified, probationary, or temporary.

"Random testing" means an objective mechanism for selecting direct care employees for alcohol and drug testing ~~which~~ that results in an equal probability any employee from a group of direct care employees will be selected.

"Reasonable suspicion" means a belief an employee is using or has used alcohol or drugs in violation of this policy. Reasonable suspicion is drawn from specific, objective, and articulable facts and reasonable inferences drawn from those facts in light of experience and training, and may be based upon but not limited to:

(A) documented observations, such as the physical symptoms or manifestations of being under the influence of alcohol or drugs while at work or on duty or the direct observation of alcohol or drug use while at work or on duty;

(B) a report of alcohol or drug use while at work or on duty, provided by reliable and credible sources and which has been independently corroborated;

(C) evidence an employee has tampered with an alcohol or drug test as required by this policy; or

(D) evidence an employee is involved in the use, possession, sale, solicitation, or transfer of illegal drugs while on duty, on OKDHS property, or operating state-owned vehicles, machinery, or equipment.

"Review officer" means a physician certified pursuant to Standards for Workplace Drug and Alcohol Testing Act [40 O.S. § 551 – through 565] who reviews positive alcohol and drug test results and contacts each ~~individual~~ person having a positive alcohol or drug test to determine ~~if~~ whether there is a medical reason for the positive test result.

340:2-1-43. Implementation of alcohol and drug testing of OKDHS employees and applicants

(a) **Notice of communication.** The local administrator or designee ensures a copy of the rules in Part 4 of this Subchapter, OAC 340:2-1-40 through 340:2-1-46, are:

(1) conspicuously posted in all Oklahoma Department of Human Services (OKDHS) working units;

(2) provided to all employees;

(3) provided to employees 30 days prior to the initial implementation or implementation of changes; and

(4) provided to each applicant upon ~~his or her~~ the applicant's receipt of a conditional offer of employment.

(b) **Determination of persons subject to alcohol and drug testing.** Persons subject to alcohol and drug testing are included in (1) through (3).

(1) All applicants who are made conditional offers of employment are required to take a pre-employment drug ~~and alcohol~~ test.

(A) When a conditional offer of employment is made, the applicant is given forms to take to the drug-testing site for completion. The forms are:

(i) Form 11AD003E, Request for Alcohol and Drug Testing. The applicant presents a photo identification (ID) at the testing site for ID purposes; and

(ii) the contracted drug testing provider's form.

(B) A confirmed positive test result, or a refusal to be tested, is a basis for refusal to hire.

(2) All employees of OKDHS are subject to reasonable suspicion drug and alcohol testing.

(3) Employees of OKDHS employed as direct care specialists are subject to random alcohol and drug testing.

(c) **Types of testing.** The situations in which alcohol and drug testing occur are identified in (1) through (3) of this subsection.

(1) **Pre-employment or pre-placement.**

(A) All candidates conditionally offered initial hire, and all direct care candidates conditionally offered transfer, promotion, demotion, reinstatement, or placement into positions as direct care specialists are tested for ~~alcohol and~~ drugs.

(B) The provisions of subparagraph (A) do not apply to candidates for temporary positions who have been employed by OKDHS within the previous 120 days, persons employed for less than 200 hours per year unless employed in a direct care position, and Low Income Home Energy Assistance Program (LIHEAP) temporary employees.

(2) **Random testing.** Random alcohol and drug testing is administered at a minimum annual rate of 50~~%~~ per cent of direct care specialists. Tests are unannounced and are conducted throughout the calendar year. The Developmental Disabilities Services Division and the Children and Family Services Division provide to the contracted testing ~~vendor~~ provider a regularly updated list of the names, Social Security numbers, and work locations for all direct care specialists.

(3) **Reasonable suspicion.** Any employee may be tested upon documented grounds for reasonable suspicion in accordance with this policy.

(A) A request for reasonable suspicion testing of ~~an individual~~ a person must be submitted in writing to the local administrator, stating the indications upon which reasonable suspicion is based. The basis for reasonable suspicion testing is the employee:

(i) exhibits the physical symptoms or manifestations of being under the influence of alcohol or drugs; and

(ii) must be observed by two persons who have completed specialized training provided by OKDHS in recognizing physical symptoms or manifestations of being under the influence of alcohol or drugs. Such specialized training is deemed to include an OKDHS on-line training course on OKDHS drug and alcohol policy approved for all employees. One of the ~~individuals~~ persons making the observation must be a supervisor.

(B) Upon approval by the local administrator, the employee is required to submit to alcohol or drug testing.

(~~f~~d) **Arrangements for testing.** The local administrator or designee is responsible for ensuring employees and applicants in their facilities who are subject to testing are tested in accordance with this policy.

(~~g~~e) **On duty testing.** Alcohol and drug testing of an employee occurs during or immediately after the employee's work period. An employee is considered on duty during this time.

(~~h~~f) **Testing procedures.** Testing for alcohol and drugs is a two step process.

(1) For alcohol, a breath or saliva test is performed as the first step. If positive for alcohol, a confirmation test is performed as the second step.

(2) Hair or urine ~~are~~ is used for the initial and the confirmation test for all drugs. Specimens are collected at the test site, and positive test results are reviewed by the medical review officer.

340:2-1-45. Employee Assistance Program referral [REVOKED]

~~The Department of Human Services makes available an Employee Assistance Program to assist employees with substance abuse problems. A referral to the Employee Assistance Program is not in lieu of, but is separate from, corrective discipline.~~

340:2-1-47. Grievance rights [REVOKED]

~~Eligible employees may grieve a disciplinary action through the DHS grievance process. [DHS 2-1-150 through 2-1-169]~~

SUBCHAPTER 15. RISK AND SAFETY MANAGEMENT

PART 5. ALCOHOL AND DRUG TESTING ~~POLICY~~ FOR DRIVERS OF COMMERCIAL VEHICLES

340:2-15-42. Implementation of alcohol and drug testing of affected ~~DHS~~ OKDHS employees, applicants, and volunteers

(a) **Notice of communication.**

(1) The rules in this Part and the pertinent federal regulations are conspicuously posted in all ~~Departmental~~ Oklahoma Department of Human Services (OKDHS) working units.

(2) All ~~individuals~~ persons in affected positions shall receive a copy of the rules in this Part and the federal regulations 30 days prior to the initial implementation or implementation of changes in the rules.

(3) Each local administrator is responsible for obtaining and maintaining written documentation that each affected ~~individual has~~ person received a copy of the rules as well as any ~~future~~ subsequent rule amendments to this Part.

(4) All affected ~~individuals shall receive~~ persons are provided the name, work location, and telephone number for the designated employee representative (DER) and the local testing coordinator. Affected ~~individuals~~ persons may direct questions and concerns to the DER and the testing coordinator.

(b) **Coordination.**

(1) **DER.** The DER is responsible for the overall implementation and administration of this program, including coordination with the contracted testing provider, training, and record keeping.

(2) **Testing coordinator.** Each OKDHS appointing authority ~~shall designate~~ designates one or more employees to coordinate all aspects of the drug and alcohol testing program within ~~his or her~~ the designee's respective area of responsibility.

(c) **Affected ~~individual~~ person.** Affected ~~individuals~~ persons, as defined in this Part, are subject to alcohol and drug testing.

(1) With an applicant's written authorization, ~~the Department~~ OKDHS shall request information from an applicant's former employer concerning any prior alcohol test with a result of 0.04 alcohol concentration or higher; a verified positive drug test; or a refusal to be tested.

(2) No applicant with a prior alcohol test with a result of 0.04 alcohol concentration or higher, a verified positive drug test, or a refusal to be tested, shall be hired by ~~the Department~~ OKDHS for any position requiring the operation of a commercial motor vehicle.

(3) ~~No less than~~ At least once per calendar year, ~~the Department~~ OKDHS shall obtain and review motor vehicle reports for all affected ~~individuals~~ persons.

(d) **Actual knowledge of alcohol or drug ~~usage~~ use.** No supervisor or administrator having actual knowledge that an affected ~~individual~~ person has used drugs or has used alcohol within four hours of operating ~~a Department~~ an OKDHS commercial vehicle shall permit the person to operate or continue to operate the vehicle.

(e) **Types of testing.**

(1) **Pre-employment or pre-placement.** All candidates, including potential volunteers, whether conditionally offered initial hire, transfer, promotion, demotion, or placement into affected positions are tested for alcohol and drugs. Candidates receive a copy of this policy prior to testing. Positive test results prohibit the hiring, promotion, transfer, or placement ~~in~~ into an affected position.

(2) **Random testing.** Random alcohol and drug testing is administered at a minimum annual rate of 50 percent of affected ~~individuals~~ persons for drugs and 25 percent of affected ~~individuals~~ persons for alcohol. Tests are unannounced and ~~are~~ conducted throughout the calendar year. Each testing coordinator provides to the contracted testing ~~vendor~~ provider a list of the names, employee identification numbers, and work locations for all affected ~~individuals~~ persons. Each testing coordinator ~~assures~~ ensures that the list of affected ~~individuals~~ persons is kept current.

(3) **Reasonable suspicion.** Reasonable suspicion for submitting ~~an individual~~ a person for testing is documented by two appropriately trained supervisors.

(A) Upon documentation, the supervisor or designated authority arranges for the affected ~~individual~~ person to be tested for alcohol and drugs. OKDHS Form ~~P-94~~ 11PE094E, Reasonable Suspicion Checklist, is available to assist supervisors in correctly documenting reasonable suspicion.

(B) Each reporting supervisor certifying an affected ~~individual~~ person for reasonable suspicion testing must have completed at least one hour of training in alcohol abuse and one hour of training in drug abuse. Training is provided or arranged by the testing coordinator and the DER.

(4) **Post-accident testing.** Immediately following an accident involving a commercial motor vehicle, the supervisor or designated authority arranges for the driver to be tested for alcohol and drugs. If the operator does not submit to an alcohol test within two hours of the accident, the supervisor prepares a report stating the reason a test was not given. If the operator does not submit to an alcohol test within eight hours, the supervisor ceases attempting to have the alcohol test administered and prepares a report stating the reasons ~~why~~ a test was not given. If the operator does not submit to drug testing within 32 hours, the supervisor ceases attempts to have the drug test

administered and prepares a report stating the reasons a test was not given. The reporting supervisor provides copies of the reports to the local administrator, respective testing coordinator, and the DER within 24 hours of the accident. Post-accident testing occurs when:

(A) the accident involves a fatality;

(B) the operator receives a citation for a moving traffic violation arising from the accident;

(C) any vehicle is towed from the scene; or

(D) the ~~individual~~ person operating the vehicle or any other person sustains an injury that results in lost work time or ~~that~~ requires treatment away from the scene of the accident.

(5) **Return-to-duty and follow-up testing.** Operators who test positive for alcohol must undergo a return-to-duty alcohol test before being permitted to resume the operation of any vehicle utilized in the performance of the operator's duties. Each operator, after returning to duty, is ~~also~~ subject to a minimum of six follow-up alcohol tests in the first 12 months following the date of the initial positive test. ~~Individuals do~~ The operator does not pay for return-to-duty or follow-up testing.

(6) ~~Department~~ **Positive test.** OKDHS employees scoring positive on an alcohol or drug test are referred to the Employee Assistance Program (EAP).

(f) **Testing procedures.** In accordance with federal regulations, drug testing is conducted for marijuana, cocaine, amphetamines, opiates, including heroin, and phencyclidine (PCP). Testing for alcohol is performed using ~~breathalizers~~ breathalyzers as specified in federal regulations.

(1) Drug testing is a two-stage process. Split urine specimens are collected at the test site.

(2) If the first drug test is positive for one or more of the five listed drugs, a second confirmation test is performed using gas chromatography/mass spectrometry analysis.

(3) Positive drug test results are reviewed by a medical review officer (MRO). The MRO:

(~~4~~A) ~~The MRO~~ contacts each ~~individual~~ person having a positive drug test to determine ~~if~~ whether there is a medical reason for a positive test result~~.~~; and

(~~5~~B) ~~The MRO~~ provides the final test report to the DER.

[OAR Docket #07-1148; filed 5-22-07]

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

[OAR Docket #07-1149]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 28 Office of Administrative Hearings: Child Support
340:2-28-1 through 340:2-28-2 [AMENDED]
340:2-28-4.2 through 340:2-28-4.3 [AMENDED]
340:2-28-4.4 [NEW]
340:2-28-16.1 through 340:2-28-16.2 [AMENDED]
340:2-28-17.2 [AMENDED]
340:2-28-19 through 340:2-28-20 [AMENDED]
340:2-28-24 through 340:2-28-26 [AMENDED]
340:2-28-29 through 340:2-28-31 [AMENDED]
340:2-28-33 [AMENDED]
(Reference APA WF 07-02)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Section 237 of Title 56 of the Oklahoma Statutes.
DATES:
Comment period:
February 15, 2007 through March 19, 2007
Public hearing:
None requested
Adoption:
March 27, 2007
Submitted to Governor:
March 27, 2007
Submitted to House:
March 27, 2007
Submitted to Senate:
March 27, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 22, 2007.
Final adoption:
May 22, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed permanent rule revisions to Subchapter 28 of Chapter 2 amend the rules to provide for electronic filing and submission of documents with the Oklahoma Department of Human Services (OKDHS) Office of Administrative Hearings: Child Support (OAH). The amendments will enable OAH to implement a project that will develop a comprehensive court case management system that is virtually paperless, incorporates computer technology to facilitate web electronic filing and document submission, and integrates automated document generation.
CONTACT PERSON:
Dena Thayer, Programs Manager, Policy Management Unit, OKDHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

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

SUBCHAPTER 28. OFFICE OF ADMINISTRATIVE HEARINGS: CHILD SUPPORT

340:2-28-1. Purpose

The purpose of this Subchapter is to provide rules for all administrative hearings of child support and other matters under ~~it's~~ the jurisdiction of the Office of Administrative Hearings: Child Support, as defined in this Subchapter. This Subchapter complies with Section 237 of Title 56 of the Oklahoma Statutes to administer the Oklahoma Department of Human Services'~~-~~ statewide plan for child support enforcement

under Title IV, Part D, of the Social Security Act, Sections 651 through 669B, of Title 42 of the United States Code, Chapter III of Title 45 of the Code of Federal Regulations, Sections 237 through 240.23 of Title 56 of the Oklahoma Statutes, applicable provisions of Titles 10, 43, and 68 of the Oklahoma Statutes, and all other relevant state and federal laws. Nothing in this Subchapter shall be construed to limit the rights of persons who are not represented by counsel to submit pleadings on their own behalf.

340:2-28-2. Definitions

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

"ALJ" means an administrative law judge in the Office of Administrative Hearings: Child Support.

"Authorized representative" means a person designated under law to act for another person or an entity, such as a guardian of a child or an executor of an estate.

"Child Support Enforcement Division" or **"CSED"** means the Child Support Enforcement Division of the Oklahoma Department of Human Services (OKDHS). District offices of CSED may be administered by OKDHS or through contract or cooperative agreements with district attorneys, Community Action Program (CAP) agencies, Native American tribal organizations, and others. As used in this Subchapter, CSED includes all of these district offices and their employees and agents.

"Custodian" means the person who has primary physical custody of the child(ren).

"Electronic filing" means the submission of documents to the Office of Administrative Hearings: Child Support through an electronic medium rather than the use of a paper document. The electronic medium must be a secured system that leaves a computer trail so that the document may be traced to the signator and/or person filing the document.

"In camera" means before the ALJ without spectators.

"In forma pauperis affidavit" means a sworn declaration or statement of facts made by an indigent person seeking waiver of transcription costs and fees.

"IV-D" means Title IV, Part D, of the Social Security Act generally relating to child support. Title IV appears in the United States Code as Sections 601 through 687, Subchapter IV, Chapter 7, Title 42.

"IV-D case" means a child support case receiving IV-D services.

"Natural person" means a human being as opposed to an entity created by law.

"Noncustodial parent" means a parent who does not have primary ~~care,~~ physical custody~~, or control~~ of the child(ren).

"OAH" means the Office of Administrative Hearings: Child Support within the Legal Division of OKDHS. [56 O.S. § 237.7]

"Obligor" means the person who is required to make payments under an order for support. [12 O.S. § 1170 and 56 O.S. § 237.7]

"Payor" *means any person or entity paying monies, income, or earnings to an obligor. In the case of a self-employed person, the "payor" and "obligor" may be the same person.* [12 O.S. § 1170 and 56 O.S. § 237.7]

"Pleading" means a formal document that contains statements or allegations that constitute a cause of action or defense.

"Pro se" means without a lawyer.

"Writ of mandamus" means a written order issued by a court to compel a lower court or government officer to perform mandatory or ministerial duties correctly.

340:2-28-4.2. Terms and location of Office of Administrative Hearings: Child Support

(a) The Office of Administrative Hearings: Child Support (OAH), is in session at the district child support offices on days docketed for administrative hearings at the offices. Pleadings, other documents, and orders may be filed with, or presented to, the administrative law judge (ALJ) at the district child support office on administrative hearing docket days. On days when OAH is not in session at the district child support office, pleadings, other documents, and orders must be filed at OAH located in the Sequoyah Building in Oklahoma City, ~~OK~~ Oklahoma. The mailing address is P.O. Box 53025, Oklahoma City, OK 73105 and the finding address is 2400 N. Lincoln Blvd., Oklahoma City, OK.

(b) Proceedings cannot be commenced unless and until an administrative case is opened through the Oklahoma Department of Human Services Child Support Enforcement Division.

(~~b~~c) All proceedings are commenced by filing pleadings at OAH. The OAH file is maintained at OAH located in the Sequoyah Building unless otherwise designated by the chief ALJ of OAH.

(~~c~~d) All pleadings filed and exhibits introduced are kept in OAH unless otherwise directed by an ALJ, and are not removed except upon order of an ALJ. In that event, a receipt specifying the record or document removed must be submitted to OAH by the party obtaining the record or document. The receipt must be legible and state the date and the name, business address, and telephone number of the person removing the document. Any party who obtains an order for the removal of a transcript made by the official court reporter or as directed by the ALJ or makes a copy in the OAH office may be required to pay the copying costs according to OAC 340:2-21-16.

340:2-28-4.3. Clerk of Office of Administrative Hearings: Child Support

The clerk of the Office of Administrative Hearings: Child Support (OAH), is designated and fully empowered to perform the functions of:

(1) maintaining the records of OAH;

(2) docketing all hearing dates from pleadings, orders, continuances, or prior docket sheets;

(3) preparing the dockets for hearing, and ~~gathering files for docket~~ imaging into the electronic court file paper documents that have been manually filed;

(4) electronically file-stamping documents that have been electronically filed and approving docketed hearing dates;

(~~4~~5) certifying the official transcripts;

(~~5~~6) transmitting the record to the district court;

(~~6~~7) designating a court reporter for preparation of a hearing transcript; and

(~~7~~8) performing any functions delegated by the chief administrative law judge for the implementation of rules in this Subchapter and the administration of OAH.

340:2-28-4.4. Electronic filing

Court clerks of the Office of Administrative Hearings: Child Support (OAH) treat documents filed through the OAH approved electronic medium as if the documents had been filed as paper documents and affix an electronic file-stamp date on the electronically filed document.

340:2-28-16.1. Docketing cases

District child support offices ~~must submit copies of their dockets to the~~ docket their hearing notices and continuances through an approved Office of Administrative Hearings: Child Support (OAH) docketing system~~,~~ available to child support enforcement. Hearing notices and continuances must be docketed a minimum of 14 days prior to the docket date. ~~Failure to submit the docket to OAH may result in a case not being held on the docket.~~ Cases not ~~on~~ approved for the docket may be heard at the discretion of the assigned administrative law judge.

340:2-28-16.2. Service of orders

(a) Orders prepared by the administrative law judge (ALJ) must be mailed or hand-delivered to the parties within three business days by the ALJ, unless the ALJ directs the mailing or delivering of an order by one party upon another. Copies of all orders must be mailed or hand-delivered to opposing parties by the preparer within three business days from the filing of the order.

(b) Providing copies of the filed order through an electronic means available to parties is an acceptable form of delivery. Electronic delivery of orders must be accomplished within three days of filing the order.

340:2-28-17.2. Pleadings and motion practice

(a) **Signatures on documents.**

(1) **Signing of pleadings.** Every pleading and motion filed with the Office of Administrative Hearings: Child Support (OAH)~~,~~ must be signed by an attorney of record, whose Oklahoma Bar Association (OBA) identification number must be stated, or, if the party is not represented by an attorney, must be signed by the party. Each pleading and motion must include the address of the signer and telephone number, if any. Except as provided by rule or statute, pleadings need not be supported by affidavit. A pleading is any document that contains statements or allegations that constitute a cause of action or defense.

(2) **Signing of other documents.** Other documents such as legally mandated administrative notices issued by the Child Support Enforcement Division (CSED) to notify obligors of proposed enforcement actions to be taken by CSED do not require an attorney's signature.

(3) **Electronic signatures.** Secured electronic mediums approved by OAH that attach an electronic signature or notary stamp are acceptable to meet the signature requirements.

(b) **Practice.**

(1) **Form, filing, and service.**

(A) The original and copies of all pleadings in proceedings and matters presented to an administrative law judge (ALJ) must be filed with OAH. All paper produced originals are retained by OAH. Electronic submissions are digitally maintained by OAH pursuant to state record requirements. All paper or electronically submitted pleadings must be filed prior to any administrative proceedings being docketed.

(B) Pleadings and motions filed in OAH must be typewritten or legibly hand-written on white paper, size 8 $\frac{1}{2}$ by 11 inches. ~~Pleadings~~ Both paper and electronically submitted pleadings and motions must have the proper style of the case indicating the parties' names, OAH number, and IV-D case number, or family group number (FGN).

(i) If filed by an attorney, the name, OBA number, address, and telephone number must be shown on the last page of the instrument.

(ii) If filed by a party not represented by a lawyer, that party must sign his or her name and type or legibly print his or her name, mailing address, zip code, and telephone number on the last page of the instrument filed.

(iii) A notice of paternity and support obligations must be titled In the Interest of the Children of _____ and _____, and must list the names of both the mother and the father or alleged father. The party filing the proceeding is the petitioner. The names of the obligor and the custodians must be listed under the case numbers.

(iv) A notice of a support debt to establish current support and support owed for past months in accordance with the child support guidelines must be titled In the Interest of the Children of _____ and _____, and must list the names of both the mother and the father. The party filing the proceeding is the petitioner. The names of the obligor and the custodians must be listed under the case numbers.

(C) All documents in a proceeding, whether produced on paper or electronically submitted, must be served as required by rule or statute. Proof of service must be filed with OAH for each service made and must establish on its face that regulatory and statutory requirements for service are satisfied.

(D) Parties or attorneys filing motions or pleadings, produced on paper or electronically submitted, after

the filing of the notice initiating the action must file the original with OAH or submit it electronically and deliver or mail a paper or electronic copy to the opposing party or counsel of record. A certificate of mailing or service must be filed with OAH.

(E) Upon failure to comply with the requirements in this Section, the ALJ may, among other sanctions, continue the cause of action until satisfactory compliance or deny the requested relief.

(F) Requests that do not comply with the requirements of (A) through (E) of this paragraph are considered only at the discretion of the ALJ.

(G) Documents submitted through a secured electronic means approved by OAH will meet the requirement of original documents as set forth in this Section.

(2) **Motions.**

(A) An original motion, produced on paper or in an electronic document submitted through a secured electronic means approved by OAH, must be filed with OAH with copies, on paper or electronically, served upon opposing parties. Motions must be in writing, stating the legal basis for the motion, relief requested, and whether the opposing party objects, if known.

(i) The name, OBA identification number, address, and phone number of the attorney must be shown on the last page of the instrument.

(ii) If a person filing the pleading is not represented by a lawyer, that party must sign his or her name and type or legibly print his or her name, address, business and home telephone numbers and zip code.

(B) The ALJ determines whether oral argument is necessary on a motion and if so, provides pro se parties and all attorneys of record with notice of the specific hearing date, time, and place.

(C) Briefs or responses that do not comply with this paragraph are considered only at the discretion of the ALJ.

(D) This paragraph does not prohibit oral motions. The preferred method of filing documents, including motions, is through an electronic means approved by OAH.

(3) **Briefs.** Briefs and responses must comply with applicable statutes and deadlines.

(A) Reply and response briefs must be delivered to the ALJ at least three working days prior to any hearing. Each brief must be clearly styled to show:

(i) whether it is in support of a motion, in opposition of a motion, or a reply brief~~. It must also clearly show~~;

(ii) the particular application or proceeding to which it relates~~,~~; and

(iii) the party or parties on whose behalf it is presented.

(B) Briefs, if required, must not exceed 20 pages in length without prior permission of the ALJ.

(C) Reply briefs must be limited to five pages in length.

(D) No further briefs may be filed without permission of the ALJ.

(E) Briefs and responses that do not comply with this paragraph are considered only at the discretion of the ALJ.

(4) **Extensions of time.** Except at the discretion of the ALJ, all requests for extensions of time must contain:

(A) the original due date for the response;

(B) the amount of additional time requested;

(C) the reason for the request;

(D) the current status of the case, including the next hearing date, if a hearing has been scheduled; and

(E) a statement that the opposing party or the opposing party's counsel has been contacted regarding the extension and either consents or objects to the extension; or in the alternative, a statement that good faith effort was made to comply but the opposing party or the opposing party's counsel was unavailable.

(5) **Discovery not to be filed.** Depositions, interrogatories, requests for admissions, requests for production of documents, and responses must not be filed with OAH unless the discovery document accompanies the administrative notice, or is an attachment to a motion or response to a motion, or is ordered by the ALJ. A motion to compel discovery or discovery motion for protective order must include either a verbatim recitation or a copy of the interrogatory, question, request, answer, response, or objection which is the subject of the motion.

(A) Any discovery that contains confidential information, such as bank account numbers, routing numbers, or Social Security numbers, may be redacted by the party submitting the documents. If the numbers are relevant to the case, redacting all numbers except the last four digits is acceptable.

(B) It is the responsibility of the party submitting the documents to redact any sensitive material.

(C) The originals with the redacted information intact may be required for viewing by the ALJ assigned to the case.

(6) **Disputed discovery motions.** No hearing on a discovery dispute may be set unless the moving party or counsel advises the ALJ in the motion that the party or counsel has conferred, in good faith about the dispute, with the opposing party or opposing party's counsel, ~~in good faith about the dispute,~~ but has been unable to resolve the dispute.

(7) **Withdrawal of counsel.** When submitting an application or motion to withdraw and a proposed order allowing withdrawal, counsel must comply with the requirements in this paragraph.

(A) Every application to withdraw as counsel must contain:

(i) a statement of grounds for withdrawal;

(ii) the current status of the case, including the next hearing date, if a hearing has been scheduled;

(iii) whether new or substitute counsel has been obtained by the client and entered an appearance; and

(iv) a certificate of mailing to the party or custodian showing the last known mailing address and to all other attorneys of record in the case.

(B) No application to withdraw may be considered unless it is submitted to the ALJ at least ten days prior to the date on which a hearing is scheduled.

(C) Every proposed order allowing withdrawal must contain a statement of the case's current status, including the next hearing date, if a hearing has been scheduled, and a certificate of mailing to the party or custodian, showing the last known mailing address, and to all other parties.

340:2-28-19. Evidentiary purpose

The hearing is directed to receiving factual evidence related to issues in the proceeding.

(1) **Argument.** Argument is not presented in evidence, but in statements, memoranda, or briefs, as determined by the administrative law judge (ALJ). Brief opening statements of the party's position and what the party intends to prove may be made at the hearing.

(2) **Testimony.** Testimony is given orally, under oath or affirmation, by witnesses at the hearing. Witnesses must be available for cross-examination by all parties at the hearing. The ALJ may conduct hearings telephonically or by other electronic means when requiring a party or witness to physically attend would create a hardship.

(3) **Stipulation and exhibits.** Two or more parties may agree to stipulations of fact. Stipulations of fact or exhibits proposed by any party must be exchanged at the prehearing conference or otherwise prior to the hearing if the ALJ so requires. The ALJ may substitute copies for original documents. Unless otherwise ordered, all exhibits to be introduced into evidence or presented at the hearing must be marked in numerical order for identification and shown to opposing parties prior to the prehearing conference or, where a conference is not held, prior to the hearing on the matter.

(4) **Confidential information.** Confidential information, such as bank account numbers, routing numbers or Social Security numbers, may be redacted by the party submitting the documents. If the numbers are relevant to the case, redacting all numbers except the last four digits is acceptable.

(A) It is the responsibility of the party submitting the documents to redact any sensitive material.

(B) The originals with the redacted information intact may be required for viewing by the ALJ assigned to the case.

(~~4~~5) **Rules of evidence; exceptions.** Technical rules of evidence do not apply to the hearing. Rules and principles designed to ~~assure~~ ensure production of the most credible evidence available and to subject testimony to test by cross-examination are applied by the ALJ where reasonably necessary. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of direct examination of the witness. The ALJ may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record are open to examination by the parties, ~~and opportunity~~ Opportunity is given to refute facts and arguments presented on either side of the issues.

(~~5~~6) **Evidence of payments.** A report of payments made by the obligor or payor with a certification of authenticity executed by the Oklahoma Department of Human Services or a district court clerk is admissible in evidence as self authenticated.

(~~6~~7) **Judicial notice.** The ALJ may take judicial notice at any stage of the proceeding of the common law, constitutions, and public statutes in force in every state, territory, and jurisdiction of the United States, including tribal courts and the Court of Indian Offenses, and of adjudicative facts whenever:

(A) the adjudicative fact is generally known within the territorial jurisdiction of the administrative court;

(B) the adjudicative fact is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned; or

(C) a party requests the taking of judicial notice and supplies the ALJ with the necessary information.

340:2-28-20. Entry of appearance

(a) All attorneys must execute an entry of appearance by filing, either on paper or through a secured electronic means approved by the Office of Administrative Hearings: Child Support (OAH), a:

(1) formal entry of appearance with the ~~Office of Administrative Hearings: Child Support (~~OAH~~)~~; or

(2) signed pleading or motion with OAH that contains the attorney's name, Oklahoma Bar Association number, address, and telephone number.

(b) Every attorney of record must continue representation in the matter until final disposition by the administrative law judge (ALJ), unless permitted by the ALJ to withdraw for good cause shown. However, attorneys representing the Child Support Enforcement Division (CSED) who enter appearances on behalf of the State of Oklahoma may be replaced as attorneys of record by other attorneys representing the CSED without permission of the ALJ.

340:2-28-24. Record for decision

(a) The audio or video tape, transcript of testimony, exhibits, ~~and~~ all papers, including electronically submitted documents, and requests filed in the proceedings, except for correspondence, including rulings and any recommended or initial decision, constitutes the exclusive record for decision by the administrative law judge (ALJ).

(b) Audio or video tapes of the hearings are the property of the Office of Administrative Hearings: Child Support (OAH), and are not available for copying, review, or transcription except as described in OAC 340:2-28-23, which pertains to official transcripts.

(c) OAH manages and disposes of case records according to the Oklahoma Statutes ~~as interpreted in Subchapter 21 of this Chapter~~.

340:2-28-25. Record for ~~Appeal~~ appeal

The certified transcript, exhibits, briefs, memorandum of law, and any written orders constitute the record for appeal to the district court. Parties must file a designation of record with the Office of Administrative Hearings: Child Support indicating which documents in the administrative record are to be sent to the appellate court.

340:2-28-26. Case numbering

(a) Every case to be heard or otherwise addressed by an administrative law judge (ALJ) with the Office of Administrative Hearings: Child Support (OAH), must be assigned an OAH case number prior to the case being placed on the docket. OAH numbers are generally assigned within ~~three working days~~ one business day after the request is submitted to OAH by the district child support office. The case is assigned a number starting with the year the case is opened with OAH, and a chronological number of the case for that year within OAH~~, and the two-digit county designation of the child support office requesting the number~~.

(1) ~~To transfer a~~ The office sending the case is responsible for transfers from one child support office to another~~, an ALJ must sign a transfer order so that the county designation may be changed on OAH records~~ by filing a Notice of Transfer or a Motion and Order for Transfer signed by an ALJ with OAH. The transfer must indicate both the office transferring the case and the office receiving the case by office name rather than county designation.

(2) Notices, motions, and orders referred to in this Section may be submitted by paper, or electronically through a secured electronic system approved by OAH.

(b) Documents are not accepted for filing by OAH unless the OAH number is clearly written on the document and the case number corresponds to the named parties assigned to that case according to OAH records.

340:2-28-29. Dismissals

All motions for dismissals or partial dismissals must be filed, either on paper or through electronic means approved by the Office of Administrative Hearings: Child Support (OAH) with ~~the Office of Administrative Hearings: Child Support~~ OAH. The administrative law judge (ALJ) determines whether a dismissal is granted according to relevant statutory and common law.

340:2-28-30. Continuances

(a) A party seeking a continuance must request a ~~motion for the~~ continuance from the assigned administrative law judge (ALJ). ~~The~~ Whether the motion is filed on paper or submitted electronically, the motion must include the reason for the continuance and be made ten days prior to the scheduled hearing date. A motion for continuance filed within ten days prior to the scheduled hearing date or orally requested at the hearing may be approved at the discretion of the assigned ALJ. ~~The ALJ must include the reason(s) for a continuance in the order granting the continuance.~~

(b) A party does not have the authority to continue a matter set on a regularly or specially scheduled docket of an ALJ. Parties may agree to continue a docketed matter with the approval of the assigned ALJ. Without an agreement, the motion is heard by the assigned ALJ.

(c) ~~In the event~~ When an assigned ALJ is unavailable for a docket, another ALJ may be assigned or may direct that the unresolved matters be continued without a hearing.

(d) After one continuance has been granted for each party, further motions for continuances are heard by an ALJ assigned to the case and are not granted, except for good cause.

(e) All orders for continuance must set forth the basis for the continuance.

340:2-28-31. Objections to service and venue

Objections to jurisdiction over a person, the issuance of service of notice, or the venue of the action are waived if a party submits to a scheduled hearing or pretrial conference without written objection. The objection may be filed either on paper or through electronic means approved by the Office of Administrative Hearings: Child Support.

340:2-28-33. Default judgment

(a) A default judgment or administrative order may be entered if:

(1) after ~~being served with notice to appear~~ statutory requirements for service have been met, a party fails to:

(A) appear for a set hearing date; ~~or~~

(B) file a responsive pleading; or

(~~B~~C) request a hearing within the statutory time allotted;

(2) having requested a hearing, the obligor fails to make an appearance at the hearing; or

(3) otherwise provided by statute.

(b) Under the circumstances described in this Section, notice of taking default is not required.

[OAR Docket #07-1149; filed 5-22-07]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 5. ADULT PROTECTIVE SERVICES

[OAR Docket #07-1150]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. Investigation of Adult Protective Services
340:5-5-4 [AMENDED]
(Reference APA WF 07-03)

AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; and Sections 10-101 through 110 of Title 43 A of the Oklahoma Statutes.
DATES:
Comment period:
February 15, 2007 through March 19, 2007
Public hearing:
None requested
Adoption:
March 27, 2007
Submitted to Governor:
March 27, 2007
Submitted to House:
March 27, 2007
Submitted to Senate:
March 27, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 22, 2007.
Final adoption:
May 22, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed permanent rule revisions to Subchapter 5 of Chapter 5: (1) clarify how Adult Protective Services (APS) works with an alleged victim who is a tribal member; (2) change the statute citation and language regarding voluntary referrals for APS service; (3) clarify how APS staff work with Developmental Disabilities Services Division (DDSD) staff; (4) provide other clarifying information; and (5) update obsolete language.
CONTACT PERSON:
Dena Thayer, Programs Manager, Policy Management Unit, OKDHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

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

SUBCHAPTER 5. INVESTIGATION OF ADULT PROTECTIVE SERVICES REFERRALS

340:5-5-4. Special considerations during investigations

(a) **Referrals regarding members of Indian tribes.** Referrals are accepted for an alleged victim (AV) who is a tribal member~~, but as soon as tribal affiliation is known, the Adult Protective Services (APS) specialist determines whether that tribe has an APS program.~~

~~(1) If the tribe has an APS program, the referral is made to the tribal authorities, and Oklahoma Department of Human Services (OKDHS) APS staff do not become involved unless their assistance is requested.~~

~~(2) If there is no tribal APS program, local OKDHS APS investigates the referral. Voluntary services may be provided or arranged~~ according to the Protective Services for Vulnerable Adults Act as set forth in Sections 10-101 through 10-110 of Title 43A of the Oklahoma Statutes. The Adult Protective Services (APS) specialist provides or arranges voluntary or involuntary services as indicated for a vulnerable adult regardless of whether ~~or not~~ the adult resides on tribal land.

~~(3) If involuntary services are required and the vulnerable adult resides on tribal land, OKDHS cannot petition the district court for an order to provide emergency protective services because the district court has no jurisdiction over tribal land.~~

(b) **Referrals involving two or more counties.** If a referral involves two or more counties, as when the AV lives in one county and the alleged perpetrator (AP) in another, local APS staff ~~in~~ from both ~~counties~~ human services centers (HSCs) are involved in the investigation.

(c) **Referrals involving Medicaid fraud.** ~~If~~ When an APS investigation indicates fraud by a provider receiving Medicaid funds, APS staff immediately notifies the Medicaid Fraud Control Unit (MFCU) in the Office of the Oklahoma Attorney General ~~is notified immediately~~. APS cooperates with any investigation by MFCU. If MFCU declines to investigate, APS staff completes the investigation and sends a summary report to MFCU upon completion of the investigation.

(d) **Referrals involving ~~individuals~~ persons and provider agency employees.** APS investigations of maltreatment of vulnerable adults may include all persons in a relationship of caretaker, regardless of organizational affiliation, except those noted in Subchapter 3 of this Chapter. Care providers who may be subject to APS investigation include, but are not limited to, home health providers, community services workers for persons with developmental disabilities, personal care assistants, adult foster homes, adult day care centers, independent living centers, residential care facilities, and assisted living centers.

(1) These agency investigations include all the elements of an APS investigation, with special emphasis placed on:

(A) interviewing agency staff and other residents or participants who may have knowledge of the reported incident;

(B) obtaining copies of applicable charts and records;

(C) reviewing medication lists and schedules;

(D) taking photographs;

(E) examining habilitation or other care plans;

(F) examining financial records and other money management documentation;

(G) reviewing time schedules and time sheets; and

(H) requesting any other information needed to complete the investigation.

(2) If assistance is needed in assessing medical issues in these cases, involvement of the OKDHS long-term care nurse may be requested.

(3) ~~Findings~~ APS staff submits findings of substantiated referrals of maltreatment by persons who are personal care assistants, Medicaid personal care attendants (MPCA), and community services workers subject to the requirements of the Community Services Worker (CSW)

Registry maintained by Developmental Disabilities Services Division (DDSD) pursuant to Section 1025.3 of Title 56 of the Oklahoma Statutes ~~are submitted~~ within three working days to the OKDHS Office of Client Advocacy for consideration of placement of the worker's name on the statewide CSW Registry. Persons whose names are on the CSW Registry ~~cannot~~ must not be employed by providers for direct care services to ~~individuals~~ persons with developmental disabilities or as personal care attendants (PCA) paid through the Medicaid ADvantage Waiver.

(4) For agency employees who are not subject to the CSW Registry requirements, the agency director or board is notified of any substantiated elements of the investigation. Any corrective action plan on the part of the agency becomes a part of the APS case record. If the agency fails to cooperate in addressing the substantiated elements of the investigation, APS staff notifies the licensing agency, any appropriate governing board, and the district attorney's (DA's) office ~~are notified~~ of the failure to cooperate.

(e) **Referrals involving other licensed or certified ~~individuals~~ persons.** ~~Findings are sent~~ APS staff sends findings to any state agency with concurrent jurisdiction over persons or issues identified in the investigation, including, where appropriate, the Oklahoma State Department of Health (OSDH), the Oklahoma Board of Nursing, and any other appropriate state licensure or certification board, agency, or registry.

(f) **Referrals alleging exploitation.** Referrals involving exploitation are complex. To assist in handling some of these referrals, the OKDHS Office of the Inspector General (OIG) may accept for investigation referrals of exploitation involving large amounts of funds or the need to access complex records regarding financial transactions. If OIG declines to investigate, the APS specialist completes the investigation. Protective services that may be provided in cases of exploitation include:

(1) changing the representative payee;

(2) freezing all assets of the client; and

(3) petitioning the court for an order allowing access to records.

(g) **Persons ~~remanded~~ referred to OKDHS by the courts.** ~~Although courts~~ Courts are ~~no longer~~ not authorized to remand criminal defendants to OKDHS~~,~~ based on a finding of lack of competency~~,~~. ~~the courts~~ Courts are authorized to refer the alleged incompetent defendant to OKDHS for consideration of voluntary assistance according to Section ~~1175.6.A.4.a~~ 1175.6b(B) of Title 22 of the Oklahoma Statutes. In order to qualify for such findings, the court must make findings described in (1) or (2) of this subsection.

(1) ~~The AV has been found by the court to be incompetent and not capable of achieving competency within a reasonable period of time~~ Referral for voluntary services occurs when the court finds that the person is incompetent for reasons other than the AV is a person requiring ~~mental health~~ treatment ~~as defined by the Mental Health Code in~~ under Title 43A of the Oklahoma Statutes and is found not to be dangerous.

(2) ~~If the APS specialist is notified by~~ When a court, the ~~DA's office~~ DA, or the attorney for a criminal defendant notifies the APS specialist that a referral for voluntary APS services has been made, the APS specialist obtains a copy of the order ~~is obtained~~ from the person making the referral. If, after evaluation, it appears to the APS specialist the AV may also be developmentally disabled, the APS specialist ~~makes immediate contact with~~ immediately contacts the ~~local~~ DDSD Area Intake office and requests their involvement in the process of determining what voluntary services are available. This is a joint effort between the APS specialist and the DDSD ~~worker~~ case manager.

(h) **AV receiving services from DDSD.** When an AV is receiving or may be eligible for services from DDSD, the APS specialist contacts the appropriate DDSD ~~case manager~~ Area Intake office to coordinate activities to enhance the AV's safety. ~~Situations involving an AV facing criminal charges, often meet the definition of an AV with developmental disabilities.~~ Section ~~1175.3.D.1.b~~ 1175.3(D)(1)(b) of Title 22 of the Oklahoma Statutes authorizes a court to call for DDSD to conduct a competency evaluation to determine whether mental retardation or other developmental disability may be involved.

(i) **Referrals involving residents of residential care facilities, assisted living facilities, and continuum of care facilities.** A copy of the final investigative report is sent to OSDH.

[OAR Docket #07-1150; filed 5-22-07]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 10. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)

[OAR Docket #07-1151]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Conditions of Eligibility - Need
Part 3. Income
340:10-3-32 [AMENDED]
(Reference APA WF 07-07)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; 56 O.S. § 230.50 and 230.52; the Personal Responsibility and Work Opportunity Act of 1996; and Title 45 Code of Federal Regulations (CFR) Part 260.
DATES:
Comment period:
February 15, 2007 through March 19, 2007
Public hearing:
None requested
Adoption:
March 27, 2007
Submitted to Governor:
March 27, 2007
Submitted to House:
March 27, 2007
Submitted to Senate:
March 27, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 22, 2007.

Final adoption:
May 22, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Chapter 10 Subchapter 3 proposed permanent rule amendments: (1) change language regarding tax forms used to determine self-employment income; and (2) add a rule regarding how profit sharing income is treated.
CONTACT PERSON:
Dena Thayer, Programs Manager, Policy Management Unit, OKDHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

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

SUBCHAPTER 3. CONDITIONS OF ELIGIBILITY - NEED

PART 3. INCOME

340:10-3-32. Determination of earned income

Earned income results from self-employment or other employment sources.

(1) **Earned income from self-employment.** If the income results from the ~~individual's~~ person's activities primarily as a result of the ~~individual's~~ person's own labor from the operation of a business enterprise, the countable earned income is determined by deducting 50% of the gross income as business expenses or by using the net business profit for the most recent tax year as reported on ~~Internal Revenue Service Form 1040, Schedule C, Profit or Loss from Business~~ the person's income tax return. Self-employment income that represents a household's annual support is prorated over a 12-month period, even if the income is received in a shorter period of time.

(A) **Room or board.** Earned income from a room rented in the home is determined by considering 25% of the gross amount received as business expenses. Earned income from room and board paid by a person in the home is determined by considering 50% of the gross income received as a business expense.

(B) **Rental property.** Income from rental property is considered income from self-employment if none of the activities associated with renting the property is conducted by an outside person or agency.

(C) **Profit sharing.** Households who operate S corporations, general or limited partnerships, or limited liability companies may receive profit sharing that is reported on the household's personal income tax return. When a household member:

(i) actively participates in the operations, the income from profit sharing is considered part of the household's self-employed earned income; or

(ii) does not actively participate in the operations, the income from profit sharing is considered part of the household's unearned income.

(2) **Earned income from sources other than self-employment.**

(A) **Earned income from wages, salary, or commission.** If the income is from wages, salary, or commission, the earned income is the gross income or true wage prior to payroll deductions and withholdings. This includes earned income from contract employment. Money from the sale of whole blood or blood plasma is considered as earned income.

(B) **Earned income from work and training programs.**

(i) **Workforce Investment Act (WIA).** WIA earned income received by the payee or spouse as wages is considered as any other earned income. WIA earned income of a dependent child(ren) is considered when received in excess of six months in any calendar year.

(ii) **On-the-job training (OJT).** Earned income from regular employment for OJT is considered as any other earned income.

[OAR Docket #07-1151; filed 5-22-07]

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

[OAR Docket #07-1152]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Eligibility
340:40-7-11 [AMENDED]
(Reference APA WF 07-08)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law (P.L.) 104-193; the Balanced Budget Act of 1997, P.L. 105-33; and 45 Code of Federal Regulations (CFR) Parts 98 and 99.
DATES:
Comment period:
February 15, 2007 through March 19, 2007
Public hearing:
None requested
Adoption:
March 27, 2007
Submitted to Governor:
March 27, 2007
Submitted to House:
March 27, 2007
Submitted to Senate:
March 27, 2007
Gubernatorial approval:
May 1, 2007

Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 22, 2007.
Final adoption:
May 22, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed revisions to Subchapter 7 of Chapter 40 amend rules to: (1) coincide with Food Stamp Program and Temporary Assistance for Needy Families (TANF) simplifying how self-employed farm income and business expenses are considered, revise language regarding tax forms used to determine self-employment income, and specify how profit sharing income is treated; (2) add information about the Supported Permanency benefits; and (3) add clarifying information.
CONTACT PERSON:
Dena Thayer, Programs Manager, Policy Management Unit, OKDHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

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

SUBCHAPTER 7. ELIGIBILITY

340:40-7-11. Sources of income considered

(a) **Sources of income considered.** Income may be received periodically or at irregular intervals. All income, unless specifically excluded in OAC 340:40-7-12, is considered in determining monthly gross income. Income is classified as earned or unearned income. Gross income is treated the same for both types of income.

(b) **Earned income.** Earned income means total money earned by ~~an individual~~ a person through the receipt of wages, salary, commission, or profit from activities in which the ~~individual~~ person is engaged as self-employed or as an employee.

(1) **Wages.** Wages include total money received for work performed as an employee including armed forces pay, commissions, tips, piece-rate payments, longevity payments, and cash bonuses before any deductions are made such as taxes, bonds, pensions, union dues, credit union payments, and cafeteria plans.

(A) Only the portion of the cafeteria plan the client controls is counted as income.

(B) Reimbursements for expenses such as a uniform allowance or transportation costs, other than daily commuting, are subtracted from gross income.

(C) Payments made for annual leave, sick leave, or severance pay are considered as earned income during the month such income is received whether paid during employment or at termination of employment.

(D) Wages that are garnisheed or diverted and paid to a third party are also counted as income.

(2) **Self-employment.** Earnings derived from a business enterprise owned solely or in part by the ~~individual~~ person are considered as self-employment income. ~~Except for households with farming income, self-employment~~ Self-employment income for households declaring business expenses is determined by calculating total gross receipts or sales and subtracting 50% of the gross income to arrive at the net profit. Alternatively, the net business profit for the most recent tax year can be used as reported on ~~Internal Revenue Service Form 1040, Schedule C, Profit or loss from Business, may be used~~ the person's income tax return. ~~See (b)(2)(F) of this Section to determine self-employed farm income.~~

(A) **Profit sharing.** Households who operate S corporations, general or limited partnerships, or limited liability companies may receive profit sharing that is reported on the household's personal income tax return. When a household member:

(i) actively participates in the operations, the income from profit sharing is considered part of the household's self-employed earned income; or

(ii) does not actively participate in the operations, the income from profit sharing is considered part of the household's unearned income.

(~~A~~B) **Monthly self-employment income.** Self-employment income received on a monthly basis is normally averaged over a 12-month period. If the averaged amount does not accurately reflect the household's actual monthly circumstances because the household has experienced a substantial increase or decrease in income, the worker calculates the self-employment income based on anticipated earnings.

(~~B~~C) **Seasonal self-employment.** Self-employment income intended to meet the household's needs for only part of the year is averaged over the period of time it is intended to cover.

(~~C~~D) **Annualized self-employment income.** Self-employment income that represents a household's annual support is averaged over a 12-month period, even if the income is received in a short period of time. If the averaged amount does not accurately reflect the ~~individual's~~ person's actual monthly circumstances because the ~~individual~~ person has experienced a substantial increase or decrease in income, self-employment income is based on anticipated earnings.

(~~D~~E) **Income from rental property.** Income from rental property is considered income from self-employment.

(~~E~~F) **Income from room and board.** Payments from roomers or boarders are considered self-employment if the roomer or boarder is paying a reasonable amount. If the roomer or boarder is a non-relative adult of the opposite sex, OAC 340:40-7-6(b)(~~5~~4) applies.

~~(F) **Self-employed farm income.** To be considered a self-employed farmer, the farmer must receive or anticipate receiving annual gross proceeds of $1000 or more from the farming enterprise. Farming~~

~~is defined as cultivating or operating a farm for profit either as owner or tenant. A farm includes stock, dairy, poultry, fish, fruit, and truck farms, and also plantations, ranches, ranges, and orchards. A fish farm is an area where fish are grown or raised and where they are artificially fed and protected and does not include an area where they are merely caught or harvested. A plant nursery is a farm for purposes of this definition. To determine the net monthly self-employed farm income, the worker:~~

~~(i) adds all gross self-employment income excluding capital gains;~~

~~(ii) subtracts the total allowable business expenses from the total gross self-employment farm income. Items that are not allowable business expenses include:~~

~~(I) net losses from previous periods;~~

~~(II) federal, state, and local income taxes;~~

~~(III) money set aside for retirement purposes, and other work related personal expenses, such as meals and necessary transportation;~~

~~(IV) depreciation;~~

~~(V) penalties and fines;~~

~~(VI) charitable contributions; or~~

~~(VII) transportation costs to and from work;~~

~~(iii) subtracts any additional business expenses that exceed the farm income against any other countable income in the household; and~~

~~(iv) divides the net self-employment farm income by the number of months to be averaged.~~

(3) **On-the-job training.** Earned income from regular employment for on-the-job training is considered as any other earned income.

(4) **Workforce Investment Act (WIA).** Income earned in on-the-job training positions provided under Section 134 of WIA is considered earned income for ~~individuals~~ persons who are 19 years of age and older. On-the-job training provided must be full-time positions, and there must be a contract between WIA and the employer for each individual position. This does not include classroom training and institutional training or intern assignments sponsored by WIA, even when an hourly amount is paid for such training.

(5) **Title I payments of Domestic Volunteer Services Act.** Payments under Title I of the Domestic Volunteer Services Act of 1973 as amended [P.L. 93-113] are considered income unless they are excluded under OAC 340:40-7-12.

(6) **Earnings of children.** Earned income of a minor parent is treated as adult earned income. Earnings of other children 17 years of age and younger who are under the parental control of an adult household member are excluded per OAC 340:40-7-12.

(c) **Unearned income.** Unearned income is income ~~an individual~~ a person receives for which ~~he or she~~ the person does not put forth any daily, physical labor. Types of income listed in paragraphs (1) through (11) of this subsection are considered unearned income.

(1) **Assistance payments.** Assistance payments include state means tested programs, such as Temporary Assistance for Needy Families (TANF), including Supported Permanency benefits, ~~and~~ State Supplemental Payment (SSP) to the aged, blind, or disabled, and Refugee Cash Assistance.

(2) **Pensions, disability, and Social Security benefits.** Annuities, pensions, retirement benefits, disability benefits from either government or private sources, or Social Security survivor benefits are considered unearned income.

(3) **Supplemental Security Income (SSI).** SSI is considered unearned income.

(4) **Unemployment and workers' compensation.** Income from unemployment insurance benefits or workers' compensation is counted as unearned income.

(5) **Child support, court-ordered or third party paid child care, and alimony.** Child support, child care payments, and alimony payments, whether court-ordered or voluntary, ~~which~~ that are made directly to the household from non-household members are counted as unearned income.

(A) If a child care payment is paid directly to the child care provider, it is not considered income for the client.

(B) When the absent parent reports he or she is paying a portion of the client's family share co-payment to the child care provider, the only action taken by the worker is to record this in the case record.

(C) If the absent parent or another third party, such as an employer, is making a payment to the provider in addition to the client's co-payment, it is considered as an additional co-payment that must be met before OKDHS makes a subsidy payment to the provider.

(~~C~~D) Any other payment made to a third party for a household expense must be considered as income when a court order directs that the payment be made to the household. Payments for medical support are excluded.

(6) **Veterans compensation, pensions, or military allotments.** Annuities, pensions, disability compensation, military allotments, servicemen dependent allowances, and similar payments are considered unearned income.

(7) **Contributions.** Appreciable contributions recurrently received in cash are considered unearned income except ~~in instances where~~ when the contribution is not made directly to the recipient. To be appreciable, a contribution must exceed $30 per calendar quarter per ~~individual~~ person.

(8) **Dividends, interest, minerals, and royalties.** Dividends, interest income, income from minerals, royalties, and similar sources are considered unearned income. When income from these sources is received irregularly or in varied amounts, it is averaged over 12 months. Income from royalties is treated as unearned, self-employment income, subject to (b)(2) of this Section.

(9) **Lump sum payments.** Non-recurring lump sum payments from a countable income source are considered ~~as~~ income the month they are received. Money not expended within the month of receipt is considered ~~as~~ a resource. Recurring lump sum payments, including income from earnings, are averaged over the period they are intended to cover.

(10) **Title IV-E or State Adoption Subsidy.** ~~Federally~~ Federal or state funded adoption subsidy payments made to adoptive parents are considered as unearned income.

(11) **Irregular income.** Income received irregularly but in excess of $30 per quarter is considered ~~as~~ income unless it is from an excluded income source specifically mentioned at OAC 340:40-7-12. Countable irregular income is averaged over 12 months.

[OAR Docket #07-1152; filed 5-22-07]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 50. FOOD STAMP PROGRAM

[OAR Docket #07-1153]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Financial Eligibility Criteria
Part 3. Income
340:50-7-30 [AMENDED]
(Reference APA WF 07-09)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; and Chapter II, Part 273 of Title 7 of the Code of Federal Regulations (CFR).
DATES:
Comment period:
February 15, 2007 through March 19, 2007
Public hearing:
None requested
Adoption:
March 27, 2007
Submitted to Governor:
March 27, 2007
Submitted to House:
March 27, 2007
Submitted to Senate:
March 27, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 22, 2007.
Final adoption:
May 22, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Proposed Food Stamp Program permanent rule revisions: (1) simplify how self-employed farm income and business expenses are considered; (2) change language regarding tax forms used to determine self-employment income; (3) add a rule regarding how profit sharing income is treated; and (4) remove outdated language.

CONTACT PERSON:
Dena Thayer, Programs Manager, Policy Management Unit, OKDHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

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

SUBCHAPTER 7. FINANCIAL ELIGIBILITY CRITERIA

PART 3. INCOME

340:50-7-30. Self-employed households

Households whose income is derived either wholly or in part from a self-employment enterprise are treated in accordance with the procedures listed in paragraphs (1) through (~~8~~9) of this Section.

(1) **Capital gains.** The proceeds from the sale of capital goods or equipment is income for program purposes and is calculated in the same manner as a capital gain for federal income tax purposes. Even though a percentage of the proceeds from the sale of capital goods or equipment is taxed for federal income tax purposes, the worker counts the full amount of capital gain as income.

(2) **Profit sharing.** Households who operate S corporations, general or limited partnerships, or limited liability companies may receive profit sharing that is reported on the household's personal income tax return. When a household member:

(A) actively participates in the operations, the income from profit sharing is considered part of the household's self-employed earned income; or

(B) does not actively participate in the operations, the income from profit sharing is considered part of the household's unearned income.

(3) **Self-employed farm income.** To be considered a self-employed farmer, the farmer must receive or anticipate receiving annual gross proceeds of $1,000 or more from the farming enterprise.

(A) Farming is defined as cultivating or operating a farm for profit either as owner or tenant.

(B) A farm includes stock, dairy, poultry, fish, fruit, and truck farms, and plantations, ranches, ranges, and orchards.

(i) A fish farm is an area where fish are grown or raised and where they are artificially fed, protected, and cared for, and does not include an area where they are only caught or harvested.

(ii) A plant nursery is a farm for purposes of this definition.

(~~2~~4) **Monthly self-employment income.** Self-employment income ~~which is~~ received on a monthly basis but which represents a household's annual support is normally

averaged over a 12-month period. If the averaged amount does not accurately reflect the household's actual monthly circumstances because the household has experienced a substantial increase or decrease in business, the worker calculates the self-employment income based on anticipated earnings.

(~~3~~5) **Seasonal self-employment income.** Self-employment income ~~which is~~ intended to meet the household's needs for only part of the year is averaged over the period of time it is intended to cover. For example, the income of self-employed vendors who work only in the summer and supplement their income from other sources during the balance of the year is averaged over the summer months rather than a 12-month period.

(~~4~~6) **Annualized self-employment income.** Self-employment income which represents a household's annual support must be ~~analyzed~~ annualized over a 12-month period, even if the income is received in a shorter period of time. For example, self-employment income received by crop farmers must be averaged over a 12-month period if the income represents the farmer's annual support.

(A) If the averaged annualized amount does not accurately reflect the household's actual circumstances because the household has experienced substantial increase or decrease in business, the worker calculates the self-employment income on anticipated earnings.

(B) The worker does not calculate self-employment income on the basis of prior earnings such as income tax returns when an increase or decrease of business has occurred.

(i) If the household's self-employment enterprise has been in existence for less than a year, the income from that self-employment enterprise must be averaged over the period of time the business has been in operation and the monthly amount projected for the coming year.

(ii) If the business has been in operation for a short time and there is insufficient data to make a reasonable projection, self-employment income is recomputed at each new certification until a full year's information is available.

(~~5~~7) **Anticipated income.** When a household who would normally have the self-employment income annualized experiences a substantial increase or decrease in business, the worker calculates the self-employment income based on anticipated earnings.

(A) For those households whose self-employment income is calculated on an anticipated basis, the worker adds any capital gains the household anticipates it will receive in the next 12 months, starting with the date the application is filed, and divides this amount by 12. This amount is used in successive certification periods during the next 12 months except that a new average monthly amount must be calculated over this 12-month period if the anticipated amount of capital gain changes.

(B) The worker adds the anticipated monthly amount of capital gains to the anticipated monthly self-employment income, and subtracts the cost of producing the self-employment income.

(~~6~~8) **Determining net monthly ~~non-farm~~ self-employment income.** Self-employment income is not compared to the maximum gross income standards shown on Oklahoma Department of Human Services (OKDHS) Appendix C-3, Maximum Food Stamp Allotments and Standards for Deductions, Maximum Income, and Utilities, until after the business expenses have been deducted from the gross self-employment income.

(A) To determine the net monthly self-employment income, the worker:

(i) adds all the gross self-employment income, including capital gains;

(ii) subtracts 50% of the gross self-employment income for ~~those households~~ a household declaring business expenses or uses the net profit for the most recent tax year as reported on the ~~Internal Revenue Service Form 1040, Schedule C, Profit or Loss from Business~~ person's income tax return; and

(iii) divides the net self-employment income by the number of months to be averaged.

(B) The monthly net self-employment income is added to all other earned income received by the household.

(i) The total monthly earned income less the earned income deduction according to OKDHS Appendix C-3 is then added to all other monthly income received by the household.

(ii) The standard deduction, dependent care, and shelter costs are computed as for any other household and subtracted to determine the monthly net income of the household.

(~~7~~9) **Household with income from boarders.** ~~While a~~ A household ~~which~~ that operates a commercial boarding house may be considered a food benefit household and self-employed as shown in paragraph (~~7~~8) of this subsection~~, households~~. A household with boarders or roomers that ~~are~~ is not a commercial boarding ~~houses~~ house may ~~also~~ receive food benefits as shown in subparagraphs (A) through (C) of this paragraph.

(A) Persons paying a reasonable amount for room and board are excluded from the household when determining the household's eligibility and benefit level. Payments from the boarder are treated as self-employment income if the boarder is paying a reasonable amount.

(i) The income from boarders includes all direct payments to the household for room and meals, including contributions to the household for part of the household shelter expense.

(ii) Shelter expenses paid directly by boarders to someone outside the household are not counted as income to the household.

(B) After determining the income received from the boarder, the worker excludes 50% of the boarder payment ~~which is a~~ as the cost of doing business.

(C) The net income from self-employment is included with other earned income and the earned income deduction from OKDHS Appendix C-3 is taken.

(i) Shelter cost the household actually incurred, even if the boarder contributes to the household for part of the household's shelter expense, is computed to determine if the household will receive a shelter deduction.

(ii) The shelter and utility cost ~~cannot~~ must not include any expense billed to and directly paid by the boarder to a third party.

~~(8)~~ ~~**Self-employed farm income.**~~ ~~To be considered a self-employed farmer, the farmer must receive or anticipate receiving annual gross proceeds of $1000 or more from the farming enterprise. Farming is defined as cultivating or operating a farm for profit either as owner or tenant. A farm includes stock, dairy, poultry, fish, fruit, and truck farms, and also plantations, ranches, ranges, and orchards. A fish farm is an area where fish are grown or raised and where they are artificially fed, protected, and cared for, and does not include an area where they are merely caught or harvested. A plant nursery is a farm for purposes of this definition.~~

~~(A) To determine the net monthly self-employed farm income, the worker:~~

~~(i) adds all the gross self-employment income including capital gains;~~

~~(ii) subtracts the total allowable cost of doing business as listed in paragraph 8 of this subsection, from the total gross self-employment farm income; and~~

~~(iii) divides the net self-employment farm income by the number of months to be averaged.~~

~~(B) When the business expense exceeds the gross self-employment farm income, the losses are offset against any other countable income in the household. When the annual net loss is established, the loss is prorated by dividing by 12 for the monthly amount to be subtracted from the total countable income prior to subtraction of any applicable standard deduction, dependent care, and shelter costs.~~

~~(C) The monthly net self-employment farm income is added to all other earned income received by the household. The total monthly earned income less the earned income deduction according to OKDHS Appendix C-3 is then added to all other monthly income received by the household.~~

~~(i) The standard deduction and dependent care costs are computed as for any other household.~~

~~(ii) The shelter costs are computed as for any other household unless the income producing farm property is connected to the home property and the self-employment costs cannot be separately identified from the shelter costs.~~

~~(I) Proration may be used to separately identify costs based on information from a mortgage lender, real estate tax records, Farmer's Home Administration (FmHA) documents, or insurance premiums.~~

~~(II) The shelter ratio may be applied to taxes and insurance costs if better information is not readily available.~~

~~(III) If the cost of rent or mortgage, insurance, taxes, and interest cannot be separated, no self-employment deduction for insurance, taxes, or interest on the mortgage payment is allowed and no portion of the mortgage payment, taxes, or interest may be allowed as shelter costs.~~

~~(D) Costs of producing self-employment farm income.~~

~~(i) Allowable costs of producing self-employment farm income include, but are not limited to:~~

~~(I) payments on the principal of the purchase price of income producing real estate, capital assets, equipment, machinery, other durable goods;~~

~~(II) interest paid to purchase income producing property;~~

~~(III) insurance premiums; and~~

~~(IV) taxes paid on income producing property.~~

~~(ii) Items not considered as a cost of producing self-employment income are:~~

~~(I) net losses from previous periods;~~

~~(II) federal, state, and local income taxes;~~

~~(III) money set aside for retirement purposes and other work related personal expenses, such as meals and necessary transportation which are counted for by the appropriate amount of earned income deduction shown on OKDHS Appendix C-3; and~~

~~(IV) depreciation.~~

[OAR Docket #07-1153; filed 5-22-07]

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

[OAR Docket #07-1154]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Eligibility for Benefits
340:65-3-2 [AMENDED]
(Reference APA WF 07-04)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Sections 161 et seq. of Title 56 of the Oklahoma Statutes.
DATES:
Comment period:
February 15, 2007 through March 19, 2007
Public hearing:
None requested

Adoption:
March 27, 2007
Submitted to Governor:
March 27, 2007
Submitted to House:
March 27, 2007
Submitted to Senate:
March 27, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 22, 2007.
Final adoption:
May 22, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed revisions to Subchapter 3 of Chapter 65 amend the rules to: (1) add a definition for who can be a payee for the programs administered by Family Support Services Division (FSSD); (2) update outdated language and form numbers; and (3) clarify information.
CONTACT PERSON:
Dena Thayer, Programs Manager, Policy Management Unit, OKDHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

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

SUBCHAPTER 3. ELIGIBILITY FOR BENEFITS

340:65-3-2. Definitions

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

"Applicant" means a person who directly or through ~~someone~~ a person acting responsibly on ~~his or her~~ the applicant's behalf requests a formal determination of eligibility for one or more public assistance programs.

"Application process" means the process by which the applicant's request is formalized. ~~It can~~ The application process may consist of a face-to-face interview by the worker during which the applicant provides information regarding his or her situation, or a paper application form. Any person who fraudulently represents facts, acts without authority, or exceeds his or her authority to perform a transaction may be prosecuted under all applicable criminal and civil laws.

"Client" means a person who is applying for or receiving services, cash assistance, or other benefits.

"Date of application" means, for:

(A) child care benefit applications, the date the applicant or ~~someone~~ a person acting on ~~his or her~~ the applicant's behalf completes the child care interview and provides all necessary verification, including the name of the child care provider the applicant wishes to use.

(B) Temporary Assistance for Needy Families (TANF), food benefits, and Medicaid, the date the applicant or ~~someone~~ a person acting on ~~his or her~~ the applicant's behalf signs the application form. If the application is initiated outside of Oklahoma Department of Human Services (OKDHS), the application date is the date the application form is stamped into the human services center (HSC).

(i) If an oral request is received prior to the date of signature on the application, the date of the oral request is entered in red above the signature date. The date of the oral request is the date of application.

(ii) ~~Care must be taken to protect the application date for an~~ When the applicant ~~who~~ accepts an appointment to return at a later date to complete and sign the application form~~. In this instance,~~ the application date is the date of the original request and is handled the same as an oral request.

(iii) The oral request date is protected only if the application is signed within 30 calendar days. If the ~~individual~~ applicant fails to sign the application within 30 calendar days, no application request is considered made. The ~~individual's~~ applicant's contact with OKDHS is documented in the record or as information and referral only if a record does not exist. If the ~~individual~~ applicant subsequently contacts OKDHS after ~~the~~ 30 calendar days and completes the application process, the application date is the date the application is completed and signed.

(iv) Receipt of Form ~~MS-MA-5~~ 08MA005E, Notification of Needed Medical Services, ~~is an~~ preserves the date of application for medical benefits.

"Inquiry" means a request for information but does not imply a request for assistance.

"Near real-time (NRT) benefit processing" means ~~applications~~ the application for ~~assistance are~~ child care benefits is processed within two ~~working~~ business days of receiving verification needed to determine eligibility for assistance.

"Payee" means the person in the household in whose name benefits are issued. The person considered the payee varies depending on the requested programs. The payee may or may not be included in the benefit.

(A) For the Child Care Program, the payee must be the person responsible for the child for whom benefits are requested. The payee does not have to be related to the child. If the parent of the child is in the home, the parent is considered the payee, per OAC 340:40-3-1(a)(3).

(B) For the TANF Program, the payee must have a certain degree of relationship to the child for whom benefits are requested, per OAC 340:10-3-56 and 340:10-9-1.

(C) For the Food Stamp Program, the payee can be any responsible adult living in the home. If the only adult living in the home is a non-household or ineligible member in accordance with OAC 340:50-3-1, 340:50-5-5, and 340:50-5-8.1, that person is shown as the payee on the case.

(D) For the Medicaid Program, the payee is the person for whom benefits are requested or the person responsible for the minor child for whom benefits are requested. The payee does not have to be related to the child. If the parent of the child is in the home, the parent is considered the payee, per OAC 317:35-7-15.

(E) For the State Supplemental Payment (SSP) Program, the payee is the person for whom benefits are requested. If the person for whom benefits is requested is a minor child, the child is coded as a person with a guardian.

"Recipient" means a person who receives services, cash assistance, or other benefits.

[OAR Docket #07-1154; filed 5-22-07]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 70. SOCIAL SERVICES

[OAR Docket #07-1155]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 8. Supplemental Security Income-Disabled Children's Program (SSI-DCP)
340:70-8-1 [AMENDED]
Subchapter 9. Health Related Services
340:70-9-1 [REVOKED]
340:70-9-2 [AMENDED]
340:70-9-5 [AMENDED]
340:70-9-7 [REVOKED]
340:70-9-9 [AMENDED]
340:70-9-10 [REVOKED]
340:70-9-15 [REVOKED]
340:70-9-17 [AMENDED]
(Reference APA WF 06-26)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; and Section 501 of Title V and Sections 1902 and 1905 of Title XIX of the Social Security Act.
DATES:
Comment period:
February 15, 2007 through March 19, 2007
Public hearing:
None requested
Adoption:
March 27, 2007
Submitted to Governor:
March 27, 2007
Submitted to House:
March 27, 2007
Submitted to Senate:
March 27, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 22, 2007.
Final adoption:
May 22, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed revisions to Subchapters 8 and 9 of Chapter 70 amend the rules to: (1) revoke obsolete Sections and move relevant material to other Sections; (2) clarify procedures for handling abnormal findings during an Early and Periodic Screening, Diagnosis and Treatment (EPSDT) examination; (3) add information about the Family Planning Waiver; (4) update obsolete language and form numbers; and (5) clarify language.
CONTACT PERSON:
Dena Thayer, Programs Manager, Policy Management Unit, OKDHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

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

SUBCHAPTER 8. SUPPLEMENTAL SECURITY INCOME-DISABLED CHILDREN'S PROGRAM (SSI-DCP)

340:70-8-1. Eligibility and available services

The Supplemental Security Income-Disabled Children's Program (SSI-DCP) is established under Section 1615 of the Social Security Act and administered by the Oklahoma Department of Human Services (OKDHS) Family Support Services Division (FSSD). ~~This provides for the referral by the~~ The Social Security Administration (SSA) refers children under 18 who have been approved for Supplemental Security Income (SSI) ~~recipient children who are under 18 years of age~~ to ~~a~~ OKDHS, the designated state agency ~~which~~ that provides social services.

(1) **Eligibility.** Any child ~~between the age of~~ from birth ~~and~~ to 18 years of age is eligible for SSI-DCP services if the child receives a ~~Supplemental Security Income (SSI)~~ payment. SSA establishes financial and medical eligibility for the SSI disability payment. Once the child turns 18, he or she is not eligible.

(2) **Service plan.** A service plan must be written by a worker for each child ~~on~~ receiving SSI-DCP services to plan current and future social service needs.

(A) This plan must be reviewed yearly in conjunction with the eligibility review.

(B) If the child has other types of benefits ~~which have~~ that require a current social service plan, an additional social service plan is not necessary. ~~All equipment and services available through SSI-DCP funding must be pre-approved.~~

(3) **Services and equipment.** ~~Services available locally or through~~ SSI-DCP provides funding for the services and equipment ~~are~~ described in (A) through (F) of

this paragraph. The parent, guardian, or caretaker must request services and equipment through the Family Support Services (FSS) worker in the local human services center (HSC). All equipment and services available through SSI-DCP must be pre-approved by FSSD Health Related and Medical Services (HR&MS) Section. HR&MS staff considers whether other resources are available or if the child is in a temporary living situation to determine whether to approve the service or equipment.

(A) **Child care.** ~~The purpose of child~~ Child care services ~~is~~ are provided to enhance social skills and assist transition into a group setting such as the classroom. Enrichment child care~~, developmental child care, or both, are~~ is available to ~~children~~ a child with disabilities for a ~~period~~ maximum of two days per week not to exceed ten full-time or part-time days per month ~~in an approved child care center~~.

(i) ~~A~~ The parent, guardian, or caretaker must provide a written recommendation ~~is submitted by~~ from a professional ~~such as~~ who is working directly with the child in some capacity that states how child care would be beneficial to the child. The professional may be an occupational therapist, physical therapist, special education teacher, or physician ~~and processed by the Oklahoma Department of Human Services (OKDHS) county office for approval~~.

~~(ii) The professional who writes the recommendation must work directly with the child in some capacity and be knowledgeable concerning the needs of the child.~~

(~~iii~~ ii) ~~This service~~ Unless special circumstances exist, the child care is only for ~~children~~ a child who ~~have~~ has not yet started school or Head Start and when no other funding source exists to provide child care.

(iii) When enrichment child care is approved, care must be provided outside of the child's home in a licensed and contracted child care facility where at least one other child must be attending during the same hours.

(B) **Equipment.** ~~Equipment which is ordered, purchased, and paid for through SSI-DCP is available for children with special needs. The equipment~~ Equipment approved through SSI-DCP must be used to aid the child in accessibility or mobility. ~~It requires a~~ The parent, guardian, or caretaker must provide a written recommendation from a professional, such as an occupational therapist, physical therapist, special education teacher, or physician, who has professional knowledge concerning the equipment needs of the child. SSI-DCP does not pay for repairs of purchased equipment, van lifts, or other items.

(i) Computers or computer software are not in the scope of the program.

(ii) Educational or classroom devices, equipment, or supplies that are not adapted for the needs of the child are not in the scope of the program.

(iii) Van lifts are available to a child who is not in ~~OKDHS~~ the custody of OKDHS, tribal custody, or in the Developmental Disabilities Home and Community-Based Waiver Program. Modifications to the van are not approved.

(I) The ~~family~~ parent, guardian, or caretaker must own the van as verified by title registration and license verification, and the van must be in operating condition.

(II) The worker advises the family that estimates are required from two van lift dealers who employ certified van lift installation technicians.

(III) Only a certified van lift specialist is approved to install the lift and the lift must have factory and dealership warranty equal to private purchase warranty.

(IV) The life expectancy of a van lift is ten years through SSI-DCP. Under no circumstances will the lift be replaced prior to the ten-year period.

(V) All repairs are the responsibility of the family.

(C) **Diapers.** ~~Diapers are stocked in the OKDHS warehouse. Diapers are ordered and distributed monthly to county offices.~~ Certain diapers are available through the OKDHS Supply Warehouse. To be ~~approved for this service~~ eligible to receive diapers, the child must be ~~between~~ at least four years of age ~~and 18 years of age~~. Once the child turns 18, he or she is not eligible. A physician must document in writing that the child cannot be toilet trained. This service request must be renewed yearly at the time of the review to continue receipt of the diapers.

(D) **Formula.** ~~Formula is stocked in the OKDHS warehouse for distribution to the county office for children with special health care needs. Formula is ordered monthly and distributed monthly.~~ Certain formula is available through the OKDHS Supply Warehouse. A physician or nutritionist must provide a ~~written recommendation~~ prescription naming the brand of formula needed by the child. A ~~written recommendation~~ prescription is required yearly at the time of the review to continue receipt of the formula.

(E) **Developmental aid.** A developmental aid is any device or equipment that is adapted to meet the needs of a child with special needs. ~~A child who is not disabled does not generally use these items. This service request requires a written explanation from a~~ A professional, such as an occupational therapist, physical therapist, special education teacher, or physician, must provide a written explanation concerning the goals and objectives this ~~equipment~~ developmental aid would meet before it can be approved.

(F) **Professional services.** ~~These~~ Professional services are non-medical services recommended by a physician, physical therapist, or occupational therapist ~~which~~ that clearly define goals and objectives to

achieve ~~clearly defined~~ results. As the budget allows, certain services are available ~~for emergency needs~~ on a temporary basis.

(4) **Purchasing procedures.** ~~All equipment and materials purchased from SSI-DCP funds must be pre-authorized by Family Support Services Division (FSSD), Health Related and Medical Services (HR&MS) Section.~~ Equipment orders are processed through the OKDHS Support Services Division (SSD) Contracts and Purchasing Unit.

(5) **SSI-DCP notices.** If a SSI-DCP request is denied, a computer-generated denial notice is sent to the ~~family~~ child advising the item is not approved for purchase through the SSI-DCP funding. The family may request a fair hearing within 30 days from the date of the notice by completing Form ~~H-1~~ 13MP001E, Request for a Fair Hearing.

SUBCHAPTER 9. HEALTH RELATED SERVICES

340:70-9-1. Health Related Services [REVOKED]

~~The Family Support Services Division (FSSD) is responsible for providing services to assist eligible individuals utilize health resources in order to prevent or treat a physical, mental, or emotional illness or condition. County staff also has the primary responsibility for identifying and providing health related services to the specific programs of Early and Periodic Screening, Diagnosis and Treatment (EPSDT); Family Planning (FP); and the Supplemental Security Income Disabled Children's Program (SSI-DCP).~~

340:70-9-2. Early and Periodic Screening, Diagnosis and Treatment (EPSDT)

(a) Early and Periodic Screening, Diagnosis and Treatment (EPSDT) is a preventive health program ~~which~~ under the SoonerCare Program that provides for comprehensive medical services to ~~eligible persons~~ SoonerCare recipients under 21 years of age. ~~The purpose of the EPSDT program is to~~ It helps identify and treat physical, mental, or emotional illnesses or conditions in order to prevent or reduce human suffering and economic loss.

(1) EPSDT services consist of physical, dental, visual, or hearing screening, family planning, and assessment services and include the provision of recommended treatment and diagnostic services.

(2) Recipients may receive initial and periodic screening examinations at no cost, provided they continue to be eligibile for SoonerCare.

(3) The initial screening may be obtained any time during the recipient's period of eligibility.

(4) The recipient uses the provider of his or her choice within the confines of the Oklahoma Health Care Authority's (OHCA) provider network. If the recipient does not know of a provider, the worker assists in locating one.

(5) See OAC 340:70-9-17 for information about family planning.

(b) ~~Persons~~ Recipients who receive EPSDT screenings are eligible for all ~~necessary follow-up care~~ recommended treatment and diagnostic services:

(1) within the scope of the ~~Oklahoma Title XIX~~ SoonerCare Program~~.~~; and

(2) ~~They are also eligible for necessary follow-up care~~ beyond the scope of the ~~Oklahoma Title XIX~~ SoonerCare Program when the ~~required care can be provided with federal Medicaid matching funds and the~~ services are pre-authorized by ~~the Oklahoma Health Care Authority~~ OHCA. The scope of the ~~Oklahoma Title XIX~~ SoonerCare Program is detailed in ~~OAC 317:35-3-2~~ OAC 317.

(c) The local human services center (HSC) worker is responsible for identifying and documenting EPSDT services and offering support services. Support services include identifying and resolving any existing barriers to the utilization of EPSDT services.

(1) The worker offers all recipients requesting EPSDT support services assistance in arranging appointments for screening examinations. The worker involves the recipient to the greatest extent possible in the process of arranging appointments for screening.

(2) If lack of transportation is identified as a barrier, the worker assists the recipient in exploring family, neighborhood, and community resources. When appropriate, the worker refers the recipient to SoonerRide, community service groups, or arranges for the services of an Oklahoma Department of Human Services (OKDHS) volunteer, or other staff to meet the need.

(3) If immunizations are not current for children in the family, the worker discusses the importance of keeping immunizations current. The family is also informed that state law requires all children in child care and/or public school to have current immunizations unless exempt for health or religious reasons. The worker recommends that the children make an appointment with their SoonerCare provider or other appropriate local resources to obtain immunizations.

(d) Medical providers of EPSDT services may include physicians, dentists, optometrists, psychologists, clinics, hospitals, child health centers, local health departments, and school districts.

340:70-9-5. Mandatory ~~outreach for~~ offer of Early and Periodic Screening, Diagnosis and Treatment (EPSDT)

(a) ~~Federal regulations require~~ Section 1902 of Title XIX of the Social Security Act requires that all persons under 21 years of age who are determined eligible for ~~Title XIX~~ SoonerCare must be informed of the availability of Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services:

(1) within 60 days of the initial ~~Title XIX~~ eligibility determination~~. The regulations further require that eligible families who have not utilized EPSDT services must be informed~~; and

(2) on an annual basis.

(b) ~~In order to comply with this mandate, the DHS State Office~~ The Oklahoma Department of Human Services (OKDHS)

mails at the time of each certification, and ~~yearly~~ each year thereafter, a written notice to eligible ~~Title XIX~~ SoonerCare recipients informing them of the availability of EPSDT services.

(c) Special arrangements must be provided for ~~those persons~~ recipients who do not read ~~and~~/or understand English.

(1) Recipients unable to read or understand written English are informed through face-to-face contact by the worker of the availability of EPSDT services.

(2) When necessary, the worker arranges for the assistance of a second-language translator, either from among members of the recipient's family or other community resources. For visually handicapped or illiterate English-speaking recipients, the worker reads and explains the written notice of EPSDT availability.

~~(b) EPSDT eligibles are:~~

~~(1) individuals who are newly certified for Temporary Assistance for Needy Families (TANF), State Supplemental Payments (SSP) for the Blind or Disabled, or Title XIX;~~

~~(2) individuals who are recertified for TANF, SSP for the Blind or Disabled, or Title XIX if the benefit has been in closed status for more than 12 months; and~~

~~(3) additional persons under 21 years of age who are added to an active TANF, or Title XIX case.~~

~~(c) The social services specialist is responsible for making the offer of EPSDT services within 60 calendar days of the date of the eligibility determination. It is up to the social services specialist's discretion if it is advisable that this offer be part of an application interview or at a later contact within the time frame. The offer of EPSDT services can be made at the time of an application interview if the social services specialist is relatively certain that the family will be certified for TANF, SSP, or Title XIX within 30 days. The offer of EPSDT services is not made at the time of an application interview if the certification could be delayed more than 30 days such as when an incapacity decision is needed. In this instance, the offer of EPSDT services is made no later than 60 calendar days from the eligibility determination date. If there is a signed acceptance of EPSDT, and the TANF, or SSP application is not certified, eligibility for Title XIX must be determined.~~

(d) ~~The Title XIX recipient whose application is received from one of the facilities doing~~ Persons who apply at a SoonerCare outreach ~~for the Agency is~~ facility are advised of the availability of EPSDT services at the time ~~the Title XIX only application is~~ their SoonerCare applications are processed or completed.

(e) When the offer of EPSDT services is made face-to-face to any eligible recipient, the ~~social services specialist~~ worker provides the recipient with a copy of ~~the Department's EPSDT pamphlet~~ OKDHS Pub. No. 87-36, Early and Periodic Screening, Diagnosis and Treatment. The ~~social services specialist~~ worker discusses ~~preventative~~ preventive health services, including EPSDT in language appropriate for the recipient's level of understanding.

~~(1) EPSDT services consist of physical, dental, visual, or hearing screening and assessment services. Dental examinations are not routinely provided to children under three years of age. EPSDT services also include the provision of recommended treatment and diagnostic services.~~

~~(2) Individuals eligible for EPSDT services can receive initial and periodic screening examinations at no cost to the individuals, as long as they receive public assistance or are otherwise eligible for Title XIX.~~

~~(3) The initial screening can be obtained any time during the recipient's period of eligibility.~~

~~(4) The recipient uses the provider of his or her choice within the confines of his or her level of managed health care. If the recipient does not know of a provider, the social services specialist can help locate one.~~

~~(5) Recommended treatment normally can be provided within the scope of Title XIX. Recommended treatment which is beyond the scope of Title XIX can be provided if federal funding is available and the service is pre-authorized. The social services specialist is available to assist the family in obtaining all recommended treatment services.~~

~~(6) The social services specialist is responsible for ensuring that eligible recipients obtain all requested EPSDT services. To meet this responsibility, the social services specialist's activities may include assisting the recipient to:~~

~~(A) complete required forms;~~

~~(B) arrange needed transportation;~~

~~(C) schedule appointments; and~~

~~(D) coordinate with others.~~

(f) If the medical provider finds an abnormality at the time of the screening, the provider notes this when filing a claim for payment. The results of the screening and abnormal finding are provided to OKDHS and appears on the worker's CWA report.

340:70-9-7. Notice of Early and Periodic Screening, Diagnosis and Treatment (EPSDT) availability to families not literate in English [REVOKED]

~~(a) Eligible individuals unable to read and/or understand written English are informed through face-to-face contact by the social services specialist of the availability of Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services. This offer is made:~~

~~(1) at the contact to complete a Temporary Assistance for Needy Families (TANF) or Title XIX application;~~

~~(2) at the point when it is apparent that the individual under 21 years of age will be approved for a State Supplemental Payment or Title XIX; or~~

~~(3) no later than 60 days following the date of initial certification for a money payment or Title XIX.~~

~~(b) The social services specialist's responsibility to ensure EPSDT services continue to be offered in a face-to-face contact on an annual basis as long as the family contains members under 21 years of age who continue to receive a money payment or Title XIX. When necessary, the social services specialist arranges for the assistance of a second-language translator, either from among members of the recipient's family or other community resources. For visually handicapped or illiterate English-speaking recipients, the social services specialist reads and explains the written notice of EPSDT availability.~~

340:70-9-9. Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services for ~~Title XIX only~~ persons not receiving SoonerCare

~~(a)~~ When a request for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services is made by or on behalf of ~~an individual~~ a person who is not currently receiving public assistance or already approved for ~~Title XIX~~ SoonerCare, the ~~social services specialist processes~~ person must complete an application ~~and determines~~ so eligibility for ~~Title XIX~~ SoonerCare can be determined. ~~If Form MS-MA-5, Notification of Needed Medical Services, is required, the social services specialist can complete Section I of the form and instruct the recipient to present this form to the doctor at the time of the screening. Child Health Screening is entered as the recommended treatment on the Form MS-MA-5.~~

~~(b) When an application for Title XIX only is made prior to the provision of the requested EPSDT services, the provision and documentation of these services are completed in the same manner as any other request for EPSDT services. In some instances,~~ If the EPSDT ~~will be~~ service was provided prior to the ~~initiation of the~~ month of the request for ~~a determination of Title XIX eligibility~~ SoonerCare, it is not covered in accordance with OAC 317:35-6-60.

340:70-9-10. Early and Periodic Screening, Diagnosis and Treatment (EPSDT) support services [REVOKED]

~~The social services specialist ascertains at the time of a request for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services, physical and/or dental, whether the family will need assistance in arranging for the screening examinations. This may include arranging for appointments and/or assistance in keeping scheduled appointments, including locating transportation.~~

~~(1) **Arranging screening examinations.** The social services specialist offers all recipients requesting EPSDT support services assistance in arranging appointments for screening examinations. The social services specialist involves the recipient to the greatest extent possible in the process of arranging appointments for screening. When screening appointments are made by the social services specialist, the recipient is notified of the arrangements in writing or in person, as appropriate, well in advance of the scheduled date. If necessary, the social services specialist reminds the recipient of the scheduled appointment just prior to the appointment date.~~

~~(2) **Assistance in keeping scheduled appointments.** At the time of the request for screening, the social services specialist assists the recipient in identifying and resolving any existing barriers to the utilization of EPSDT services. Where lack of transportation is identified as a barrier, the social services specialist assists the recipient in exploring family, neighborhood, and community resources. When appropriate, the social services specialist refers the recipient to SoonerRide, the recipient's health maintenance organization (HMO), community service groups, or arranges for the services of an Agency volunteer or other staff to meet the need.~~

~~(3) **Immunizations.** The social services specialist explores with the family to determine if the individual immunizations are current. If they are not, the social services specialist discusses the value of the immunization program. The family is also informed that state law requires all children in day care and public school to have current immunizations unless exempt for health or religious reasons. The social services specialist makes a referral to the family's medical provider or, if that option is not available, the appropriate local resources when a family requests assistance in obtaining immunizations and provides support services as needed to ensure the immunizations are obtained.~~

340:70-9-15. Periodicity responsibilities [REVOKED]

~~(a) The periodicity schedule for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services allows for an eligible individual to receive initial screening at any time after the individual's determination of eligibility for Title XIX services. More frequent screening services are also allowed when a medical condition is suspected. The periodicity schedule for EPSDT provides for:~~

~~(1) six child health screenings during the first year of life;~~

~~(2) two screenings in the second year;~~

~~(3) one screening yearly for ages two through five;~~

~~(4) one screening every other year for ages six through 20; and~~

~~(5) dental screening services once every 12 months.~~

~~(b) Families of individuals who are eligible to receive EPSDT services receive, on an annual basis, a written notice regarding the availability of EPSDT services. This notice contains a description of the periodicity schedules. It is not mandatory for the social services specialist to make a personal contact with individuals who are eligible for periodic screening services. However, when the social services specialist contacts the recipient for other purposes such as the redetermination of eligibility, he or she discusses with the recipient the importance of EPSDT services and offers these services as appropriate.~~

340:70-9-17. Family planning services

~~(a) **Scope of program.** The opportunity to participate in family planning services is offered to unmarried and married eligible individuals, and these services are provided when requested. The Agency's family~~ Family planning services ~~includes, for eligible individuals,~~ include information and counseling services, and referrals to medical providers of family planning services ~~and/or supplies~~. ~~Family planning services and/or supplies include,~~ This includes, but ~~are~~ is not necessarily limited to, physical examinations, laboratory tests, ~~counseling,~~ tubal ligations for women over 21, vasectomies for men over 21, and birth control supplies.

~~(b) **Service planning.**~~

(1) When ~~appropriate to~~ the family ~~unit involved, family planning services are included as a part of the development of each plan of service. Family planning is a part of a plan of services in which the individual who is receiving services~~ has the goal of preventing unwanted pregnancy, limiting family size, and spacing births of children~~.~~, ~~The social services specialist~~ the worker has the responsibility to assist the family to become aware of how the utilization of family planning services can affect the future plans of the ~~individual~~ person as well as the functioning of the entire family unit.

~~(c) **Eligibility for family planning services.** Any individual requesting family planning services is eligible for information, referral, and follow-up services related to family planning. Family planning services are provided to unemancipated children under the age of 18 with the consent of their parent or legal guardian. The consent of a parent or legal guardian is not required if the minor child is or has been pregnant or has a child.~~

~~(1) Family planning medical services and supplies can be provided to eligible individuals within the scope of Title XIX. Those persons eligible to receive medical services and supplies provided as a part of family planning services are:~~

~~(A) recipients of Temporary Assistance for Needy Families (TANF);~~

~~(B) recipients of the State Supplemental Payment (SSP) for the Blind or Disabled; and~~

~~(C) persons determined eligible for Title XIX.~~

~~(2) If a request is made for family planning medical services and/or supplies by persons who are not yet determined eligible for Title XIX, a determination of financial eligibility is completed.~~

~~(d) **Outreach for family planning services.**~~

~~(1) The social services specialist has the responsibility for ensuring that clients are aware of the availability of family planning services. The social services specialist discusses and offers family planning services to all newly certified TANF recipients. The social services specialist discusses and offers family planning services to SSP recipients and Title XIX, only if these services are appropriate to the plan of service developed by the social services specialist and recipient.~~

(2) If the person requesting family planning services is not eligible for SoonerCare, the worker determines whether the person is eligible for the stand-alone Family Planning Waiver program outlined in OAC 317:35-7-48.

(~~2~~3) In addition to offering family planning services to the adult members of the family, the ~~social services specialist~~ worker assists the family in assessing the need for family planning ~~related~~ services for any ~~child(ren)~~ child, both male and female, in the household.

(A) ~~When discussing the need for family planning related services for both male and female children, the social services specialist~~ The worker assists the family to become aware of some of the consequences of adolescent pregnancy.

(B) When there is a need for family planning services for any minor child in the household, the minor child ~~can~~ may self-refer to the SoonerCare medical provider of his or her choice.

(~~3~~4) If the family and ~~social services specialist~~ worker decide that family planning services are needed, ~~he or she~~ the worker refers the family to their SoonerCare medical provider.

~~(e) **Provision of family planning services.** The social services specialist is responsible for ensuring that family planning services requested by eligible individuals are initiated within 30 days of the date of the request. Follow-up is provided as indicated. If the requested services have not been obtained within 30 days, the social services specialist explores with the client any existing barriers to making use of these services and provides appropriate assistance in overcoming those barriers.~~

[OAR Docket #07-1155; filed 5-22-07]

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

[OAR Docket #07-1159]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Child Protective Services
340:75-3-8.4 through 340:75-3-8.5 [AMENDED]
Subchapter 4. Family-Centered and Community Services
Part 1. Voluntary Family-Centered Services
340:75-4-14 [AMENDED]
Subchapter 13. Other Child Welfare Services and Medical Services for Children in Out-of-Home Care
Part 3. Income and Resources of the Child
340:75-13-28 through 340:75-13-29 [AMENDED]
(Reference APA WF 07-01)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; and Section 416.621 of Title 20 of the Code of Federal Regulations.
DATES:
Comment period:
February 15, 2007 through March 19, 2007
Public hearing:
None requested
Adoption:
March 27, 2007
Submitted to Governor:
March 27, 2007
Submitted to House:
March 27, 2007
Submitted to Senate:
March 27, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 22, 2007.
Final adoption:
May 22, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

The revisions to Subchapters 3, 4, and 13 of Chapter 75 update and clarify: (1) that the Oklahoma Department of Human Services (OKDHS) is responsible for distributing Child Abuse Multidisciplinary Account (CAMA) monies to eligible multidisciplinary child abuse teams (MDTs) and children's advocacy centers; (2) the purpose and composition of MDTs; (3) procedures for developing an aftercare plan when Family-Centered Services are terminated; (4) criteria for youth to receive Social Security Administration (SSA), Veterans Affairs (VA), or Supplemental Security Income (SSI) benefits; (5) criteria for OKDHS, placement provider, or youth to become the payee of benefits; (6) protocol for a Child Protective Services (CPS) assessment; and (7) language and form numbers to conform to current usage and comply with federal, state, and OKDHS standards.

CONTACT PERSON:

Dena Thayer, Programs Manager, Policy Management Unit, OKDHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

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

SUBCHAPTER 3. CHILD PROTECTIVE SERVICES

340:75-3-8.4. Multidisciplinary child abuse team ~~participation~~

(a) **Purpose of multidisciplinary child abuse team.** ~~A~~ It is the primary responsibility of the district attorney to develop a multidisciplinary child abuse team (MDT) in the district attorney's county or contiguous group of counties, per Section 7110 of Title 10 of the Oklahoma Statutes (10 O.S. § 7110). The MDT approach is ~~utilized~~:

(1) used whenever feasible for investigations and treatment planning involving cases of child sexual abuse, serious physical abuse, and serious neglect~~.~~; ~~The team approach may vary depending on the case and resources available. In some instances, joint interviewing with law enforcement on sexual and physical abuse investigations may be considered a sufficient team approach; on other cases, the entire multidisciplinary team may meet to discuss the case. The multidisciplinary team approach is~~

(2) used to enhance the investigative process and maximize services provided to the affected children and families~~. The use of the team approach is~~; and

(3) not required ~~if~~ when there is reasonable cause to believe that a delay in investigation or interview of a child victim could place the child ~~in jeopardy~~ at risk of harm or threatened harm. ~~[10 O.S. § 7110] If there is not a current multidisciplinary team in existence, it is the primary responsibility of the district attorney to convene a meeting of a coordinated multidisciplinary team. If the district attorney is unwilling or unable to convene the meeting, then DHS CW staff share responsibility with other possible multidisciplinary team members to see that a meeting is convened to determine the feasibility of establishing a team.~~

(~~1~~b) **Multidisciplinary child abuse team ~~composition~~ members.** The ~~composition of the multidisciplinary team may~~ MDT members include, but ~~is~~ are not limited to:

(~~A~~1) mental health professionals;

(~~B~~2) law enforcement;

(~~C~~3) medical personnel;

(~~D~~4) ~~DHS~~ Oklahoma Department of Human Services (OKDHS) Child Welfare (CW) staff;

(~~E~~5) ~~multidisciplinary team~~ MDT coordinators or ~~Child Advocacy Center Directors~~ child advocacy centers personnel; and

(~~F~~6) the county district attorney or ~~designee~~ assistant district attorney.

(~~2~~c) **Multidisciplinary child abuse team ~~function~~ functions.** The function of the ~~team may include reviews of investigations, assessment of service delivery, and planning for disposition of cases through the juvenile and criminal court system. The team may develop protocols for investigations utilizing team members, effective delivery of services for families, and prosecution of child abuse and neglect cases.~~ MDT is dependent upon available resources and includes, but is not limited to:

(1) joint investigations of child abuse reports by law enforcement and CW staff whenever possible;

(2) development of written protocol for investigations and for interviewing children;

(3) identification, improvement, and delivery of services to child victims and their families;

(4) training in the multidisciplinary team approach; and

(5) formalized case reviews.

(~~3~~d) **~~Role~~ Participation of CW staff in the multidisciplinary child abuse team process.** CW staff participates as members of the ~~team~~ MDT in joint investigations and ~~provide information and expertise related to case specific situations and general child abuse and neglect dynamics. If there is any question whether a particular team meets the criteria to be considered a multidisciplinary team, consultation is obtained from the State Office CPS Programs Section. CW staff attend the~~ attends meetings ~~of~~ and case reviews ~~multidisciplinary teams that meet the necessary criteria, when there is a requested or scheduled review of a~~ pertaining to child sexual abuse, serious physical abuse, ~~or~~ and serious neglect ~~case, unless there is a legitimate reason for not attending a particular meeting. Attendance at multidisciplinary team meetings that review or discuss cases that do not involve sexual abuse, physical abuse, or neglect are optional depending on the worker's or supervisor's schedule. Examples of acceptable reasons to decline attendance at a multidisciplinary team meeting include but are not limited to those listed in (A) - (C) of this paragraph~~ by the person responsible for the child.

~~(A) The team is reviewing a case in which DHS has no authority such as in a third party perpetrator case involving a protecting person responsible for the child (PRFC).~~

~~(B) The team is reviewing a case with participants other than the authorized multidisciplinary team~~

~~members and there is some question as to whether DHS confidentiality requirements can be followed. Any time this is an issue, consultation is obtained from the State Office CPS Programs Section, in conjunction with the Legal Division, to determine whether the participants have the legal authority to review confidential DHS records.~~

~~(C) There is an unavoidable conflict in the worker's schedule and the supervisor is unable to attend on behalf of the worker.~~

(e) **Child abuse multidisciplinary team account.** Funds collected from fees for civil cases filed in district courts of Oklahoma are deposited with OKDHS and are designated as child abuse multidisciplinary team account (CAMA) monies, per 10 O.S. §§ 7110.1 and 7110.2.

(1) OKDHS distributes CAMA monies to functioning freestanding MDTs approved by the Child Abuse Training and Coordination Council (CATCC) and to child advocacy centers (CACs) accredited by the National Children's Alliance (NCA).

(2) CAMA monies are:

(A) provided for the maintenance of eligible MDTs and CACs;

(B) distributed each calendar year to MDTs and CACs by a weighted formula;

(C) made available to:

(i) one functioning MDT per county;

(ii) one hospital team; and

(iii) one accredited CAC per district attorney's district.

(3) After the NCA's five-year accreditation, the CAC must secure a third-year interim review in order to continue to be eligible for CAMA monies.

(A) The Children's Advocacy Centers of Oklahoma, Inc. (CACO) administers the review by procuring an NCA site reviewer who resides outside of Oklahoma and has no conflict of interest. The CAC submits to the reviewer 60 days prior to the on-site review:

(i) current Interagency Agreement;

(ii) current Multidisciplinary Child Abuse Team Protocol;

(iii) current financial audit;

(iv) current program budget;

(v) proof of general and professional liability coverage for the CAC board of directors and officers;

(vi) Internal Revenue Service letter of 501(c)(3) status or government affiliation statement letter;

(vii) demographic information for the community;

(viii) statistical data; and

(ix) NCA accreditation standards certifying documents.

(B) The site reviewer makes a one-half day on-site visit to the CAC and administers the review in the same manner as the NCA accreditation process.

(C) The CAC demonstrates performance of the essential components of the NCA accreditation process with full cooperation and availability of requested personnel.

(4) Failure of the third-year review requires a fourth-year review, but does not make the CAC ineligible for CAMA monies. If the CAC fails the fourth-year review:

(A) the CAC may submit, within ten working days from the site reviewer's written notice of failure:

(i) a written request for further review by the CACO board of directors; and

(ii) documents pertaining only to the CAC's understanding of the compliance issues. Information for the purposes of improvement or change of practice is not considered; and

(B) the CACO board of directors secures three additional NCA site reviewers from outside Oklahoma to review the written findings.

(5) When the review failure is upheld or when the CAC does not request further review of a failure notice, the CAC is no longer eligible for CAMA monies until reaccredited by the NCA.

340:75-3-8.5. ~~Assessment~~ Child Protective Services assessment protocol

~~The assessment is a process of determining the safety needs of the child and engaging the child's family so that the family strengths can be enhanced and needs addressed. While maintaining child safety is the priority of the process, the assessment is based on a family centered philosophy of service delivery.~~ The Child Protective Services (CPS) assessment, like an investigation, must address any allegations resulting from a report of abuse or neglect, be as thorough as possible in identifying risk factors, and address the safety needs of each child~~. It is the~~, per Section 7106 of Title 10 of the Oklahoma Statutes. A home visit must be made as part of the CPS assessment, and all alleged victims must be observed.

(1) The approach with the family during ~~an~~ the CPS assessment ~~that~~ differs from an investigation. ~~While investigations occur when there are allegations that could indicate imminent risk of serious harm to a child, an~~ An assessment addresses allegations of abuse or neglect that do not indicate immediate risk of serious harm to the child.

(2) ~~An assessment process, because there is low risk or moderate risk of harm to the child,~~ The CPS assessment does not have a strong emphasis on incident-based fact finding. ~~The assessment process is intended to encourage the~~ The family is encouraged to participate in addressing any safety concerns. ~~Through an assessment, the CW worker can obtain information from the family about their overall functioning, the resources and supports that are available to the family and what they may need to help their family provide a safe environment for their child(ren). Utilizing the assessment approach can enhance the development of a helping relationship between the CW worker and the family.~~

SUBCHAPTER 4. FAMILY-CENTERED AND COMMUNITY SERVICES

PART 1. VOLUNTARY FAMILY-CENTERED SERVICES

340:75-4-14. Termination of voluntary Family-Centered Services ~~(FCS)~~

(a) **Conferring with the ~~Child Welfare (~~CW~~)~~ supervisor regarding case closure.**

(1) When the family demonstrates progress in treatment plan goals and objectives, the Child Welfare (CW) worker determines with the family, and other service providers, the family's readiness for decreasing the frequency of contacts. The CW worker obtains approval from the CW supervisor.

(2) Before initiating steps to close the case, the CW worker and CW supervisor meet to staff the case.

(b) **Terminating CW involvement.** The primary criterion for closing a case is the determination that the child's health, safety and ~~well-being~~ welfare will be maintained by the family without CW involvement. The family, CW worker, and CW supervisor are involved in the determination that the child's health, safety, and ~~well-being~~ welfare is ensured.

(c) **Developing an aftercare plan.** An aftercare plan is jointly developed with the family. The CW worker:

(1) determines whether the family needs further services or assistance, and provides any needed referrals for community services;

(2) advises the family of signs that might indicate a need for services in the future; and

(3) provides the family with information about whom to contact for help.

SUBCHAPTER 13. OTHER CHILD WELFARE SERVICES AND MEDICAL SERVICES FOR CHILDREN IN OUT-OF-HOME CARE

PART 3. INCOME AND RESOURCES OF THE CHILD

340:75-13-28. Social Security Administration and Veterans Affairs benefits

(a) **Benefits.** Social Security Administration (SSA) benefits are based on the child's wage earner's work record and are paid due to the death, retirement, or disability of the wage earner. Entitlement to Veterans Affairs (VA) benefits may be due to a service connected or nonservice connected military record of a deceased, disabled, or retired parent.

(b) **OKDHS as payee for a child's benefits.** When a child who receives or may be eligible to receive ~~Social Security Administration (~~SSA~~)~~ or ~~Veterans Affairs (~~VA~~)~~ benefits, and for whom the Oklahoma Department of Human Services (OKDHS) is paying the full amount of the child's cost of care, is placed in ~~Oklahoma Department of Human Services (~~OKDHS~~)~~ custody and out-of-home placement, Children and Family Services Division (CFSD) Administrative Services Unit (ASU) applies to become payee for these benefits. ~~SSA benefits are based on the wage earner's work record and are paid due to the death, retirement, or disability of the wage earner. Entitlement to VA benefits may be due to a service connected or nonservice connected military record of the deceased or disabled parent(s).~~

(1) To ensure the application for and transfer of SSA or VA benefits, the:

(A) Child Welfare (CW) worker, within ten working days after the child's placement or when potential eligibility is recognized, completes and submits to ASU Form ~~DCFS 119~~ 04MP029E, Report of Social Security and Veterans Benefits for Children in Out-of-Home Placement, requesting an initial eligibility determination;

(B) assigned custody specialist, within ten working days after the child's placement, completes and submits to ASU Form ~~DCFS 119~~ 04MP029E, requesting the payee be changed to OKDHS; and

(C) CW worker, within ten working days, notifies ASU via e-mail when the:

(i) child's placement type changes; or

(ii) child is released from OKDHS custody or ~~out-of-home placement~~ OKDHS paid care.

(2) The youth who remains in school beyond age 18 to complete his or her high school education remains eligible for SSA and VA benefit payments until the youth turns age 19 or graduates if still in high school. If the youth is not competent to manage his or her money and pay for his or her cost of care, OKDHS remains the payee for benefits. The CW worker:

(A) submits Form SSA-1372, Student Statement Regarding School Attendance, to SSA when SSA is the source of the benefits, attaches a statement of evidence that the youth is not able to manage money, and sends that information to CFSD ASU;

(B) assists the youth in applying for a Disabled Adult Child case with SSA; or

(C) if the youth does not wish to make the benefit payments available to OKDHS to defray the cost of care, explores with the youth alternatives to OKDHS paid care that are consistent with the goals of self-support and self-sufficiency.

~~(3) The OKDHS contracted placement provider does not receive the full amount of foster care reimbursement and any other income the child may receive.~~

~~(A) The foster care payment is reduced by any other money the contractor receives for the child.~~

~~(B) If the amount of income received for the child is greater than the foster care reimbursement, the contractor may request to receive such monies in lieu of foster home payment from CFSD Foster Care Section.~~

(c) **Placement provider as payee for a child's benefits.** The kinship, paid, or non-paid placement provider submits completed Form 04FC011E, Placement Agreement for

Out-of-Home Care, to the local SSA office to apply as the eligible child's payee. The CW worker assists the placement provider complete the form.

(1) **Benefits.**

(A) If the SSA benefit is equal to or greater than the foster care payment, the placement provider receives the full benefit and no payment from OKDHS for the child's care.

(B) If the SSA benefit is less than the foster care payment, the placement provider may receive a partial foster care payment that is reduced dollar for dollar based on the amount of the SSA benefit.

(2) **Eligibility for paid placement provider.** The OKDHS paid placement provider may apply as representative payee for a child when the child is an SSA recipient placed with the placement provider continuously for nine or more months.

(d) **Beneficiary as payee for a child's benefits.** The youth who remains in school beyond age 18 to complete his or her high school education remains eligible for SSA and VA payments until the youth turns age 19 or graduates if still in high school.

(1) If the youth is capable of managing money, the CW worker or placement provider:

(A) submits to the local SSA office Form SSA-1372, Student Statement Regarding School Attendance;

(B) explains to the youth that the youth must pay the placement provider at the current rate;

(C) explores with the youth alternative placements that are consistent with the goals of self-support and self-sufficiency if the youth does not wish to pay the cost of care; and

(D) notifies the placement provider that OKDHS may pay a foster care payment reduced dollar for dollar based on the SSA benefit if the benefit is less than the foster care payment.

(2) If the youth is not capable of managing money and OKDHS is not paying the youth's full cost of care, the placement provider works with SSA to determine the payee for the youth's benefits.

340:75-13-29. Supplemental Security Income - Disabled Children's program

(a) **SSI program.** Supplemental Security Income (SSI) is a federal program for which recipients must qualify based on disability criteria, household income, and resource criteria designated by the Social Security Administration (SSA).

(1) To remain eligible for SSI, recipients may not accrue more than the maximum allowed by SSA.

(2) Some children in the legal custody of Oklahoma Department of Human Services (OKDHS) receive or may be eligible to receive SSI benefits on the basis of physical, mental, or emotional criteria.

(3) The SSI recipient remains eligible for SSI if the recipient's income, resources, and disability continue to meet SSI program criteria.

(b) **OKDHS as payee for a child's benefits.**

(1) ~~Applications are~~ The initial application is made ~~for these children~~ by Children and Family Services Division Administrative Services Unit (ASU) for a child who receives or may be eligible to receive SSI when the child:

(A) is in OKDHS custody and ~~out-of-home placement~~ OKDHS is paying the total cost of the child's care; and

(B) appears eligible for SSI based on disability.

(2) To ensure the application for and transfer of benefits, the:

(A) CW worker completes and submits to ASU, within ten working days after the child's placement or as soon as the child's disabling condition is identified, ~~and submits to ASU~~ Form ~~DCFS 119~~ 04MP029E, Report of Social Security and Veterans Benefits for Children in Out-of-Home Placement, requesting an initial eligibility determination;

(B) custody specialist completes and submits to ASU, within ten working days after the child's placement, ~~and submits to ASU~~ Form ~~DCFS 119~~ 04MP029E, requesting the payee be changed to OKDHS; and

(C) CW worker, within ten working days, e-mails ASU when the child's placement type changes or the child is released from OKDHS custody or out-of-home placement.

~~(3) The OKDHS contracted placement provider does not receive the full amount of foster care reimbursement and any other income the child may receive.~~

~~(A) The foster care payment is reduced by any other money the contractor receives for the child.~~

~~(B) If the amount of income received for the child is greater than the foster care reimbursement, the contractor may request to receive such monies in lieu of foster home payment from CFSD Foster Care Section.~~

~~(4) The child who is an SSI recipient remains eligible for SSI if the child's income, resources, and disability continue to meet SSI program eligibility criteria.~~

(3) OKDHS receives and monitors the child's benefits.

(A) OKDHS receives the child's benefits until the child leaves OKDHS out-of-home placement if OKDHS is paying the full cost of the child's care.

(B) ASU monitors each child's accrued funds and notifies the CW worker when the limit is approached to give specific instructions regarding the spenddown of that child's money. Purchases made with the child's accrued benefits must be items that benefit the child and are specifically for that child. These items must follow the child to all subsequent placements.

(c) **Placement provider as payee for a child's benefits.** The kinship, paid, or non-paid placement provider submits completed Form 04FC011E, Placement Agreement for Out-of-Home Care, to the local SSA office to apply as the eligible child's payee. The CW worker assists the placement provider complete the form.

(1) **Benefits.**

(A) If the SSI benefit is equal to or greater than the foster care payment, the placement provider receives the full benefit and no payment from OKDHS for the child's care.

(B) If the SSI benefit is less than the foster care payment, the placement provider may receive a partial foster care payment that is reduced dollar for dollar based on the amount of the SSI benefit.

(2) **Eligibility for paid placement provider.** The OKDHS paid placement provider may apply as representative payee for a child when the child is an SSI recipient placed with the placement provider continuously for nine or more months.

(d) **Beneficiary as payee for a child's benefits.** The youth who remains in school beyond age 18 to complete his or her high school education remains eligible for SSI if the youth's income, resources, and disability continue to meet SSI program criteria.

(1) If the youth is capable of managing money, the CW worker or placement provider:

(A) submits to the local SSA office Form SSA-1372, Student Statement Regarding School Attendance;

(B) explains to the youth that the youth must pay the placement provider at the current rate;

(C) explores with the youth alternative placements that are consistent with the goals of self-support and self-sufficiency if the youth does not wish to pay the cost of care; and

(D) notifies the placement provider that OKDHS may pay a foster care payment reduced dollar for dollar based on the SSI benefit if the benefit is less than the foster care payment.

(2) If the youth is not capable of managing money and OKDHS is not paying the youth's full cost of care, the placement provider works with SSA to determine the payee for the youth's benefits.

(~~b~~e) **Referrals.** Section 1615 of the Social Security Act provides for the referral by SSA of SSI recipients younger than 18 years of age to a designated state agency for provision of services to improve the child's disability. The Omnibus Reconciliation Act of 1981, Public Law 97-35, authorizes Oklahoma to operate a program for these children as a component of the Maternal and Child Health Block Grant. OKDHS is designated to administer this program in Oklahoma.

(1) The purpose of SSI-Disabled Children's Program (DCP) is to ensure that all available services and resources are used, as necessary, to assist each eligible child to become a self-sustaining and self-supporting adult.

(2) The Department of Rehabilitation Services Disability Determination Unit determines SSI eligibility for SSA and refers every SSI recipient, younger than 18 years of age, to Family Support Services Division Health Related and Medical Services to maintain a control on all referrals.

[OAR Docket #07-1159; filed 5-22-07]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 100. DEVELOPMENTAL DISABILITIES SERVICES DIVISION

[OAR Docket #07-1156]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Client Services
Part 3. Service Provisions
340:100-5-22 [AMENDED]
340:100-5-25 [REVOKED]
(Reference APA WF 07-05)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; and, in part, 10 O.S. § 1430.1 et seq., Group Homes for Persons with Developmental or Physical Disabilities Act; and 56 O.S. § 1025.1.
DATES:
Comment period:
February 15, 2007 through March 19, 2007
Public hearing:
None requested
Adoption:
March 27, 2007
Submitted to Governor:
March 27, 2007
Submitted to House:
March 27, 2007
Submitted to Senate:
March 27, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 22, 2007.
Final adoption:
May 22, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed revisions to Subchapter 5 of Chapter 100, Title 340 are required to: (1) reflect current residential service options; (2) update terminology; and (3) eliminate obsolete provisions.
CONTACT PERSON:
Dena Thayer, Programs Manager, Policy Management Unit, OKDHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 5. CLIENT SERVICES

PART 3. SERVICE PROVISIONS

340:100-5-22. Residential services

Residential services are provided contingent upon the availability of funding and resources. ~~The provision~~ Provision of services may be determined by government regulations or the judiciary. ~~Clients~~ Service recipients who require residential supports are provided services determined by the ~~interdisciplinary team~~ Personal Support Team (Team), per OAC 340:100-5-52, to represent the least restrictive appropriate setting possible.

(1) All referrals for residential services are processed ~~in accordance with DDSD intake policy and procedures~~ per OAC 317:30 and 317:40 or OAC 340:100.

(2) All ~~individuals~~ service recipients must meet eligibility requirements ~~as established by DDSD policy as a prerequisite to participation in~~ per OAC 340:100 for residential services.

(3) The ~~individual~~ service recipient, family member, and~~/or representative have an active role in identifying~~, if applicable, guardian are included as part of the Team to identify residential service needs.

(4) Residential ~~Services~~ services include:

~~(A) Supported Living;~~

(~~B~~A) ~~Semi-independent~~ assisted living services per OAC 340:100-5-22.2;

~~(C) Specialized Foster Care;~~

~~(D) Group Home Services;~~

~~(E) Adult Companion Services;~~

(B) group home services per OAC 340:100-6;

(C) home- and community-based services options per OAC 340:100-5-22.1 and group home services per OAC 317:40-5-152;

(~~F~~D) ~~Private~~ private intermediate care facility for the mentally retarded (ICF-~~/~~MR); ~~and~~

(~~G~~E) ~~Public~~ public ICF/MR ~~Programs~~ programs at ~~the~~ Northern Oklahoma Resource Center of Enid (NORCE) and Southern Oklahoma Resource Center (SORC) per OAC 317:30-3-43. ~~Individuals~~ Service recipients who meet ~~the~~ ICF/MR level of care requirement may be admitted to the public ICFs/MR for residential services when their individual circumstances indicate ~~that~~ placement in a public ICF/MR is the least restrictive, most appropriate residential environment available.

(i) ~~Otherwise eligible individuals~~ Service recipients who are able to receive services ~~which~~ that meet their needs in less restrictive environments than a state-operated facility are not eligible for admission.

(ii) This ~~policy~~ does not preclude the provision of respite services or other emergency interventions ~~which~~ that may require ~~that individuals~~ service recipients reside at ~~the resource centers~~ NORCE or SORC for a time-limited period~~.~~; and

(~~H~~F) ~~Specialized Public~~ specialized public ICF/MR ~~Program~~ program at ~~the~~ Robert M. Greer Center (Greer) per OAC 340:100-11. ~~Admissions and eligibility criteria for the Robert M. Greer Center are contained in OAC 340:100-11-4.~~

~~(5) Individuals residing at either the Northern or Southern Oklahoma Resource Center on the effective date of the rules in this Part are exempt from this admissions policy provided that each individual continues to meet ICF/MR level of care requirements, and each individual's legal representative formally elects to continue the individual's residence at the facility. Should current residents of the resource centers elect to seek community services, they will be maintained on trial leave status until such time as the consumers and their legal representatives are satisfied with the alternative program.~~

(~~6~~5) No ~~one will~~ service recipient may move from ~~the resource centers~~ NORCE or SORC without ~~having~~ adequate ~~community-based~~ supports in place as ~~certified~~ determined by the ~~individual's interdisciplinary team~~ service recipient's Team. ~~Parents/guardians are automatic members of the individual's interdisciplinary team.~~

~~(7) Area Managers may, when recommended by the interdisciplinary team, authorize specialized foster care, group home, adult companion, supported living and semi-independent living services.~~

(~~8~~6) ~~The~~ Oklahoma Health Care Authority (OHCA) establishes eligibility and certifies level of care need for admission to private and public ICFs/MR ~~in accordance with the~~ per OHCA policy ~~of that Agency~~. Admission to ~~Public~~ public ICFs/MR must be approved by ~~the Director of~~ the Oklahoma Department of Human Services Director or ~~his/her~~ designee.

(~~9~~7) Continued eligibility for appropriateness of services is addressed by the ~~interdisciplinary team~~ Team during annual development of the ~~IHP~~ Individual Plan (Plan). ~~Continuation of services is authorized by the Area Manager upon review of findings of the interdisciplinary team.~~

~~(10) Area Managers may provide provisional authorization for services (not to exceed 90 days) upon written recommendation of the interdisciplinary team, pending development of the IHP.~~

(~~11~~8) Specific residential support needs are determined through the ~~interdisciplinary team~~ Team process and documented in the ~~person's Individual Habilitation~~ service recipient's Plan. The services provided ~~shall~~ must be ~~those~~ identified in the ~~Individual Habilitation~~ approved Plan.

(~~12~~9) The ~~Case Manager/Individual Program Coordinator~~ Developmental Disabilities Services Division (DDSD) case manager, agency program coordinator, or both ~~ensures that~~ ensure residential services are coordinated with all other services provided to the ~~individual~~ service recipient.

~~(13) The number of people served by a DDSD facility or contract agency does not exceed:~~

~~(A) The agency's capacity to assure client safety and habilitation;~~

~~(B) Licensing standards;~~

~~(C) Provisions of DDSD contracts; and~~

~~(D) DDSD or contract agency budgetary restraints.~~

(~~14~~10) Contract providers~~/agencies~~ are reimbursed for residential services at rates established by ~~the~~ Oklahoma

Commission for Human Services or ~~by contract provisions approved by the Director of DHS~~ OHCA.

(~~15~~11) Programs and facilities are monitored on a regular basis to ensure continued compliance with all applicable contract conditions, rules, and regulations. Monitoring reports documenting ~~degrees of~~ compliance with regulatory standards are maintained and used as a basis for contract renewal or termination.

(~~16~~12) Provider agencies are informed of, and provided an opportunity to correct deficiencies ~~which~~ that may result in contract termination ~~and have the right to appeal actions taken by the DDSD with which they disagree~~ per OAC 340:100-3-27.1.

340:100-5-25. Service authorization/client services/service provisions/residential services [REVOKED]

~~The DHS affirms the right of individuals to reside in a setting of choice, commensurate with their need.~~

~~(1) A discrepancy between the interdisciplinary team recommendation and the individual's personal choice prompts an administrative review by the Division Administrator. If the administrative review does not resolve the issue a further review shall be completed by a three person administrative review panel composed of the Deputy Director of DHS, the DDSD Director of Psychological Services, and the Advocate General. If this review does not resolve the dispute, the request for review is forwarded to the Director of DHS for a final decision.~~

~~(2) The following shall serve as guidelines for the administrative review of consumer admission to or continued residence in settings within the service continuum.~~

~~(A) Supported/Semi-Independent Living/Independent Living - Age 18 and above and meets eligibility requirements for DDSD services.~~

~~(B) Family Home - Recommended setting for children and meets requirements of eligibility for DDSD services.~~

~~(C) Specialized Foster Care - Between ages 6-18, or through the completion of school, and meets eligibility requirements for DDSD services.~~

~~(D) Adolescent Group Home - Age 14-17 and meets eligibility requirements for DDSD services.~~

~~(E) Adult Group Home - Age 18 and above and meets eligibility requirements for DDSD services. Case manager can authorize residential placement into a group home when there is an appropriate available bed.~~

~~(F) ICF-MR - Meets eligibility requirements for Medicaid ICF-MR services. Eligibility for admission to a public ICF-MR program at the Northern or Southern Oklahoma Resource Centers requires a determination by the Department that residence in the facility is the least restrictive, most appropriate setting available to meet the needs of the individual as identified at the Individual Habilitation Plan (IHP) by the IDT. For individuals who were living at the resource centers on the effective date of the rules in this Part, continued residence requires only that the individual meet the standard for ICF/MR level of care and that the individual's legal representative formally elects for them to remain in residence. The election to remain in residence is made in writing and delivered to the Department at the time of the IHP.~~

~~(3) Interdisciplinary teams are charged with the responsibility of assessing the appropriateness of all living environments for which a client is eligible as part of service planning with each individual/family. The interdisciplinary team recommendation shall reflect the least restrictive of these residential alternatives capable of meeting identified needs.~~

~~(4) All persons receiving services from or through providers under contract with the Division of Developmental Disabilities Services, participate in a developmental assessment.~~

~~(5) Case Managers/Superintendents are authorized to approve residential services recommended within Individual Habilitation Plans when compatible with this policy.~~

~~(6) Consumers maintain the right to appeal service eligibility determinations as stipulated by Oklahoma's State Medicaid Plan and DHS administrative appeals policy. Consumers are provided literature and an understandable explanation describing procedures for exercising this right.~~

[OAR Docket #07-1156; filed 5-22-07]

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

[OAR Docket #07-1160]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Licensing Standards for Child Care Facilities
Part 8. Requirements for Children's Shelters [REVOKED]
340:110-3-130 through 340:110-3-144 [REVOKED]
Part 11. Requirements for Therapeutic Camps [REVOKED]
340:110-3-180 through 340:110-3-195 [REVOKED]
Subchapter 5. Requirements for Child-Placing Agencies
Part 7. Requirements for Group Homes [REVOKED]
340:110-5-80 through 340:110-5-99 [REVOKED]
(Reference APA WF 07-10)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; and The Oklahoma Child Care Facilities Licensing Act, Section 401 et seq. of Title 10 of the Oklahoma Statutes.
DATES:
Comment period:
February 15, 2007 through March 19, 2007
Public hearing:
None requested
Adoption:
March 27, 2007
Submitted to Governor:
March 27, 2007
Submitted to House:
March 27, 2007
Submitted to Senate:
March 27, 2007

Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 22, 2007.
Final adoption:
May 22, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The revisions to Subchapters 3 and 5 of Chapter 110 improve the program and services provided by Oklahoma Department of Human Services (OKDHS) Division of Child Care (DCC) by revoking obsolete and duplicative Sections in Parts 8 and 11 of Subchapter 3 and Part 7 of Subchapter 5. Rules containing the current updated requirements regarding residential child care facilities are codified in existing Subchapter 3, Part 9.
CONTACT PERSON:
Dena Thayer, Programs Manager, Policy Management Unit, OKDHS, 2400 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-3611.

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE DEPARTMENT OF HUMAN SERVICES, SEQUOYAH BUILDING, OKLAHOMA CITY AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):

SUMMARY:
Sections in Parts 8 and 11 of Subchapter 3 and Part 7 of Subchapter 5 that are obsolete and duplicative in other Sections are revoked. Rules containing the current updated requirements regarding residential child care facilities are codified in existing Subchapter 3, Part 9.

[OAR Docket #07-1160; filed 5-22-07]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #07-1110]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Description of Forms and Instructions
365:1-9-5. Surplus lines forms [AMENDED]
365:1-9-11. ~~Agents' applications~~ Applications [AMENDED]
365:1-9-12.1. Required appointments [REVOKED]
365:1-9-14. ~~Agents~~Producer and adjuster continuing education forms [AMENDED]
365:1-9-15.1 License renewals and reinstatements [AMENDED]
AUTHORITY:
Insurance Commissioner, 36 O.S. §§ 307.1, 1435.19, 1435.29(H)
DATES:
Comment period:
January 16, 2007, to February 15, 2007
Public hearing:
February 22, 2007
Adoption:
March 16, 2007
Submitted to Governor:
March 23, 2007
Submitted to House:
March 23, 2007
Submitted to Senate:
March 23, 2007
Gubernatorial approval:
April 23, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 17, 2007
Final adoption:
May 17, 2007
Effective:
July 14, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The amendments to 365:1-9-5 require that surplus lines direct placement forms contain the same information as the surplus lines broker forms.
The amendment to 365:1-9-11 removes the Arkansas Border Trade Agent form. Border trade agreements for producers are no longer necessary as a result of licensing requirements under the Producer Licensing Act.
The amendment to 365:1-9-12.1 eliminates the requirement of an appointment at the time of license renewal. Appointments are no longer required to maintain an active producer license under the Producer Licensing Act.
The amendments to 365:1-9-14 involve revisions to continuing education forms. The amendments require prior notice of continuing education form revisions prior to the form revisions, eliminate specific time requirements for course approval, requires a request for course approval to be submitted on a particular form, requires an affidavit to be provided regarding attendance at a continuing education course, and requires providers to submit notification to the Insurance Department concerning the time, place, location, and name of instructors for approved course offerings.
The amendment to 365:1-9-15.1 eliminates the requirement of an appointment for reinstatement of a license. Appointments are not required for an active license under the Producer Licensing Act.
CONTACT PERSON:
Karl F. Kramer, First Assistant General Counsel, (405) 521-2746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2007:

SUBCHAPTER 9. DESCRIPTION OF FORMS AND INSTRUCTIONS

365:1-9-5. Surplus lines forms

(a) **Surplus lines brokers quarterly ~~statement and affidavit~~ summary form.** The surplus lines ~~brokers quarterly statement and affidavit forms show~~ broker quarterly summary includes forms that detail the types of coverages written, the aggregate amount of insurance issued, the gross premiums charged, and the gross return premium. ~~The top page~~ Form SL-3a must be signed by the broker with an original/live signature, notarized, and filed on or before the last day of the month following the close of a calendar quarter. The specific forms are:

(1) SL-3a Affidavit of a true and correct report. File in duplicate.

(2) SL-3b Spreadsheet to accumulate premium and tax data by the company number and company name of the surplus line carrier. File in one-part only.

(3) SL-3c Affidavit ~~for placement~~ of coverage. File in one-part.

(4) SL-3d Affidavit for return of premiums and the credit or refund of premium taxes.

(b) ~~**Report of direct purchase of surplus lines insurance**~~ **Surplus lines direct placement by an insured summary form.** The ~~report of direct purchase of surplus lines insurance form is filed by individuals who purchase insurance direct from non-admitted companies. The report states the name of the purchaser, the insurer, the type of insurance, the amount of premium, and the tax due.~~ direct placement by an insured summary includes forms that detail the types of coverages written, the aggregate amount of insurance issued, the gross premiums charged, the gross return premium, and the tax due. Form DSL-3a must be signed by the affiant, generally the individual responsible for procuring risk coverage, with an original signature, notarized and filed within thirty (30) days next succeeding the issuance of evidence of coverage. The specific forms are:

(1) DSL-3a Affidavit of a true and correct report. File in duplicate.

(2) DSL-3b Spreadsheet to accumulate premium and tax data by the company number and company name of the surplus lines carrier. File in one part only.

(3) DSL-3c Affidavit of coverage. File in one-part.

(4) DSL-3d Affidavit for return of premiums and the credit or refund of premium taxes.

365:1-9-11. ~~Agents' applications~~ Applications

The following applications must be completed by the person(s) making application and upon completion, must comply with the applicable Oklahoma statutes:

(1) Application for Resident Insurance License (IL-1).

(2) Application for Non-Resident Insurance License (IL-1).

(3) Application for Insurance License for Partnership or Corporation (R-3).

(4) Application for License as Third Party Administrator (TPA-1).

(5) Application for Corporate License as Third Party Administrator (TPA-2).

(6) Application for License as Insurance Adjuster (CR-1).

(7) Application for License as Insurance Consultant (IC-1).

(8) Application for License as Managing General Agent or Agency (MGA).

(9) Application for Resident Insurance Broker's License (IL-1).

(10) Catastrophe Registration as Emergency Insurance Adjuster (EIA).

~~(11) Arkansas Border Trade Agent (PR-1).~~

(~~12~~11) Application for Customer Service Representative (IL-1)

365:1-9-12.1. Required appointments [REVOKED]

~~(a) Upon the renewal of a license, a particular line of an agent's license must be supported by an appointment or the line will not be renewed unless a waiver of this requirement is granted by the Insurance Commissioner. A request for such a waiver shall be requested in writing at least ten days prior to the renewal deadline.~~

~~(b) If no lines are supported by an appointment, the license will not be renewed unless a waiver of this requirement is granted by the Insurance Commissioner. A request for such a waiver shall be requested in writing at least ten days prior to the renewal deadline.~~

365:1-9-14. ~~Agents~~ Producer and adjuster continuing education forms

(a) ~~**Application for Provider Approval**~~ **Form Approval.** ~~**(CE-1).** The application for provider approval should be submitted to request approval to provide agents continuing education courses in this state.~~ The Insurance Commissioner shall approve forms to be used by providers of continuing education courses for producers and adjusters. Notice of any form changes shall be given to providers no less than 30 days before the effective date of form revisions.

(b) ~~**Request for Course Approval (CE-2).**~~ **Provider Application.** ~~The request for course approval form and attachments are required at least thirty (30) days prior to the beginning of an agents continuing education course but not less than ten (10) days prior to the Advisory Committee meeting immediately preceding the course date so that the course may be reviewed and credits be granted.~~ A provider application shall be submitted and approved in order to provide continuing education courses to producers and adjusters.

(c) ~~**Instructor Qualification Form (CE-3).**~~ **Course Approval Request.** ~~The instructor qualification form is required for each instructor or speaker for agents continuing education courses. The instructor qualification form must be completed; resumes or biographical statements may be attached.~~ The request for course approval shall be submitted on a course approval request form. The form and attachments are required the first day of the month one full month before the first course offering.

(d) ~~**Provider List of Agents Successfully Completing Course (CE-4).**~~ **Course Completion.** A ~~provider~~ list of ~~agents~~ producers and adjusters successfully completing a course must be submitted ~~to the Insurance Department~~ by the provider and received by the Commissioner within ten (10) business days from the ending date of the course. The form shall include an affidavit from the provider certifying that the producers or adjusters appearing on the list have been positively identified, have completed the course, and are entitled to continuing education credits. A copy of the list shall be maintained by the provider for no less than four (4) years.

(e) **Certificate of Course Completion (CE-5).** Each student successfully completing a course shall be provided a certificate of course completion.

(f) ~~**Course List.**~~ **Schedule of Course Offerings.** ~~A list of current courses approved for continuing education credits is available from the Insurance Commissioner's office, Agents~~

~~Licensing Division.~~ The provider shall submit notification to the Insurance Department confirming the date, time, location and instructors for approved course offerings that are not a self-study format.

(g) **Notice of Approved Course to be Repeated (CE-6).** The provider shall submit notification to the Insurance Department at least fourteen (14) days prior to the beginning date of the approved course to confirm time, location, date and instructor(s).

(h) **Instructor Qualification.** An instructor qualification form shall be filed for each instructor or speaker for a continuing education course.

(i) **Course Evaluation.** The provider shall submit a course evaluation form completed by each producer or adjuster listed on the course completion form. The course evaluation form shall be received by the Commissioner within ten (10) business days from the ending date of the course.

365:1-9-15.1. License renewals and reinstatements

(a) **Proof of courses.** As a prerequisite for submission of a renewal or reinstatement application, when requested by the Insurance Commissioner, each licensee must submit Certificate(s) of Course Completion with said application to equal the total number of hours required.

(b) **Renewal period and required submissions.** Renewals will be accepted up to ninety days after the expiration date with a properly completed renewal form, proof of course completion and double the license fee.

(c) **Required submissions after ninety days.** After the ninety-day period and before two years after the license expiration date, a licensee shall be eligible for reinstatement by submitting a new application~~, company appointment(s),~~ and applicable fees. A licensee shall not be eligible for reinstatement if previously the license was revoked, suspended or continuance was denied.

(d) **Insurance adjusters.** This section shall also apply to insurance adjusters as defined by the Insurance Code.

[OAR Docket #07-1110; filed 5-21-07]

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

[OAR Docket #07-1112]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Minimum Standards; Contract Guidelines
Part 11. Accelerated Benefits
365:10-5-101. Definitions [AMENDED]
Subchapter 23. Discount Medical Plan Organizations
365:10-23-3. Audited Financial Statements [NEW]
365:10-23-4. Marketers of Discount Medical Plan Organizations [NEW]
AUTHORITY:
Insurance Commissioner, 36 O.S. §§ 307.1, 1219.4(N)
DATES:
Comment period:
January 16, 2007, to February 15, 2007
Public hearing:
February 22, 2007
Adoption:
March 16, 2007
Submitted to Governor:
March 23, 2007
Submitted to House:
March 23, 2007
Submitted to Senate:
March 23, 2007
Gubernatorial approval:
April 23, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 17, 2007
Final adoption:
May 17, 2007
Effective:
July 14, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The proposed amendment to 365:10-5-101 deletes subsection (c). The current language of subsection (c) is less advantageous to the public. Companies are more willing to accelerate benefits if no time frame is involved.

Section 365:10-23-3 is new. Discount medical plan organizations are required to have a net worth of $150,000.00. This rule requires a discount medical plan organization to submit an audited financial statement so the Insurance Department may verify that the organization has the required net worth.

Section 365:10-23-4 is new. The Insurance Department has issued Cease and Desist Orders to numerous entities acting as discount medical plan organizations without authorization. The entities have claimed they are marketing on behalf of registered discount medical plan organizations. The rule will allow the Insurance Department to verify each discount medical plan organization's marketers.
CONTACT PERSON:
Karl F. Kramer, First Assistant General Counsel, (405) 521-2746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2007:

SUBCHAPTER 5. MINIMUM STANDARDS; CONTRACT GUIDELINES

PART 11. ACCELERATED BENEFITS

365:10-5-101. Definitions

(a) **"Accelerated benefits"** covered under this regulation are benefits payable under a life insurance contract:

(1) To a policyowner or certificateholder, during the lifetime of the insured, in anticipation of death or upon the occurrence of specified life-threatening or catastrophic conditions as defined by the policy or rider; and

(2) Which reduce the death benefit otherwise payable under the life insurance contract; and

(3) Which are payable upon the occurrence of a single qualifying event which results in the payment of a benefit amount fixed at the time of acceleration.

(b) **"Qualifying event"** shall mean one or more of the following:

(1) A medical condition which would result in a drastically limited life span; or

(2) Any condition which usually requires continuous confinement in an eligible institution as defined in the contract if the insured is expected to remain there for the rest of his or her life; or

(3) Other qualifying events which the Commissioner shall approve for any particular filing.

~~(c) The accelerated benefit policy or rider may not require that the insured's life expectancy be less than twelve (12) months.~~

SUBCHAPTER 23. DISCOUNT MEDICAL PLAN ORGANIZATIONS

365:10-23-3. Audited Financial Statements

Each application and renewal application for a discount medical plan organization registration shall include an audited financial statement. The audited financial statement shall have been prepared within twelve (12) months of the application.

365:10-23-4. Marketers of Discount Medical Plan Organizations

Discount medical plan organizations shall submit a list of its marketers to the Insurance Commissioner. The list shall be submitted within (30) days following the close of each calendar quarter.

[OAR Docket #07-1112; filed 5-21-07]

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

[OAR Docket #07-1111]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 25. Regulation Permitting The Recognition Of Preferred Mortality Tables For Use In Determining Minimum Reserve Liabilities [NEW]
365:10-25-1. Authority [NEW]
365:10-25-2. Purpose [NEW]
365:10-25-3. Definitions [NEW]
365:10-25-4. 2001 CSO Preferred Class Structure Table [NEW]
365:10-25-5. Conditions [NEW]
365:10-25-6. Separability [NEW]
365:10-25-7. Effective Date [NEW]
AUTHORITY:
Insurance Commissioner, 36 O.S. §§ 307.1 and 1504(A)(4)
DATES:
Comment period:
February 1, 2007, to March 5, 2007
Public hearing:
March 7, 2007
Adoption:
March 16, 2007
Submitted to Governor:
March 23, 2007
Submitted to House:
March 23, 2007
Submitted to Senate:
March 23, 2007
Gubernatorial approval:
April 23, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 17, 2007
Final adoption:
May 17, 2007
Effective:
July 14, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The purpose of this new regulation is to recognize, permit and prescribe the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities.
CONTACT PERSON:
Karl F. Kramer, First Assistant General Counsel, (405) 521-2746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2007:

SUBCHAPTER 25. REGULATION PERMITTING THE RECOGNITION OF PREFERRED MORTALITY TABLES FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES

365:10-25-1. Authority

This regulation is promulgated by the Commissioner of Insurance pursuant to Section 1510(A)(4) of Title 36 of the Oklahoma Statutes and O.A.C. 365:10-17-4(a) and (b).

365:10-25-2. Purpose

The purpose of this regulation is to recognize, permit and prescribe the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with Section 1510(A)(4) of Title 36 of the Oklahoma Statutes and O.A.C. 365:10-17-4(a) and (b).

365:10-25-3. Definitions

(a) "2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the *Proceedings of the NAIC (2nd Quarter 2002)* and supplemented

by the 2001 CSO Preferred Class Structure Mortality Table defined below in Subsection b. Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables. Mortality tables in the 2001 CSO Mortality Table include the following:

(1) "2001 CSO Mortality Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

(2) "2001 CSO Mortality Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

(3) "Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

(4) "Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

(b) "2001 CSO Preferred Class Structure Mortality Table" means mortality tables with separate rates of mortality for super preferred nonsmokers, preferred nonsmokers, residual standard nonsmokers, preferred smokers, and residual standard smoker splits of the 2001 CSO Nonsmoker and Smoker Tables, as adopted by the NAIC at the September, 2006 national meeting and published in the *NAIC Proceedings {3rd Quarter 2006}*. Unless the context indicates otherwise, the "2001 CSO Preferred Class Structure Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table. It includes both the smoker and nonsmoker mortality tables. It includes both the male and female mortality tables and the gender composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality table.

(c) "Statistical agent" means an entity with proven systems for protecting the confidentiality of individual insured and insurer information; demonstrated resources for and history of ongoing electronic communications and data transfer ensuring data integrity with insurers, which are its members or subscribers; and a history of and means for aggregation of data and accurate promulgation of the experience modifications in a timely manner.

365:10-25-4. 2001 CSO Preferred Class Structure Table

At the election of the company, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this regulation, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard for policies issued on or after January 1, 2007. No such election shall be made until the company demonstrates at least 20% of the business to be valued on this table is in one or more of the preferred classes. A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of this rule, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of the NAIC model regulation, "Recognition of the 2001 CSO Mortality Table For Use In Determining Minimum Reserve Liabilities And Nonforfeiture Benefits Model Regulation."

365:10-25-5. Conditions

(a) For each plan of insurance with separate rates for preferred and standard nonsmoker lives, an insurer may use the super preferred nonsmoker, preferred nonsmoker, and residual standard nonsmoker tables to substitute for the nonsmoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the residual standard nonsmoker table, the appointed actuary shall certify that:

(1) The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(2) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(b) For each plan of insurance with separate rates for preferred and standard smoker lives, an insurer may use the preferred smoker and residual standard smoker tables to substitute for the smoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, for business valued under the preferred smoker table, the appointed actuary shall certify that:

(1) The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table corresponding to the valuation table being used for that class.

(2) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table.

(c) Unless exempted by the commissioner, every authorized insurer using the 2001 CSO Preferred Class Structure Table shall annually file with the commissioner, with the NAIC, or with a statistical agent designated by the NAIC and acceptable to the commissioner, statistical reports showing mortality and such other information as the commissioner may deem necessary or expedient for the administration of the provisions of this regulation. The form of the reports shall be established by

the commissioner or the commissioner may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the commissioner.

365:10-25-6. Separability

If any provision of this regulation or its application to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of the provision to other persons or circumstances shall not be affected.

365:10-25-7. Effective Date

The effective date of this regulation is July 14, 2007.

[OAR Docket #07-1111; filed 5-21-07]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 15. PROPERTY AND CASUALTY

[OAR Docket #07-1113]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
365:15-1-3. Property and casualty form filings [AMENDED]
365:15-1-3.1. Workers' compensation medical claims small deductible form [AMENDED]
365:15-1-18. Withdrawal or discontinue writing [AMENDED]
365:15-1-20. Oklahoma Risk Retention Act [AMENDED]
365:15-1-21. Article 36 of the Insurance Code [NEW]
365:15-1-22. Processing Fee for Affidavit of Exempt Status [NEW]
365:15-1-23. Exclusion from Ocean Marine Definitions [NEW]
Subchapter 7. Property and Casualty Competitive Loss Cost Rating Regulation
365:15-7-3. Property and casualty rate, loss cost and manual rule filings [AMENDED]
365:15-7-7. Forms governed by Article 36 [REVOKED]
365:15-7-9. Independent filings~~; not a member or subscriber of a Bureau for the kind and line of insurance involved~~ [NEW]
365:15-7-13. Retroactive filings [REVOKED]
365:15-7-15. Persons requesting notice of filings [REVOKED]
365:15-7-20. Uniform application of deviations [REVOKED]
365:15-7-24. Oklahoma Risk Retention Act [AMENDED]
365:15-7-26. Weather related claims [AMENDED]
365:15-7-27. Credit related policies [AMENDED]
365:15-7-30. Special Commercial Risks [NEW]
365:15-7-31. Withdrawal or Discontinue Writing [NEW]
Subchapter 9. Medical Professional Liability Rate Setting
365:15-9-10. Property and casualty rate, loss cost and manual rule filings [NEW]
365:15-9-11. Duration of filings [NEW]
365:15-9-12. Forms governed by Article 36 [NEW]
365:15-9-13. Group filings [NEW]
365:15-9-14. Independent filings [NEW]
365:15-9-15. Reference filings [NEW]
365:15-9-16. Members of or subscribers to a licensed advisory organization [NEW]
365:15-9-17. Resubmittal of disapproved or rejected filings [NEW]
365:15-9-18. Statistical plans [NEW]
365:15-9-19. Outside Review [NEW]
365:15-9-20. Individual risk rating plans [NEW]
365:15-9-21. Waiver of Premium [NEW]
AUTHORITY:
Insurance Commissioner, 36 O.S. §§ 307.1, 901.1, 902.2, 981, and 6821
DATES:
Comment period:
January 16, 2007, to February 15, 2007
Public hearing:
February 22, 2007
Adoption:
March 16, 2007
Submitted to Governor:
March 23, 2007
Submitted to House:
March 23, 2007
Submitted to Senate:
March 23, 2007
Gubernatorial approval:
April 23, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 17, 2007
Final adoption:
May 17, 2007
Effective:
July 14, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:

The amendments to 365:15-1-3, 365:15-1-3.1, 365:15-1-18, and 365:15-1-20 are non-substantive changes. The amendments delete unnecessary language, clarify existing language, correct omissions errors, and add or subtract language that makes the regulations more readable.

The addition of 365:15-1-21 is transferred from subchapter 7. Subchapter 7 concerns rates while subchapter 1 involves forms.

The addition of 365:15-1-22 is required. Section 924.4(A) of Title 36 requires the Insurance Commissioner to set a fee for the Affidavit of Exempt Status.

The inclusion of 365:15-1-23 clarifies that policy forms for personal watercraft insurance shall be filed with the Insurance Commissioner.

The amendments to 365:15-7-, 365:15-7-9, 365:15-7-24, 365:15-7-26, and 365:15-7-27 are non-substantive changes. The amendments delete unnecessary language.

The revocations of 365:15-7-13, 365:15-7-15, and 365:15-7-20 are required. Rule 365:15-7-13 is now moot due to the enactment of Section 987(F) of Title 36. The statutes that govern 365:15-7-15 and 365:15-7-20 are no longer applicable and have been repealed.

Section 365:15-7-30 is a new rule. The rule is necessary to clarify that the exemption described by Section 997(3) of Title 36 applies only to large policies.

Section 365:15-7-31 is a new rule. The rule provides the Insurance Commissioner with information about why an insurer is withdrawing from the Oklahoma market.

Section 365:15-9-10 is a new rule. The rule establishes procedural steps for the submission of additional materials following a rate change application submitted in accordance with Section 6821 of Title 36. The rule is necessary due to the components of a rate as well as a member insurer utilizing an advisory organization's approved rate for medical professional liability insurance.

Section 365:15-9-11 is a new rule. The rule is necessary since a rate expiration date is not needed.

Section 365:15-9-12 is a new rule. The rule is required since Section 6821 of Title 36 does not mention policy forms.

Section 365:15-9-14 is a new rule. The rule is necessary to inform the Insurance Commissioner if a filing is original or is a filing that uses materials already submitted by another insurer.

Section 365:15-9-15 is a new rule. The rule allows insurers to adopt an industry standard promulgated by an advisory organization.

Section 365:15-9-16 is a new rule. The rule permits members of an advisory organization to utilize the organization's rule and manual page filings, but does not grant automatic approval to a member's usage of an advisory organization rate filing.

Section 365:15-9-17 is a new rule. The rule prevents a filer from using an existing disapproved filing as a method to file an amendment.

Section 365:15-9-18 is a new rule. The rule allows statistics for loss experience.

Section 365:15-9-19 is a new rule. The rule authorizes the Commissioner to hire independent reviewers to examine a particular filing and to provide independent analysis of a filing.

Section 365:15-9-20 is a new rule. The rule allows insurers to write specialty risks and details how the risk will be rated.

Section 365:15-9-21 is a new rule. The rule authorizes an insurer to waive its right to collect small premiums.

Section 365:15-9-22 is a new rule. The rule provides the Insurance Commissioner details about why an insurer is leaving the Oklahoma market.

CONTACT PERSON:

Karl F. Kramer, First Assistant General Counsel, (405) 521-2746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

365:15-1-3. Property and casualty form filings

(a) **Purpose.** The purpose of this section is to specify the procedures for submitting form filings to the Insurance Commissioner as required by Article 36 of the Insurance Code.

(b) **Procedures.** Policy forms, endorsements and revisions thereto, by insurance companies and rating organizations licensed in Oklahoma, shall be submitted in compliance with this section, or shall be rejected for filing, and the entity that made such submission shall be so notified.

(1) **Filing requirements.** The Insurance Code, Article 36, requires that each insurer shall make its form filings by line of business directly with the Insurance Commissioner. Companies may satisfy their obligation to make such filings, where authorized by law, by becoming a member or subscriber to an Oklahoma licensed rating organization that makes such filings.

(2) **Filing fees.**

(A) Form filings shall be accompanied by the proper fees as specified in the Insurance Code. Fees shall not be paid in cash.

(B) Filings for groups of insurers shall be accompanied by the specified fee for each transaction, regardless of the number of members or subscribers.

(C) Filings by rating organizations shall be accompanied by the specified fee for each transaction regardless of the number of members or subscribers.

(D) Filing fees are not required for transactions that involve only the following:

(i) Error corrections.

~~(ii) Informational filings (not required to be filed).~~

(~~iii~~ii) Change in effective date for approved filing.

(~~iv~~iii) Final printing of approved forms.

(~~v~~iv) Additional information or amendments to pending filings.

(~~vi~~v) Withdrawal of obsolete forms having no impact on Oklahoma policyholders.

(~~vii~~vi) Change in officer or signature for approved filing.

(~~viii~~vii) Change in company logo for approved filing.

(~~ix~~viii) Changing the effective date for advisory organization filings by members or subscribers.

~~(x) Nonadoption of advisory organization filings that would be a duplication of a filing in effect for the filer.~~

(3) **Address requirements.** All filings shall be addressed as follows: Oklahoma Insurance Commissioner, P.O. Box 53408, Oklahoma City, OK 73152-3408.

(4) **Number of copies.** All filings including the cover letter, all exhibits, forms and additional information submitted to the Insurance Commissioner shall be submitted with two (2) legible copies of all material. Such filings and exhibits shall be typewritten or printed. Companies that file as a group listing all companies on the transmittal letter may accomplish this requirement by submitting two (2) legible copies of all material. ~~.~~

(5) **Effective date of filings.** The effective date of form filings and the dates of required action by the Insurance Commissioner are governed by the applicable provisions of the Insurance Code.

(6) **Notice of Insurance Commissioner action.** The Insurance Commissioner shall indicate action taken in writing, one (1) copy of which shall be attached to the official file copy and one (1) copy transmitted to the filing entity, or action may be indicated by stamp, with the individual stamping same, placing his initial or signature thereunder. Responses to questions shall be submitted in writing with two legible copies of all material. Nothing in this section shall preclude the Insurance Commissioner from the use of other forms of communication to secure information from the filing entity.

(7) **Life, accident and health insurance.** This section does not apply to Life, Accident and Health. Life, Accident and Health filings shall be made in accordance with the applicable provisions of the Insurance Code and Rules of the Insurance Commissioner.

(8) **Postage requirements.** No submissions shall be accepted which arrive at the offices with postage due. No submissions will be returned unless the necessary postage accompanies the same.

(9) **Filing form and content.** All filings shall contain the following:

(A) The name of the filing entity and complete mailing address to which correspondence shall be sent.

(B) A "RE" or "caption" briefly describing the content and context of the filing.

(C) A list or index of the forms filed in the filing letter or attached thereto including the form numbers and edition date, if applicable.

(D) A complete description and full explanation of the changes made by the filing including, reasoning therefor, illustrative examples, including "John Doe" specimen form, and a comparison of currently approved and proposed materials (side by side comparison).

(E) A concise statement to identify the form to be replaced by the filing including the approval date in this jurisdiction and the identifying filing number of the filing containing the form to be replaced as assigned by the Insurance Department.

(F) If a form is being withdrawn or amended due to court decisions in any jurisdiction, the filing entity shall furnish the legal citation, and if from another jurisdiction, a copy of such decision or opinion with its filing.

(G) If a form filing is due to a federal law or regulation of a federal agency, the filing entity shall furnish the legal citation and a copy of the pertinent provisions.

(H) Completed transmittal forms and exhibits.

(10) **Withdrawal of pending filings.** Pending filings may be withdrawn by the filing entity upon notice to the Insurance Commissioner prior to the approval or disapproval thereof. The notice shall include the reason for the withdrawal.

(11) **Duration of filings.** All filings are in effect until withdrawn or amended by the insurer or rating organization, with approval of the Insurance Commissioner or until abrogated by the Insurance Commissioner.

(12) **Bureau deviations.** Every member of, or subscriber to, a licensed rating organization may adhere to any filings made on its behalf by its Rating Organization, except that any such member or subscriber may deviate from such filings as authorized by this section if it has filed with the Rating Organization and with the Insurance Commissioner, the deviation to be applied and information necessary to justify the deviation. If such deviation is approved, it shall remain in force until such approval is withdrawn or replaced by the insurer with approval of the Insurance Commissioner.

(13) **Group filings.** Where filings are made on behalf of more than one insurer, ~~a designation~~ the filing shall list the insurer or insurers by individual name and not by Company group.

(14) **Members of or subscribers to a licensed rating organization.**

(A) **Filings.** A licensed rating organization may make filings on behalf of its members and subscribers except deviation filings.

(B) **Adherence to filings.** Every member of or subscriber to a licensed rating organization may adhere to any filings made on its behalf by such organization except that any such member or subscriber may deviate from such filings upon compliance with this section and approval of the Insurance Commissioner

(C) **Individual company filings.** Members and subscribers shall not file individual forms that have been filed on their behalf by the appropriate rating organization. Declaration pages, policy "jackets" and other forms not normally filed by the rating organization ~~should~~ shall be filed by the insurer directly with the Insurance Commissioner.

(D) **Filing requirements; bureau form deviation.** If form deviations are proposed, the insurer shall file the form including supporting ~~data~~ documentation with the Insurance Commissioner and furnish copies to the appropriate rating organization.

(E) **Agency filings.** "Agency Filings" by a Rating Organization on behalf of its members or subscribers shall be accepted by the Insurance Commissioner in instances where the rating organization does not have a filing in effect for the coverage involved.

(15) **Independent filings.** If the insurer is ~~not a member or subscriber of a bureau for the kind and line of insurance involved,~~ filing an independently developed form, the filing shall comply with the following:

(A) File Policy Forms, Endorsements, and other materials, with the Insurance Commissioner and designate them as "Independent Filings".

(B) File support of each filing in accordance with this section.

(C) For revisions, file form with the Insurance Commissioner.

(16) **Reference filings~~; rating organization filings~~.**

(A) **Rating Organization Filings**

(i) **Filings permitted without reference filing agreement.** Rating Organization forms used in whole or in part may be adopted by "Reference Filings" subject to the approval of the Insurance Commissioner. When making such type filing submit a filing memorandum identifying the forms used. Departures and exceptions, if any, shall be accompanied by the necessary supporting data. Such adoption shall apply only to current filings and shall have no automatic effect as to future filings. Each rating organization filing shall be separately and specifically adopted.

(~~B~~ii) **Filings permitted with reference filing agreement.** Approved Rating Organization material may be adopted by filing a REFERENCE FILING AGREEMENT with the Insurance Commissioner identifying the forms and material to be used. Such adoption shall apply from the date it is approved by the Insurance Commissioner to filings in effect on that date and to all applicable future filings. It shall remain in effect until such time as the agreement is withdrawn with the approval of the Commissioner.

(~~C~~iii) **Reference filing.** If filing by "Reference Filing" DO NOT file forms.

(B) **Other than Rating Organization filings.** An insurer may adopt another insurer's filing by filing forms on the filing insurer's format and by advising the Insurance Commissioner of the names(s) of the insurer whose program is being copied, the Oklahoma filing number, and the date(s) the program was filed for that insurer. Unless an exception is granted by the Insurance Commissioner, this procedure applies only to the filing of the initial program for the adopting

insurer and is subject to the review of the Insurance Commissioner.

(17) **Resubmittal of filings.** All resubmissions of disapproved or rejected filings shall be presented to the Insurance Commissioner in the same manner as required by this section for an original filing. In addition the cover letter or completed transmittal forms addressed to the Insurance Commissioner shall state the full and complete history of the filing, the reason for disapproval or rejection, and the factors which distinguish the resubmittal so it warrants reconsideration.

(18) **Retroactive filings.** The Insurance Commissioner has no authority to and shall not approve filings proposing a retroactive effective date except in cases of a filing correcting an error in a previously approved filing and in cases where required or necessitated by Statute.

(19) **Delivery of policy to insured.** In any instance whereby a policy of insurance is effected the insured shall be furnished with either:

(A) The original policy;

(B) A copy of the original policy or a duplicate policy printed with ten point or larger type; or

(C) A certificate including provisions and conditions of the original policy printed with ten point or larger type.

(20) **Coverage elimination after policy issuance.** Any endorsement which eliminates or restricts coverage and which is issued during the policy term shall be identified as accepted by the insured, by the signature of the insured thereon, and a signed copy (original, computer generated or microfilm) of such endorsement shall be retained in the files of the insurer for one year after the expiration of the policy.

(21) **Uniform standard mortgage clause.** The mortgage clause to be used by Insurance Companies in Oklahoma shall be uniform Standard Form Number 127B September 1934 Edition or subsequent editions, except upon written application by an insurer or rating organization, a cause providing broader coverage may be approved by the Insurance Commissioner.

(22) **Claims-made policies.**

(A) The policy application and the Declarations page of each claims-made policy shall include a conspicuous notice indicating that the contract is a claims-made policy and advising the policyholder to read its provisions.

(B) The policy shall provide for extended reporting period options based on rules, rates or rating plans approved by the ~~State Board for Property and Casualty Rates or~~ the Insurance Commissioner.

(23) **New forms, reductions in coverage.**

(A) Form filings that may result in the elimination of claims (losses) shall be considered as a relevant factor to be given due consideration by ~~the State Board for Property and Casualty Rates or~~ the Insurance Commissioner as respects rates in effect or proposed for the coverage involved.

(B) The filer shall fully disclose the rate consideration so that ~~the Board or~~ Commissioner can be notified of the form filing. The form filing may be disapproved if the rate effect has not been considered in rules, rates or rating plans approved by the Board.

365:15-1-3.1. Workers' compensation medical claims small deductible form

The offer of ~~medical claims~~ a small deductible on all Oklahoma Workers' Compensation policies required pursuant to 85 O.S. § 64, shall be in the form set forth in Appendix B of this Chapter which shall be filed with and approved by the Insurance Commissioner. The form shall be provided to the proposed insured in writing separately from the application and shall read as set forth in Appendix B of this Chapter.

365:15-1-18. Withdrawal or discontinue writing

(a) Any insurer desiring to withdraw from the state or discontinue the writing of certain classes of insurance or programs in this state shall give ninety (90) days notice in writing to the Property and Casualty Division of the Insurance Department and shall state in writing its reasons for such action. The insurer shall also provide the following information:

(1) The number of policyholders effected;

(2) The number of insurance agents effected;

(3) The date the insurer will cease writing new business;

(4) The date the insurer will start non-renewing insurance policies;

(5) Whether the insurer has made arrangements with another insurer to pick up the renewals;

(6) The lines of insurance on which the insurer plans to concentrate; and

(7) Whether the insurer anticipates re-entering the market.

~~(b) The Insurance Commissioner may waive any part of the notice required by this section.~~

365:15-1-20. Oklahoma Risk Retention Act

Filings made in compliance with the Oklahoma Risk Retention Act, 36 O.S. § 6451 et seq., shall be filed separately. ~~The Insurance Commissioner may waive this requirement.~~

365:15-1-21. Article 36 of the Insurance Code

For purposes of subchapters one (1) and seven (7), policy forms, endorsements, and other forms used shall be filed in compliance with the applicable provisions of Article 36 of the Insurance Code. The forms shall be filed separately from rates and manual rules.

365:15-1-22. Processing Fee for Affidavit of Exempt Status

Pursuant to 36 O.S. § 924.4, the Insurance Department shall collect a non-refundable fee of Two Dollars and Fifty Cents ($2.50) for printing and mailing the blank Affidavit of

Exempt Status form to persons who request it. Payment shall not be in cash.

365:15-1-23. Exclusion from Ocean Marine Definitions

For purposes of subchapters one (1) and seven (7), the term ocean marine insurance does not include vessels or craft or their cargoes, hull damage, or destruction of watercraft used for personal use.

SUBCHAPTER 7. PROPERTY AND CASUALTY COMPETITIVE LOSS COST RATING REGULATION

365:15-7-3. Property and casualty rate, loss cost and manual rule filings

(a) **Purpose.** The purpose of this section is to specify the procedures for submitting rate, loss cost and manual rule filings to the Insurance Commissioner as required by 36 O.S. § 981 et seq.

(b) **Procedures.** Rate, loss cost and manual rules and revisions thereto by insurance companies and advisory organizations licensed in Oklahoma shall be submitted in compliance with this section, or shall be rejected for filing, and the entity that made such submission shall be so notified.

(1) **Filing requirements.** The Insurance Code, 36 O.S. § 981 et seq., requires that each insurer shall make its rate, loss cost and manual rule filings by line of business directly with the Insurance Commissioner. Companies may satisfy their obligation to make such filings, where authorized by law, by becoming a member or subscriber to an Oklahoma licensed advisory organization which makes such filings.

(2) **Filing fees.**

(A) Rate, loss cost and manual rule filings shall be accompanied by the proper fees as specified in the Insurance Code. Fees shall not be paid in cash.

(B) Filings for groups of insurers shall be accompanied by the specified fee for each transaction regardless of the number of members or subscribers.

(C) Filings by rating organizations shall be accompanied by the specified fee for each transaction regardless of the number of members or subscribers.

(D) Filing fees are not required for transactions that involve only the following:

(i) Excess consent rate filings;

(ii) Individual risk submissions;

(iii) Individual risk filings for excess workers' compensation;

(iv) Changing the effective date for advisory organization filings by members or subscribers;

(v) Additional information or amendments to pending filings;

(vi) Advising effective date for approved filing and/or submitting final printed materials;

(vii) Dividend plans;

~~(viii) Informational filings (not required to be filed);~~

(~~ix~~viii) Withdrawal of obsolete filings having no impact on Oklahoma policyholders; and/or

~~(x) Nonadoption of advisory organization filings that would be a duplication of a filing in effect for the filer.~~

(3) **Address requirements.** All filings shall be addressed as follows: Oklahoma Insurance Commissioner, P.O. Box 53408, Oklahoma City, OK 73152-3408.

(4) **Number of copies.** All filings including the cover letter, all exhibits, rate sheets and additional information submitted to the Insurance Commissioner shall be submitted with two (2) legible copies of all material. Such filings and exhibits shall be typewritten or printed. Companies that file as a group listing all companies on the transmittal letter may accomplish this requirement by submitting two (2) legible copies of all material. ~~.~~

(5) **Effective date of filings.** The effective date of rate, loss cost and manual rule filings and the dates of required action by the Insurance Commissioner are governed by the applicable provisions of the Insurance Code.

(6) **Notice of Insurance Commissioner action.** The Insurance Commissioner shall indicate action taken in writing, one (1) copy of which shall be attached to the official file copy and one (1) copy transmitted to the filing entity, or action may be indicated by stamp, with the individual stamping same, placing their initial or signature thereunder. Responses to questions shall be submitted in writing two legible copies of all material. Nothing in this section shall preclude the Insurance Commissioner from the use of other forms of communication to secure information from the filing entity.

(7) **Life, accident and health insurance.** This section does not apply to life, accident and health insurance. Life, accident and health insurance filings shall be made in accordance with the applicable provisions of the Insurance Code and Rules of the Insurance Commissioner.

(8) **Postage requirements.** No submissions shall be accepted that arrive at the offices with postage due. No submissions will be returned unless the necessary postage accompanies the same.

(9) **Withdrawal of pending filings.** Pending filings may be withdrawn by the filing entity upon notice to the Insurance Commissioner prior to the approval or disapproval thereof. The notice shall include the reason for the withdrawal.

(10) **Filing form and content.** All filings shall include the following:

(A) The name of the filing entity and complete mailing address to which correspondence shall be sent.

(B) A "RE" or "caption" briefly describing the content and context of the filing.

(C) A list or index of the manual pages filed in the filing letter or attached thereto including the page numbers and edition date, if applicable.

(D) A complete description and full explanation of the changes made by the filing including, reasoning therefor, illustrative examples, including "John Doe" specimen examples, and a comparison of currently approved and proposed materials (side by side comparison).

(E) A concise statement to identify the manual pages (rate and/or rule) to be replaced by the filing including the approval date in this jurisdiction and the identifying Oklahoma Insurance Department's assigned filing number of the filing containing the documents to be replaced .

(F) Completed transmittal forms and exhibits.

(11) **Bureau deviations.** Every member of, or subscriber to, a licensed rating organization may adhere to any filings made on its behalf by its rating organization, except that any such member or subscriber may deviate from such filings as authorized by this section if it has filed with the rating organization and with the Insurance Commissioner, the deviation to be applied and information necessary to justify the deviation. If such deviation is approved, it shall remain in force until such approval is withdrawn by the insurer with approval of the Insurance Commissioner.

365:15-7-7. Forms governed by Article 36 [REVOKED]

~~Policy forms, endorsements, and other forms used shall be filed in compliance with the applicable provisions of Article 36 of the Insurance Code. Said forms shall be filed separately from rates and manual rules.~~

365:15-7-9. Independent filings~~; not a member or subscriber of a Bureau for the kind and line of insurance involved~~

(a) Independent filers shall file Rates, Loss Costs, Rating Plans or Rating Systems, Schedules, Manuals, and other materials, with the Insurance Commissioner and designate them as Independent Filings.

(b) Independent filers shall file data and experience in support of each filing in accordance with these rules.

(c) Independent filers shall file rate and loss cost revisions with the Insurance Commissioner.

365:15-7-13. Retroactive filings [REVOKED]

~~The Insurance Commissioner has no authority to and shall not accept filings proposing a retroactive effective date except in cases of a filing correcting an error in a previous filing and in cases where required or necessitated by Statute or law.~~

365:15-7-15. Persons requesting notice of filings [REVOKED]

~~(a) **List of persons to receive notification.** The Insurance Commissioner shall maintain a list of persons who annually request to be notified of rate filings in accordance with this subchapter.~~

~~(b) **Request in writing.** The request shall be in writing and specify the line of insurance or specific individual filings to which it applies.~~

~~(c) **Requests effective one year.** The request shall be stamped received and shall be effective for one (1) year from that date. The name of the person shall be stricken or removed from the list at the expiration of one (1) year unless a new request and annual period is established.~~

~~(d) **Change of address notification.** Communication of any change of address or other change shall be in writing to the Insurance Commissioner.~~

~~(e) **Notice satisfied by regular mail.** Required notice to the person of a filing or meeting to set a hearing, or of a hearing, shall be satisfied by regular mail to the address on file by a letter, a copy of a computer printing of filings with the pertinent filing(s) noted by check mark or highlighted, by copy of the agenda including the pertinent filing(s) or by copy of a notice of hearing on the pertinent filing.~~

365:15-7-20. Uniform application of deviations [REVOKED]

~~Deviations to filings of advisory organizations shall be uniformly applied to all risks encompassed by the deviation.~~

365:15-7-24. Oklahoma Risk Retention Act

Filings made in compliance with the Oklahoma Risk Retention Act, 36 O.S. § 6451, et seq., shall be filed separately. ~~The Insurance Commissioner may waive this requirement.~~

365:15-7-26. Weather related claims

Homeowners policies and any other personal residential insurance coverage shall not reflect a surcharge for weather related claims ~~unless an exception is approved by the Commissioner~~.

365:15-7-27. Credit related policies

The return of unearned premium on any credit related policy shall not be calculated using the "sum of the digits" formula, commonly known as the "Rule of 78~~,"~~ ~~unless an exception is approved by the Commissioner~~.

365:15-7-30. Special Commercial Risks

To qualify for the exemption under 36 O.S. § 997 (3), the commercial lines insurance risks shall be separate and distinct policies, with a minimum annual premium of more than Ten Thousand Dollars ($10,000.00) per policy.

365:15-7-31. Withdrawal or Discontinue Writing

Any insurer desiring to withdraw from the state or discontinue the writing of certain classes of insurance or programs in this state shall give ninety (90) days notice in writing to the Insurance Department Property and Casualty Division. The insurer shall state in writing its reasons for such action. The insurer shall also provide the following information:

(1) The number of policyholders effected;

(2) The number of insurance agents effected;
(3) The date the insurer will cease writing new business;
(4) The date the insurer will start non-renewing insurance policies;
(5) Whether the insurer has made arrangements with another insurer to cover the renewals;
(6) The lines of insurance the insurer plans to concentrate; and
(7) Whether the insurer anticipates re-entering the market.

SUBCHAPTER 9. MEDICAL PROFESSIONAL LIABILITY RATE SETTING

365:15-9-10. Property and casualty rate, loss cost and manual rule filings

(a) **Purpose.** The purpose of this section is to specify the procedures for submitting rate, loss costs and manual rule filings to the Insurance Commissioner, which are submitted under the authority of 36 O.S. § 6821.

(b) **Procedures.** Rate, loss costs and manual rules and revisions by insurance companies and advisory organizations licensed in Oklahoma shall be submitted in compliance with this section or shall be rejected for filing. If a filing is rejected, the entity that made such submission shall be notified.

(1) **Filing requirements.** The rate, loss cost and manual rule filings allowed by this section are for medical professional liability insurance. Companies may satisfy their obligation to make such filings, where authorized by law, by becoming a member or subscriber to an Oklahoma licensed advisory organization which makes such filings.

(2) **Filing fees.**

(A) Rate, loss cost and manual rule filings shall be accompanied by the proper fees as specified in the Insurance Code. Fees shall not be paid in cash.

(B) Filings for groups of insurers shall be accompanied by the specified fee for each transaction regardless of the number of members or subscribers.

(C) Filings by rating organizations shall be accompanied by the specified fee for each transaction regardless of the number of members or subscribers.

(D) Filing fees are not required for transactions that only involve the following:

(i) Changing the effective date for advisory organization filings by members or subscribers;

(ii) Additional information or amendments to pending filings;

(iii) Advising the Insurance Department of the effective date for an approved filing and/or submitting final printed materials;

(iv) Dividend plans;

(v) Withdrawal of obsolete filings having no impact on Oklahoma policyholders.

(3) **Address requirements.** All filings shall be addressed as follows: Oklahoma Insurance Commissioner, P.O. Box 53408, Oklahoma City, OK 73152-3408.

(4) **Number of copies.** All filings including the cover letter, all exhibits, rate sheets and additional information submitted to the Insurance Commissioner shall be submitted with two (2) legible copies of all material. Such filings and exhibits shall be typewritten or printed. Companies that file as a group and list all companies on the transmittal letter may accomplish this requirement by submitting two (2) legible copies of all material. .

(5) **Effective date of filings.** The effective date of rate, loss cost and manual rule filings and the dates of required action by the Insurance Commissioner are governed by the applicable provisions of the Insurance Code.

(6) **Notice of Insurance Commissioner action.** The Insurance Commissioner shall indicate action taken in writing, one (1) copy of which shall be attached to the official file copy and one (1) copy transmitted to the filing entity. Action may also be indicated by stamp, with the individual stamping their initial or signature thereunder. Responses to questions shall be submitted in writing with two legible copies of all material. Nothing in this section shall preclude the Insurance Commissioner from the use of other forms of communication to secure information from the filing entity.

(7) **Life, accident and health insurance.** This section does not apply to life, accident and health insurance. Life, accident and health insurance filings shall be made in accordance with the applicable provisions of the Insurance Code and Rules of the Insurance Commissioner.

(8) **Postage requirements.** No submissions shall be accepted that arrive at the offices with postage due. No submissions will be returned unless the necessary postage accompanies the same.

(9) **Withdrawal of pending filings.** Pending filings may be withdrawn by the filing entity upon notice to the Insurance Commissioner prior to the approval or disapproval thereof. The notice shall include the reason for the withdrawal.

(10) **Filing form and content.** All filings shall include the following:

(A) The name of the filing entity and complete mailing address to which correspondence shall be sent.

(B) A RE or caption briefly describing the content and context of the filing.

(C) A list or index of the manual pages filed in the filing letter or attached thereto including the page numbers and edition date, if applicable.

(D) A complete description and full explanation of the changes made by the filing including reasoning therefor, illustrative examples, including John Doe specimen examples, and a comparison of currently approved and proposed materials (side by side comparison).

(E) A concise statement identifying the manual pages (rate and or rule) to be replaced by the filing. The statement shall include the approval date in this jurisdiction and the identifying Oklahoma Insurance

Department's assigned filing number of the filing containing the documents to be replaced .

(F) Completed transmittal forms and exhibits.

(11) **Bureau deviations.** Every member of, or subscriber to, a licensed advisory organization may adhere to any filings made on its behalf by its rating organization, except that any such member or subscriber may deviate from such filings as authorized by this section if it has filed with the rating organization and with the Insurance Commissioner, the deviation to be applied and information necessary to justify the deviation. If such deviation is approved, it shall remain in force until such approval is withdrawn by the insurer with approval of the Insurance Commissioner.

365:15-9-11. Duration of filings

Approved rates for medical professional liability insurance shall be effective until amended or withdrawn by the insurer.

365:15-9-12. Forms governed by Article 36

Policy forms, endorsements, and other forms used for medical professional liability insurance shall be filed in compliance with the applicable provisions of Article 36 of the Insurance Code. The forms shall be filed separately from rates and manual rules.

365:15-9-13. Group filings

Filings made on behalf of more than one insurer shall list the insurer or insurers individually and not by company group.

365:15-9-14. Independent filings

(a) Independent filers shall file rates, loss costs, rating plans or rating systems, schedules, manuals, and other materials with the Insurance Commissioner and designate them as independent filings.

(b) Independent filers shall file data and experience in support of each filing in accordance with these rules.

(c) Independent filers shall file rate and loss cost revisions with the Insurance Commissioner.

365:15-9-15. Reference filings

(a) **Advisory organization filings.**

(1) **Filings permitted without reference filing agreements.** Advisory organization manuals, materials, and forms used in whole or in part may be adopted by members of or subscribers to a licensed advisory organization by reference filings subject to review by the Insurance Commissioner. When making a reference filing, a filing memorandum shall be submitted, identifying the manuals, rules, or forms used and the Oklahoma filing number. Rate departures and rule exceptions, if any, shall be accompanied by the necessary supporting data. Such adoption shall apply only to current filings and shall have no automatic effect as to future filings. Each advisory organization filing shall be separately and specifically adopted.

(2) **Filings permitted with reference filing agreement.** Approved advisory organization manuals, material and forms may be adopted by members of or subscribers to a licensed advisory organization by filing a reference filing agreement with the Insurance Commissioner identifying the manuals, material or forms to be used and the Oklahoma filing number. Such adoption shall apply from the date it is filed with the Insurance Commissioner to filings in effect on that date and to all applicable future filings. The reference filing agreement shall remain in effect until such time as the agreement is withdrawn as a filing with the Insurance Commissioner. Manuals shall not be filed if filings are made by reference filing.

(b) **Other than Advisory organization filings.** An insurer may adopt another insurer's filing by filing rates on the filing insurer's format and by advising the Insurance Commissioner of the name(s) of the insurer whose program is being copied, the Oklahoma filing number, and the date(s) the program was filed for that insurer. Unless an exception is granted by the Insurance Commissioner, this procedure applies only to the initial filing of the program for the "adopting" insurer and is subject to the review of the Insurance Commissioner. Reference filings for previously approved rates for medical professional liability insurance are not allowed.

(c) **Reference filings.** References filings to previously approved rates for medical professional liability insurance are not allowed.

365:15-9-16. Members of or subscribers to a licensed advisory organization

(a) **Filings.** A licensed advisory organization may make filings on behalf of its members and subscribers except deviation and rate filings.

(b) **Adherence to filings.** Every member of or subscriber to a licensed advisory organization may adhere to the filings made on its behalf by such organization except that any such member or subscriber may deviate from such filings upon compliance with the rules of this chapter and review of the Insurance Commissioner where required by the Insurance Code.

(c) **Individual company filings.** Members and subscribers shall not file individual manuals that have been filed on their behalf by the appropriate advisory organization.

(d) **Filing requirements; loss cost deviations.** When loss cost deviations are proposed, the filing memorandum shall indicate the applicable advisory organization filing, the Oklahoma filing number, and state the percentage of deviation, as well as the subject matter the deviation applies to by manual name, page number and supporting date in accordance with the rules of this chapter. Copies of all such information shall be furnished to the appropriate advisory organization.

365:15-9-17. Resubmittal of disapproved or rejected filings.

All resubmitted filings shall be presented to the Insurance Commissioner in the same manner required by this subchapter for an original filing. In addition, the cover letter or completed transmittal forms addressed to the Insurance Commissioner shall state the full and complete history of the filing, the reason for the disapproval, and the factors that distinguish the resubmittal to warrant reconsideration.

365:15-9-18. Statistical plans

(a) The Insurance Commissioner may approve a statistical plan or any modification to the plan submitted by an advisory organization adapted to the applicable rating system, which shall be used thereafter for the recording of loss and expense experience.

(b) The Insurance Commissioner may approve an advisory organization as the statistical agent to gather, record, compile, and report experience in such manner, form, and detail determined by the Insurance Commissioner as necessary to ascertain whether rating systems comply with the standards of the applicable provisions of the Insurance Code.

365:15-9-19. Outside Review

(a) The Insurance Commissioner shall have the authority to hire statisticians, accountants, attorneys, auditors, investigators or any other person the Insurance Commissioner deems necessary or beneficial to aid in review or examination of any filings for rate revision made by insurers or advisory organizations.

(b) Persons listed in paragraph (a) of this section shall be fully accredited and or licensed in their field of expertise and may be employees of corporations, partnerships or individuals duly qualified to provide required services.

(c) The Insurance Commissioner may retain an actuary to review a filing when deemed necessary or beneficial by the Insurance Commissioner based on one ore more of the following criteria:

(1) Significant premium and or percentage effect;

(2) Significant market share as determined from market share report;

(3) Staff unfamiliar with actuarial methodology;

(4) Filing establishes a benchmark;

(5) Actuarial review necessitated by filer's inability to comply with filing requirements;

(6) Review of the adequacy of the proposed filing; and

(7) Review of whether the proposed filing constitutes discrimination as described by 36 O.S. § 985(A)(3).

(d) When a filing is referred to an outside consultant for review, an engagement letter shall be presented to the consultant specifying the scope of review. The filer shall be notified of the review.

(e) All reasonable expenses incurred in such filing review shall be paid by the insurer or advisory organization making the filing.

(f) The Insurance Commissioner shall consider the opinion of the consulting actuary and any other evidence submitted in support of the filing and shall accept or reject the consulting actuary's opinion in whole or in part based on such other evidence.

365:15-9-20. Individual risk rating plans

Individual risk rating plans shall comply with the following requirements:

(1) Each individual risk rating plan shall establish standards that bear a relationship to the variation in hazard and or expense to be measured.

(2) Any individual risk rating plan shall be applied by company representatives responsible for underwriting the risk(s) involved.

(3) Each insurer utilizing such plans shall obtain all information necessary to determine the proper applications of such plans to any particular risk. Such supporting information shall be retained by the insurer for three (3) years and made available to the Insurance Department upon its request.

365:15-9-21. Waiver of Premium

Insurers may waive additional premium due from an insured. An insurer may also waive the return premium due to an insured. However, any return premium shall be returned to the insured upon request. The amount to be waived for both the additional premium and the return premiums shall be shown on a manual rule page and filed with the Insurance Commissioner.

[OAR Docket #07-1113; filed 5-21-07]

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

[OAR Docket #07-1114]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. ~~Agents~~Producers, Brokers and Limited ~~Representatives~~Lines Producers [AMENDED]

365:25-3-1. Insurance ~~agents~~producers continuing education [AMENDED]

365:25-3-3. Licensing of incorporated insurance agency [AMENDED]

365:25-3-4. Knowledge of ~~agent~~producer imputed to the insurer [AMENDED]

365:25-3-6. Management and commission contracts; approval by Insurance Commissioner [REVOKED]

365:25-3-8. Inducement of lapse, surrender or cancellation of existing permanent life insurance coverages prohibited [AMENDED]

365:25-3-9. "Twisting" defined and prohibited [AMENDED]

365:25-3-10. Participating contracts of life insurance [AMENDED]

365:25-3-11. Motor service club agent's license [REVOKED]

365:25-3-12. Insurance consultants and surplus lines insurance brokers [AMENDED]

365:25-3-13. Surplus line insurance with non-admitted insurer; approval prior to issuance; collection and remittance of taxes; claims for tax adjustments; procedures; forms [AMENDED]

365:25-3-14. Insurance adjusters continuing education [AMENDED]
365:25-3-16. Examination exemptions ~~for limited representatives~~ [AMENDED]
Subchapter 5. Bail Bondsmen
Part 5. General Provisions Pertaining to Bail Bondsmen
365:25-5-40. Computation of time in 59 O.S. § 1332 [AMENDED]
Subchapter 17. Consumer Protection in Annuity Transactions Regulation
365:25-17-8. Mitigation of responsibility [AMENDED]

AUTHORITY:
Insurance Commissioner, 36 O.S. §§ 307.1, 1435.19, 1435.29(H) and 59 O.S. § 1302(A)

DATES:
Comment period:
January 16, 2007, to February 15, 2007
Public hearing:
February 22, 2007
Adoption:
March 16, 2007
Submitted to Governor:
March 23, 2007
Submitted to House:
March 23, 2007
Submitted to Senate:
March 23, 2007
Gubernatorial approval:
April 23, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 17, 2007
Final adoption:
May 17, 2007
Effective:
July 14, 2007

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATION BY REFERENCE:
n/a

ANALYSIS:
The proposed amendments to section 365:25-3-1 explain the requirements for continuing education ethics courses, describe the types of elective continuing education courses producers may take, discuss the requirements for self-study and distance learning continuing education courses, eliminate the provision regarding the Continuing Education Advisory Committee since the Committee is already discussed in Section 1435.29 of Title 36, and modify the time period continuing education courses shall remain approved. The amendments are also intended to bring consistency among the different sections of the continuing education rules and to make Oklahoma's continuing education rules similar to other states.

The amendments to 365:25-3-3 and 365:25-3-12(C) as well as the revocation of 365:25-3-6 are required to comply with the Producer Licensing Act, 36 O.S. § 1435.1 et seq., and the Gramm-Leach-Bliley Act passed by Congress. Both acts require the elimination of licensing barriers to non-resident applicants who are licensed and in good standing in their home state.

Section 365:25-3-3 eliminates the requirement for non-resident corporate agencies to submit a Certificate of Qualification from the Oklahoma Secretary of State. Most non-resident agencies do not have a physical presence in Oklahoma and act through their licensed producers. The revocation of 365:25-3-6 is necessary since override commissions are now permissible under the Producer Licensing Act. The elimination of a bond requirement for non-resident surplus lines brokers and insurance consultants also remove a barrier to non-resident licensing as required by the Gramm-Leach-Bliley Act.

The amendment to 365:25-3-9 eliminates unnecessary language that is already in the Insurance Code at Section 1204 of Title.

The amendment to 365:25-3-11 is necessary because the requirements for a motor service club agent registration are described in the Insurance Code at Section 3105 of Title 36. Furthermore, the requirements of the rule and statute conflict with one another.

The amendment to 365:25-3-12(e) eliminates the requirement for insurance consultant annual fee reports. Insurance consultants are already required to have fee agreements approved by the Commissioner and are required to maintain those records for three (3) years.

The amendments to 365:25-3-13 revise direct placement requirements to include the same information required for broker reports. The amendments modify the tax refund requirements to comply with Section 624.2 of Title 36. The amendments also require broker tax refunds to be issued in the name of the broker since the broker is responsible for remitting surplus lines taxes to the Commissioner.

The amendments to 365:25-3-14 revise the guidelines and standards for self study and distance learning courses.

The amendments to 365:25-3-16 exempt all limited lines producers from an examination requirement. The amendments also add required language from the Producer Licensing Act that limited lines applicants are capable of fulfilling the responsibilities of the license without an examination.

All other amendments in subchapter 3 change the word agent to producer to comply with the language in the Producer Licensing Act.

Section 365:25-5-40 is revised to simulate the language of Section 2006(A) of Title 12. The statute is repeated in this rule to notify bail bondsmen of statutory time requirements. The language in Section 2006(A) of Title 12 has been amended since the rule was promulgated in 1993.

The amendment to 365:25-17-3 removes the word senior from the rule. The rule is intended to apply to all annuity transactions.

CONTACT PERSON:
Karl F. Kramer, First Assistant General Counsel, (405) 521-2746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2007:

SUBCHAPTER 3. ~~AGENTS~~ PRODUCERS, BROKERS AND LIMITED ~~REPRESENTATIVES~~ LINES PRODUCERS

365:25-3-1. Insurance ~~agents~~ producers continuing education

(a) **Purpose.** The purpose of this section is to set forth the requirements for continuing education, which an insurance ~~agent~~ producer must meet and to set forth the requirements for approval by the Insurance Commissioner of a proposed continuing education course.

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

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

(2) **"Certificate of course completion"** means a document acceptable to the Commissioner which signifies satisfactory completion of the course and reflects hours of credit earned.

(3) **"Continuing Education Advisory Committee"** means the committee established by the Commissioner for the purpose of reviewing and recommending approval or disapproval of continuing education courses.

(4) **"Credit hour"** means at least ~~a~~ fifty (50) minutes classroom instruction~~al session~~ unless a correspondence or self-study course.

(5) **"Instructor"** means a person who presents course materials approved for continuing education credit hours, and who has experience, training, and/or education in the course subject matter and has been approved by the Commissioner.

(6) **"Instructor Qualification Form"** means a form acceptable to the Commissioner and completed by the instructor which documents qualifications of the instructor.

(7) **"Licensee"** means a natural person who is licensed by the Commissioner as an insurance ~~agent~~ producer.

(8) **"Provider"** means a person, corporation, professional association or its local affiliates, an insurance company or any other entity which is approved by the Commissioner and provides approved continuing education to insurance ~~agents~~ producers.

(9) **"Provider ~~Continuing Education Reporting~~ Course Completion Form"** means a form acceptable to the Commissioner and completed by the provider which documents completion of an approved course by ~~an~~ a ~~agent~~ producer or ~~agents~~ producers.

(c) **Exceptions.** The requirements for continuing education in this section shall not apply to:

(1) limited lines ~~insurance representatives~~ producers.

(2) a non-resident ~~agent~~ producer who resides and is licensed in a state or district having continuing education requirements and the ~~agent~~ producer meets all the requirements of that state or district to practice therein. The non-resident ~~agent~~ producer shall be responsible for completing any reporting requirements necessary to verify completion.

(3) a non-resident ~~agent~~ producer of a state that does not require continuing education hours may fulfill the requirements of any other state's continuing education requirements and shall be deemed to have complied with this rule upon proof of completion of said hours.

(d) **Continuing education requirements.**

(1) **CEC during twenty-four month period.** All licensees shall complete the required hours of continuing education as set forth in 36 O.S. § 1435.29 during each twenty-four month period. The twenty-four month period begins the first day of the month following the month in which the license is granted. The credit hours completed must be in those lines in which the ~~agent~~ producer is licensed. Ethics shall include, but not be limited to, the study of fiduciary responsibility, commingling of funds, payment and acceptance of commissions, unfair claims practices, policy replacement consideration, and conflicts of interest.

(2) **Certificates of course completion required for license renewal.** If requested by the Insurance Department, each ~~agent~~ producer shall submit upon each licensing renewal certificate(s) of course completion as approved by the Insurance Department, which verify courses completed during the previous twenty-four month period.

(3) **Credits carried over.** Credit hours in excess of the minimum twenty-four month period requirement will not carry forward. However, excess hours may be applied to bring a lapsed license into compliance.

(4) ~~**Ethics credits.**~~ **Elective Credit.** ~~During each twenty-four (24) month period, the agent shall complete two (2) credit hours but no more than four (4) credit hours of instruction in ethics out of the total credit hours required. The remainder of the hours required must be in lines applicable to the license. Courses in excess of four (4) ethics credits shall not carry forward nor will they apply to the total hours required. However, excess ethic credits may be applied retroactively in order to bring a lapsed license into compliance. Ethics shall include, but not be limited to, the study of fiduciary responsibility, commingling of funds, payment and acceptance of commissions, unfair claims practices, policy replacement consideration, and conflicts of interest.~~ At least two (2) of the continuing education credit hours of instruction completed by licensees each twenty-four month period shall be taken in the following topics:

(1) state legislative updates

(2) federal legislative updates

(3) health coverage

(4) welfare coverage

~~(5) **Small employer group, high risk pool, and recent health care legislation. State and Federal legislative updates and topics of current importance.** At least one of the continuing education credit hours of instruction completed by licensees in Health Insurance during each twenty-four month period must address the Oklahoma Small Employer Health Insurance Reform Act, the Oklahoma Health Insurance High Risk Pool Act, and any recent state or federal health care legislation. At least one additional hour of said continuing education credit hours of instruction must address long-term care.~~

(~~6~~5) **Credits for instructors.** An instructor who is a licensee shall receive the same continuing education credit for presenting approved course materials as a licensee who attends an approved classroom instructional session.

(~~7~~6) **Prerequisite for renewal or reinstatement.** ~~Effective January 1, 1992 as~~ As a prerequisite for licensure renewal or upon reinstatement following a lapse of license, ~~an~~ a ~~agent~~ producer must submit, on his or her renewal/reinstatement date, the appropriate forms as specified in this section which establish that the education requirements have been met for the previous year(s).

(e) **Approval of continuing education providers.**

(1) **Information required, fee.** Each provider shall apply for approval from the Commissioner. Each provider, with the exception of public funded educational institutions, federal agencies or Oklahoma state agencies shall submit after its approval a provider fee of Two Hundred Dollars ($200.00), and all providers, including public funded educational institutions, federal agencies and Oklahoma agencies shall provide:

(A) Name and address of the provider;

(B) Contact person and his or her address and telephone number;

(C) The location of the courses or programs, if known, unless it is an individual self- study ~~or correspondence~~ course;

(D) The number of CEC hours requested for each course;

(E) Topic outlines which list the summarized topics covered in each course and a copy of any course materials. If a prior approved course has substantially changed, a summarization of those changes;

(F) The names and qualification of instructors. An instructor shall have one of the following qualifications:

(i) Three (3) years of recent experience in the subject area being taught; or

(ii) A degree related to the subject area being taught; or

(iii) Two (2) years of recent experience in the subject area being taught and twelve (12) hours of college and/or vocational technical school credit hours in the subject area being taught.

(G) If a prior approved course has materially changed, a summarization of those changes;

(2) **Renewal fee.** An annual renewal fee of Two Hundred Dollars ($200.00) shall be payable on or before the approval anniversary date of each year by each provider to renew the approval of the provider. A fee of double the annual renewal fee shall be paid if the application for renewal is late, or incomplete on the approval anniversary date.

(3) **Withheld or withdrawn approval.** The Commissioner may withhold or withdraw approval of any provider for violation of or non-compliance with any provision of this section.

(f) **Courses; approval; records.**

(1) ~~**Apply for approval 30 days prior to course**~~ **Timeline for approval.** At least thirty (30) days prior to the use of any course and not less than ten (10) days prior to the Continuing Education Advisory Committee meeting immediately preceding the course date, the provider shall apply to the Commissioner for course approval. The Commissioner shall grant or deny approval based upon information submitted in this section regarding each course or additional information regarding the course, if necessary. The Commissioner will assign the number of CEC hours awarded for an approved course and the line or lines of insurance for which the course qualifies.

(2) **Written approval required.** All courses shall require written approval by the Commissioner. Courses shall be deemed to have been approved by the Commissioner if the courses are provided by national professional associations or local affiliates of national professional associations approved by the Commissioner to act as providers of continuing education.

(3) **Withheld or withdrawn approval.** The Commissioner may withhold or withdraw approval for any course approval. This withdrawal will not affect any CEC hours attained under the course previous to the withdrawal.

(4) **Minimum of one credit hour.** Courses submitted for approval must consist of a minimum of one credit hour of course instruction.

(5) **Continuing education course must be separate from meetings.** Courses conducted in conjunction with other meetings must have a separate continuing education course component.

(6) **Content of courses.** Courses must be of a meaningful nature and shall not include items such as prospecting, motivation, sales techniques, psychology, recruiting, and subjects not relating to the insurance license. However, agency management courses designed to assist ~~agents~~ producers in becoming more efficient, profitable, and assuring their perpetuation, will be deemed to be in the best interest of the insuring public and thereby subject to approval. Each such agency management course must include the description, the effects the course is designed to accomplish toward the purposes of efficiency, profitability, and/or perpetuation and each course will be reviewed for approval on its own merits.

(7) **Certificate of Course Completion.** At the completion of each course, the provider shall provide the insurance ~~agent~~ producer a "Certificate of Course Completion" Form.

(8) **List of ~~agents~~ producers completing course to Commissioner; ~~Agent~~ producer license numbers.** Within ten (10) business days after completion of each course, the provider shall provide the Commissioner a list of all insurance ~~agents~~ producers who completed the course on the ~~Provider Continuing Education Reporting~~ Course Completion Form. This list shall contain the course number, date of completion and license numbers of all insurance ~~agents~~ producers completing the course. If the list is not reported within ten (10) business days, a late report fee of $50.00 shall be paid to the Insurance Department. Failure to pay the late report fee may result in revocation of provider approval. Continued late filing may also result in loss of approval.

(9) **Course records maintained four years.** Providers shall maintain course records for at least four (4) years. The Commissioner may order an examination of a provider, at the provider's expense, for good cause shown.

(10) **Repeated approved course.** At least fourteen (14) days prior to the repetition of an approved course, the Commissioner shall be notified in writing of the repetition, providing course number, name, date and instructor's name.

(11) **Course evaluation.** The provider shall require each producer listed on the Course Completion Form to complete a course evaluation form to be submitted to the Department within ten (10) business days after completion of each course.

(g) ~~**Correspondence and video courses.**~~ **Self study and Distance Learning Courses.**

~~(1) **Correspondence courses.** An insurance agent who satisfactorily completes an approved course by correspondence and provides proof of satisfactory completion as specified by the Commissioner will receive credit for the number of hours assigned by the Commissioner for completion of the course.~~

~~(2) **Video courses.** In order for an insurance agent to receive credit for viewing an approved course presented by video cassette, the insurance agent must view the video cassette under the supervision of an approved instructor and swear by affidavit that (s)he has viewed the video cassette in its entirety. The affidavit must be submitted to the provider.~~ The Insurance Commissioner shall determine appropriate guidelines and standards for self-study

and distance learning CEC offerings. The guidelines and standards shall include authentication of the registered licensee, technology requirements for course delivery and testing protocols. Guidelines and standards shall be reviewed, updated as appropriate, and published annually. Failure to follow the guidelines and standards established by the Commissioner may result in denial of continuing education credit for the producer and revocation of the course approval and or provider status for the provider.

(h) **Repeating courses.** An insurance ~~agent~~ producer may repeat a course within the twenty-four month period if the maximum credits designated for the course were not attained in the first attempt. By repeating the course, the ~~agent~~ producer may not during the twenty-four month period earn more than the maximum credits designated for the course. A~~n~~ ~~agent~~ producer may repeat a course after two years have elapsed and receive the maximum credits designated for the course. This section shall not apply to ethics courses.

(i) **Extension of time.** For good cause shown, the Commissioner may grant an extension of time during which the requirements imposed by the act may be completed. The extension shall not exceed twelve (12) months. The extension will not alter the requirements or due date of the succeeding twenty-four-month period. "Good cause" includes disability, natural disaster, or other extenuating circumstances. Each request for extension of time shall be in writing from the licensee and shall include details and any documentation to support the request. Each request must be received by the Commissioner no less than thirty (30) days before the expiration of the twenty-four month period.

(j) **~~Continuing education advisory committee.~~ Course approval.**

~~(1) There shall hereby be established the Continuing Education Advisory Committee. This committee shall consist of (1) representative of a licensed life insurance company, one (1) representative of a licensed property and casualty insurance company, one (1) representative of the Professional Independent Insurance Agents of Oklahoma, one (1) representative of the Life Underwriter Training Council, one (1) representative of the Health Underwriters, one (1) licensed non-affiliated life agent, one (1) licensed non-affiliated property and casualty agent and two (2) individuals designated by the Insurance Commissioner. These committee members shall be appointed by the Commissioner and the term of each member shall be three (3) years; except that of the members first appointed, three shall serve for one (1) year, three shall serve for two (2) years, and two shall serve for three (3) years. Any member may be reappointed for successive terms. The committee shall meet monthly. The members of the committee shall serve without pay and shall not be reimbursed for any expenses.~~

~~(2)~~ Prior to the Commissioner's approval or disapproval of a course in 365:25-3-1(f), ~~the~~ a ~~Continuing Education Advisory Committee~~ continuing education advisory committee will review the course submitted and make its nonbinding recommendation to the Commissioner on granting or denying approval based upon information submitted in 365:25-3-1(e) regarding the course or additional information regarding the course, if necessary, the number of CEC hours awarded for an approved course and the line or lines of insurance for which the course qualifies. Each course approval shall be valid for a period of ~~five (5)~~ not more than two (2) years, unless the course has a material change. Material changes to courses require course resubmission for overall course review and approval. Course approval following the review of material changes shall reset the ~~five-year~~ validity period. At the expiration of the ~~five-year~~ validity period, providers shall submit the course for approval by the ~~Board~~ Commissioner if the provider wants to continue to offer the course for continuing education credit. ~~This subsection shall apply to all existing approved continuing education courses at the time this rule becomes effective, with previously approved courses having an expiration date of five years from the date of prior approval, unless the course has a material change, as previously detailed.~~

(k) **Severability provision.** If any provision of this section, or application of such provision to any person or circumstances, shall be held invalid, the remainder of the section, and the application of such provision to person or circumstances other than those as to which it is held invalid, shall not be affected thereby.

365:25-3-3. Licensing of incorporated insurance agency

(a) **Purpose.** The purpose of this section is to set forth the rule regarding a corporation to submit its Articles of Incorporation for approval by the Insurance Commission prior to obtaining an insurance ~~agent's~~ producer's license.

(b) **Approval and filing of articles of incorporation.** No resident corporation shall be licensed as an insurance ~~agent~~ producer in this State, unless it's articles of incorporation are approved by the Insurance Commissioner's office and then filed with the Secretary of State. A certified copy thereof must then be filed with the Insurance Commissioner.

~~(c) **Application for a non-resident corporation.** A non-resident corporation shall not be licensed as an insurance agent in this State unless a Certificate of Qualification has been obtained from the Oklahoma Secretary of State prior to its submission, and the corporation application has been submitted to the Insurance Department.~~

365:25-3-4. Knowledge of ~~agent~~ producer imputed to the insurer

(a) **Purpose.** The purpose of this section is to prohibit the inclusion of language in insurance contract which purports to abrogate or limit the imputation of knowledge of the ~~agent~~ producer to the insurer.

(b) **Person soliciting policy deemed agent of issuing company.**

(1) Any person who solicits and procures an application for insurance, and policies issued in consequence

thereof, shall be regarded as the agent of the company issuing the policy. All provisions in the application and policy contracts to the contrary are void and are of no effect.

(2) No application form or contract of insurance shall be approved by the Commissioner of Insurance of the State of Oklahoma which purports to abrogate, impinge upon, interfere with, or any way prejudice the imputation of knowledge communicated to the agent, acting within the scope of his employment, to the insurer.

365:25-3-6. Management and commission contracts; approval by Insurance Commissioner [REVOKED]

~~(a) **Purpose.** The purpose of this section is to require a domestic company to submit for approval any contract providing for an override or additional commissions on all business produced within the State.~~

~~(b) **Approval of management and commission contracts.** Any domestic company which grants to any person a contract giving that person the right to override or additional commissions on all business produced within the State shall submit said contract to the Insurance Commissioner's Office for approval.~~

365:25-3-8. Inducement of lapse, surrender or cancellation of existing permanent life insurance coverages prohibited

(a) **Purpose.** The purpose of this section is to set forth the regulations regarding comparisons of existing permanent life insurance policies with other policies and to require that all recommendations for replacement of existing permanent life insurance policies be constructive.

(b) **Inducement of lapse, surrender or cancellation of existing permanent life insurance coverages prohibited.**

(1) **Replacement of policies.** No person subject to the provisions of 36 O.S. §1201 et seq. (1981), shall indiscriminately advocate or recommend in any life insurance sales presentation or proposal that the prospect surrender or permit to lapse any existing permanent life insurance policies for the purpose of replacing such policies with other insurance, alone or in conjunction with some form of equity investment.

(2) **Comparison of policies.** No person subject to the provisions of 36 O.S. §1201 et seq. (1981), shall directly or indirectly encourage any other person to surrender or permit to lapse any existing permanent life insurance policies for the purpose of inducing such other person to purchase other insurance, alone or in conjunction with some form on equity investment, by drawing a comparison between the benefits contained in such existing insurance program and the benefits which might accrue under some proposed substitute program of insurance or insurance and equity investments, unless such comparison be fully, completely, and accurately stated.

(3) **Written statement of comparison.** Any comparison shall be in writing and in not less than duplicate copies, one of which shall be left with the prospect and the other of such copies shall be retained by the general agent of the person preparing the same for not less than three years. Such records shall be subject to examination by the Insurance Commissioner.

(4) **Recommendations for replacement shall be constructive.** Sales presentation by life insurance ~~agents~~ producers shall in every instance be prospective and constructive. Destruction of existing programs of permanent insurance shall not be advocated directly or indirectly by any licensed life insurance ~~agent~~ producer to the detriment of the insured under such permanent plan of insurance.

365:25-3-9. "Twisting" defined and prohibited

(a) **Purpose.** The purpose of this section is to define and prohibit ~~"unfair methods of competition", "unfair or deceptive acts" and~~ "twisting" ~~and to provide for the refusal, suspension or revocation of a license for certain practices~~. A determination that a licensee has engaged in twisting shall result in a penalty pursuant to Section 1435.13 of Title 36.

(b) **"Twisting" defined and prohibited.**

~~(1) **Unfair methods of competition; unfair or deceptive acts or practices.** Oklahoma Insurance Code provides in part as follows:~~

~~(A) **Section 1204 - Unfair methods of competition and unfair or deceptive acts or practices defined.** *The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:*~~

~~(i) ***Misrepresentations and false advertising of policy contracts.*** *Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates or using any name or title of any policy or class of policies misrepresenting the true nature thereof; or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance. [36:1204(1)]*~~

~~(ii) ***Fraudulent statement in application; penalty.*** *Any insurance agent, examining physician, or other person who knowingly or willfully makes a false or fraudulent statement or representation in or relative to an application for insurance, or who makes any such statement to obtain a fee, commission, money or benefit shall be guilty of a misdemeanor. [36:1204(12)]*~~

~~(B) **Section 1202 - "Person" defined.** "Person" is defined in Section 1202 as *any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, any other legal entity engaged in the business of insurance, including agents, brokers and adjustors.* [36:1202(1)]~~

~~(2) **Refusal, suspension or revocation of license; procedure therefore; reinstatement.** *A license may be refused, or a license duly issued may be suspended or revoked or the renewal thereof refused by the Board, if, after notice and hearing as hereafter provided, it finds that the applicant for, or holder of such license . . . has made or issued, or caused to be made or issued any statement misrepresenting or fraudulently or unfairly making incomplete comparisons regarding the terms or conditions or any insurance or annuity contract legally issued by any insurer for the purpose of inducing or attempting to induce the owner of such contract to forfeit or surrender such contract or allow it to lapse for the purpose of replacing such contract in any way whatsoever.* [36:1412(A)(B)]~~

(~~3~~1) **"Twisting" defined.** ~~The Insurance Commissioner hereby expressly defines "twisting" to include~~ twisting includes:

(A) persuading a policyholder to drop an existing permanent policy in one company to replace it in another to the detriment of the policyholder.

(B) any misrepresentation, fraudulent or unfair incomplete comparisons made to induce and which tends to induce, lapse or surrendering of a policy.

365:25-3-10. Participating contracts of life insurance

(a) **Purpose.** The purpose of this section is to prohibit life insurance ~~agents~~ producers and life insurance companies from making or inferring any untrue statements regarding participating life insurance policies or statements that infer or state an individual prospect is being offered any advantage not available to members of the general public.

(b) **Participating contracts of life insurance.**

(1) No life insurance ~~agent~~ producer or life insurance company, stock or mutual, doing business in the State of Oklahoma shall infer or state to prospects for participating life insurance policies that any specific amount of dividends or benefits are guaranteed or are payable by reason of the participating feature contained in any life insurance contract.

(2) No life insurance ~~agent~~ producer or life insurance company shall employ any sales literature in the State of Oklahoma which infers or states that an individual prospect for insurance is being offered any advantage or benefit not available to members of the public generally who are equivalent underwriting risks.

(3) Violation of any of the provisions of this section will subject the ~~agents~~ producers and companies concerned to appropriate administrative sanctions provided for by 36 O.S. §1207 (1981).

365:25-3-11. Motor service club agent's license [REVOKED]

~~(a) **Purpose.** The purpose of this section is to set forth rules regarding the issuance of a motor service club agent's license.~~

~~(b) **Motor service club agent's license.**~~

~~(1) **Fees and examinations for motor service club agents.** Any person desiring a motor service club agent's license must pay the fees charged to agents licensed under 36 O.S. §1422.~~

~~(2) **Appointment from motor service club required.** No such license shall be issued unless there is an appointment from a motor service club accompanying the application.~~

~~(3) **Appointment fees payable by motor service club.** A motor service club must pay an appointment fee per agent as set forth in 36 O.S. § 1425(E).~~

365:25-3-12. Insurance consultants and surplus lines insurance brokers

(a) **Purpose.** The purpose of this section is to require surplus lines brokers and insurance consultants to post bonds with the Insurance Commissioner in the amounts specified.

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

(1) **"Bond"** means a surety bond in the penal sum as determined in accordance with (d) of this section which shall be obtained in favor of the Commissioner from authorized corporate sureties approved by the Commissioner and conditioned upon the licensee conducting his/its business in accordance with applicable law. Any surety issuing such bond shall notify the Commissioner of any reductions or cancellations in the bond of any licensee. No such bond shall be terminated unless at least thirty days written notice thereof is given by the surety to the licensee and the Commissioner. All surety protection under such bond shall insure to the benefit of any party aggrieved by the acts of the licensee thereunder.

(2) **"Commissioner"** means the Insurance Commissioner of the State of Oklahoma.

(3) **"Gross fee"** means the total of all fees received by any Insurance Consultant derived by offering any advice, counsel, opinion or service with respect to the benefits, advantages or disadvantages promised under any policy of insurance that could be issued or delivered in this state.

(4) **"Gross premium"** means the total of all premiums received by any Surplus Lines Insurance Broker less those reductions permitted by 36 O.S. § 1115.

(5) **"Insurance consultant"** means an individual, partnership or corporation who, for a fee, holds himself or itself out to the public as engaged in the business of offering any advice, counsel, opinion or service with respect to the benefits, advantages or disadvantages promised under any policy of insurance that could be issued or delivered in this state.

(6) **"Person"** means any individual, partnership or corporation or other entity.

(7) **"Surplus lines insurance broker"** means an individual, partnership or corporation who solicits, negotiates or procures a policy of insurance in an insurance company not licensed to transact business in this state which cannot be procured from insurers licensed to do business in this state. All transactions under such license shall be subject to 36 O.S. §§ 1101 et seq.

(8) **"Resident"** means any individual or business entity that either resides in the State of Oklahoma or maintains its principal place of business in the State of Oklahoma.

(c) **Bond required.**

(1) **Surplus lines insurance broker.** No resident ~~person~~ shall act as a Surplus Lines Insurance Broker in this state until such person has filed with the Commissioner, and thereafter maintained in force, a bond in an amount prescribed in (d) of this section.

(2) **Insurance consultant.** No resident person shall act as an Insurance Consultant in this state until such person has filed with the Commissioner, and thereafter maintained in force, a bond in the amount prescribed in (d) of this section.

(3) **Cash in lieu of bond.** In either (1) or (2) of paragraph (c) of this section, cash in lieu of a bond will be considered an acceptable substitute.

(d) **Amount of bond.** The bond required by (c) of this section shall be as follows:

(1) For $1,000,000 and above gross premium or gross fees as applicable - $40,000 bond required;

(2) For $500,000 to $999,999 gross premium or gross fees as applicable - $35,000 bond required;

(3) For $250,000 to $499,999 gross premium or gross fees as applicable - $30,000 bond required;

(4) For $100,000 to $249,999 gross premium or gross fees as applicable - $25,000 bond required;

(5) For $75,000 to $99,999 gross premium or gross fees as applicable - $20,000 bond required;

(6) For $50,000 to 74,999 gross premium or gross fees as applicable - $15,000 bond required;

(7) For $25,000 to $49,999 gross premium or gross fees as applicable - $10,000 bond required;

(8) For all gross premium or gross fees below $25,000 as applicable - $5000 bond required.

(e) **Reports required.** Every Insurance Consultant shall, on or before the first day of April of each year, file with the Commissioner a verified statement of all fees received by such consultant as a result of business conducted pursuant to such consultant's license.

(f) **Third party administrators.** Pursuant to 36 O.S. § 1448, the amount of bond for a third party administrator must be stipulated by the Insurance Commissioner in an amount that will be sufficient to protect those with which the administrator deals and not less than ten thousand dollars.

365:25-3-13. Surplus line insurance with non-admitted insurer; approval prior to issuance; collection and remittance of taxes; claims for tax adjustments; procedures; forms

(a) **Purpose.** The purpose of this section is to set forth the requirements regarding the procurement of policies from non-admitted carriers.

(b) **Placement with licensed broker.** No ~~resident,~~ licensed insurance ~~agent~~ producer, solicitor, broker or general agent shall place, or cause to be placed with any nonadmitted insurer any policy of insurance upon property and/or any other risks, or any insurable interest therein, having a situs in the State of Oklahoma, except through a duly licensed surplus line broker; and, then, any such policy shall only be procured by strict compliance with the applicable statutes of this State and the Rules issued under the authority of the Insurance Department of the State of Oklahoma.

(c) **Application for placement.**

(1) After procuring any surplus lines insurance, surplus line brokers shall execute and file affidavits and reports with the Insurance Commissioner as required pursuant to Section 1107 of Title 36 on Form SL-3(a-d). All Forms SL-3 (a-d) shall be retained in the files of the brokers, to support the policy issued thereunder, for a period of not less than three years.

(2) All applications (Form SL-3) shall be submitted in duplicate, completely filled out and verified under oath by the broker submitted for each policy for which approval for issuance is sought; provided, that in the event any group insurance is determined to constitute a surplus line of insurance, a specific method of reporting additional individual certificates issued or cancelled under such group policy shall be agreed upon between the Insurance Commissioner and the broker concerned.

(3) After procuring surplus lines insurance, an insured filing a direct placement shall execute and file affidavits and reports with the Insurance Commissioner as required by 36 O.S. § 1115 on form DSL-3 (a-d).

(d) **Broker ~~Tax~~ tax collection and remittance.**

(1) All taxes due on any insurance policy issued as a surplus line policy, through any non-admitted insurer, shall be collected by the surplus line broker who procures such policy's issuance. Such taxes shall, in each instance be collected in full on or before the issuance of the policy to the insured, except as hereinafter expressly provided for by (b) of this section. All such taxes shall be duly remitted to the State of Oklahoma, through the Insurance Commissioner~~, within thirty (30) days next succeeding the date of policy issuance.~~ on or before the end of each month following each calendar quarter ~~By~~ by letter of transmittal accompanying such tax remittance~~, the surplus line broker shall advise the Insurance Commissioner of the date policy was issued, and policy number, and the effective date thereof~~.

(2) All premium taxes shall be computed on the total agreed premium due on the policy, applying the rate of tax existing as of the date the premiums in question become payable, which date shall in every instance be deemed

to be the date of policy issuance, except in respect to the following specific situations:

(A) A policy issued for a term in excess of one year, with a fixed premium being payable annually, shall be taxed on the first year's premium at the rate effective as of the date of policy issuance. The tax on premiums payable for subsequent years shall be computed at the rate in effect as of the date such subsequent premiums become due and payable, which date shall be deemed for taxation purposes to be the policy anniversary date.

(B) Premium deposits made on policies providing for retrospective premium adjustments shall be deemed to be premiums paid for such policy as of the date of issuance and taxed accordingly, applying the tax rate in effect at date of policy issuance.

(C) Retrospective premium adjustments, made pursuant to the terms of any surplus line policy and requiring the payment of additional premiums by the insured, shall be taxed at the rate effective as of the date such additional premiums become payable, which date shall be deemed to be the date last included in the policy period considered in computing such retrospective premiums. All taxes due to the State of Oklahoma as the result of retrospective premium adjustments shall be collected by the broker concerned and remitted to the Insurance Commissioner within ~~sixty (60)~~ thirty (30) days next succeeding the last date included in the policy period considered in computing such retrospective premium adjustment.

(e) **Broker ~~Tax~~ tax refunds; warrants.**

(1) Claims for tax refunds on surplus line policies shall be separately submitted on Form SL-3(d), which shall be prepared ~~in duplicate~~ under oath, and executed by the broker concerned. Every such verified claim shall set forth with particularity the circumstances upon which it is predicated. All claims for tax refunds shall be computed at the rate of tax existing at the time the tax in question was paid. Only one claim for tax refund shall be submitted on each Form SL-3(d). Applications for adjustment of erroneously paid taxes shall be deemed to be a claim for tax refund and shall be submitted in the manner prescribed for such claims. Any claim for a tax refund ~~must~~ shall be filed within ~~thirty (30) days next succeeding the event or events giving rise to such claim~~ following the close of the calendar quarter that contains the policy period considered in computing the tax refund three (3) years from the date of tax payment. The broker shall submit proof of the original payment and proof of the reason for the refund to the Insurance Commissioner. Any claim not filed within this time period ~~the period of such thirty (30) days~~ shall be barred from ex parte administrative consideration or action by the Insurance Commissioner. Any claim for tax refund which is ~~no~~ not timely filed, or any claim for tax refund which is denied by ex parte action of the Insurance Commissioner, may be set down for public hearing upon timely application therefor by the party or parties aggrieved by such claims denial. All applications for hearings involving claims for tax refunds shall be made within the times and in the manner prescribed by statute for other hearings before the Insurance Commissioner.

(2) All claims for tax refunds shall be promptly acted upon by the Insurance Commissioner. Notice of the allowance or denial of such claims, as are duly submitted in proper form, shall be forwarded to the broker concerned within thirty days next succeeding the receipt of such claims by the Insurance Commissioner.

(3) All warrants issued in refund of premium taxes upon surplus line policies will be issued in the name of the ~~insured to whom such policy was issued and who originally paid the tax in question~~ broker who originally submitted the tax in question. ~~It shall be the duty of the broker making application for such tax refund to cause such warrant to be delivered to the insured entitled thereto within thirty (30) days next succeeding the receipt of such warrant by the broker. In the event delivery of any warrant has not been made at the expiration of the said thirty (30) day period, the broker shall immediately return such warrant to the Insurance Commissioner, advising the reasons precluding such warrant's delivery to the insured entitled thereto and including the last known address of such insured.~~

(f) ~~Forms~~ **Direct placement tax collection and remittance.**

(1) ~~Surplus line brokers shall reproduce Forms SL-2 and SL-3 in quantities sufficient for their respective requirements.~~ All taxes due on any insurance policy issued as a direct placement surplus lines policy through any non-admitted insurer shall be collected by the affiant or other representative of the insured who procured such policy's issuance. Such taxes shall, in each instance, be collected in full on or before the issuance of the policy to the insured except as hereinafter expressly provided for by Section 365:25-3-13 (f)(2)(B). All such taxes shall be duly remitted to the State of Oklahoma, through the Insurance Commissioner, within thirty (30) days following the issuance of the policy. The Direct Placement by and Insured Summary shall accompany the tax remittance.

(2) ~~The applications, et cetera, required by this section shall be supplementary and in addition to the Annual Statements and Annual Tax Returns required to be filed by each licensed surplus line broker. The Annual Statements and Annual Tax Returns of all surplus line brokers shall be duly filed, according to 36 O.S. §1114 (1981) upon the forms prescribed for such purposes.~~ All premium taxes shall be computed on the total agreed premium due on the policy, applying the rate of tax existing as of the date the premiums in question become payable, which date shall in every instance be deemed to be the date of policy issuance, except in respect to the following specific situations:

(A) A policy issued for a term in excess of one year, with a fixed premium being payable annually, shall be taxed on the first year's premium at the rate effective as of the date of policy issuance. The tax on premiums payable for subsequent years shall be computed

at the rate in effect as of the date such subsequent premiums become due and payable, which date shall be deemed for taxation purposes to be the policy anniversary date.

(B) Premium deposits made on policies providing for retrospective premium adjustments shall be deemed to be premiums paid for such policy as of the date of issuance and taxed accordingly, applying the tax rate in effect at the date of policy issuance.

(C) Retrospective premium adjustments, made pursuant to the terms of any surplus line policy and requiring the payment of additional premiums by the insured, shall be taxed at the rate effective as of the date such additional premiums become payable, which date shall be deemed to be the date last included in the policy period considered in computing such retrospective premiums. All taxes due to the State of Oklahoma as the result of retrospective premium adjustments shall be collected by the broker concerned and remitted to the Insurance Commissioner within thirty (30) days following the policy period considered in computing such retrospective premium adjustment.

(g) **Direct placement tax refunds; warrants.**

(1) Claims for tax refunds on surplus lines policies shall be separately submitted on Form DSL-3d, which shall be prepared under oath and executed by the insured or a representative of the insured. Every verified claim shall set forth with particularity the circumstances upon which it is predicated. All claims for tax refunds shall be computed at the rate of tax existing at the time the tax in question was paid. Only one claim for tax refund shall be submitted on each Form DSL-3d. Applications for adjustment of erroneously paid taxes shall be deemed to be a claim for tax refund and shall be submitted in the manner prescribed for such claims. Any claim for tax refund shall be filed within three (3) years from the date of tax payment. The insured or a representative of the insured shall submit proof of the original payment and proof of the reason for the refund to the Insurance Commissioner. Any claim not filed within this time period shall be barred from ex parte administrative consideration or action by the Insurance Commissioner. Any claim for tax refund that is not timely filed, or any claim for tax refund that is denied by ex parte action of the Insurance Commissioner, may be set down for public hearing upon timely application by the party or parties aggrieved by the claim denial. All applications for hearings involving claims for tax refunds shall be made within the times and in the manner prescribed by statute for other hearings before the Insurance Commissioner.

(2) All claims for tax refunds shall be promptly acted upon by the Insurance Commissioner. Notice of the allowance or denial of such claims, as are duly submitted in proper form, shall be forwarded to the affiant or other representative of the insurance within thirty (30) days next succeeding the receipt of such claims by the Insurance Commissioner.

(3) All warrants issued in refund of premium taxes upon surplus line policies will be issued in the name of the insured that originally paid the tax in question.

(h) **Forms**

(1) Surplus line brokers shall reproduce Forms SL-2 and SL-3 in quantities sufficient for their respective requirements.

(2) The applications and forms required by this section shall be supplementary and in addition to the Annual Statements and Annual Tax Returns required to be filed by each licensed surplus line broker. The Annual Statements and Annual Tax Returns of all surplus line brokers shall be duly filed, according to 36 O.S. §1114 upon the forms prescribed for such purposes.

365:25-3-14. Insurance adjusters continuing education

(a) **Purpose.** The purpose of this section is to set forth the requirements for continuing education which an insurance adjuster must meet, and to set forth the requirements for approval by the Insurance Commissioner of a proposed continuing education course.

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

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

(2) **"Certificate of course completion"** means a document acceptable to the Commissioner which signifies satisfactory completion of the course and reflects hours of credit earned.

(3) **"Continuing Education Advisory Committee"** means the committee established by the Commissioner for the purpose of reviewing and recommending approval or disapproval of continuing education courses.

(4) **"Credit hour"** means at least ~~a~~ fifty (50) ~~minute~~ minutes of classroom ~~instructional~~ instruction ~~session~~, unless a correspondence or self-study course.

(5) **"Instructor"** means a person who presents course materials approved for continuing education credit hours, and who has experience, training, and/or education in the course subject matter and has been approved by the Commissioner.

(6) **"Instructor Qualification Form"** means a form acceptable to the Commissioner and completed by the instructor which documents qualifications of the instructor.

(7) **"Licensee"** means a natural person who is licensed by the Commissioner as an insurance adjuster.

(8) **"Provider"** means a person, corporation, professional association or its local affiliates, an insurance company or any other entity which is approved by the Commissioner and provides approved continuing education to insurance adjusters.

(9) **"Provider ~~Continuing Education Reporting~~ Course Completion Form"** means a form acceptable to the Commissioner and completed by the provider which documents completion of an approved course by an adjuster or adjusters.

(c) **Exceptions.** The requirements for continuing education in this section shall not apply to:

(1) a non-resident adjuster who resides and is licensed in a state or district having continuing education requirements and the adjuster meets all the requirements of that state or district to practice therein. The non-resident adjuster shall be responsible for completing any reporting requirements necessary to verify completion.

(2) a non-resident adjuster of a state that does not require continuing education hours may fulfill the continuing education requirements of any other state in which the individual is licensed and shall be deemed to have complied with this rule upon proof of completion of said hours.

(d) **Continuing education requirements.**

(1) **Twelve hours of CEC during twenty-four month period.** All licensees shall complete twelve (12) credit hours of continuing education during each twenty-four month period. The twenty-four month period begins the first day of the month following the month in which the license is granted. The credit hours completed must be in those lines in which the adjuster is licensed. Courses taken in excess of twelve (12) hours will not carry forward. However, courses taken in excess of twelve (12) hours may be applied retroactively in order to bring a lapsed license into compliance.

(2) **Certificates of course completion required for license renewal.** If course completion is not reflected on the license renewal form issued by the Insurance Department, each adjuster shall attach, if requested by the Commissioner, an approved course completion certificate to the license renewal form returned to the Department for verification of course completion. The Commissioner shall maintain a cumulative total of continuing education credit hours to insure compliance within the twenty-four (24) month period.

(3) **Credits for instructors.** An instructor who is a licensee shall receive the same continuing education credit for presenting approved course materials as a licensee who attends an approved classroom instructional session by including his/her name and license number on roster.

(4) **Prerequisite for renewal or reinstatement.** ~~Effective January 1, 1996, as~~ As a prerequisite for license renewal or prior to reinstatement following a lapse of license, an adjuster must submit the appropriate forms as specified in this section that establish the educational requirements have been met if not currently recorded by the Oklahoma Insurance Department.

(e) **Approval of continuing education providers.**

(1) **Information required.** Each provider shall apply for ~~Commissioner~~ approval by the Commissioner. All providers, including publicly funded educational institutions, federal agencies, or Oklahoma state agencies, shall provide:

(A) Name and address of the provider.

(B) Contact person and his or her address and telephone number(s).

(C) The location of the courses or programs, if known, unless it is an individual ~~study or correspondence~~ self-study course.

(D) The number of CEC hours requested for each course.

(E) Topic outlines which list the summarized topics covered in each course and a copy of any course materials.

~~(i) if a classroom course, a timed outline including any breaks;~~

~~(ii) if a correspondence course, a copy of text or table of contents with page numbers;~~

~~(iii) if a prior approved course has substantially changed, a summarization of those changes.~~

(F) The names and qualification of instructors. An instructor shall have one of the following qualifications:

(i) Three (3) years of recent experience in the subject area being taught; or

(ii) A degree related to the subject area being taught; or

(iii) Two (2) years of recent experience in the subject area being taught and twelve (12) hours of college and/or vocational technical school credit hours in the subject area being taught.

(G) If a prior approved course has materially changed, a summarization of those changes.

(2) **Withheld or withdrawn approval.** The Commissioner may withhold or withdraw approval of any provider for violation of or non-compliance with any provision of this section.

(f) **Courses; approval; records.**

(1) ~~**Application deadline for course approval.**~~ **Course approval timeline.** ~~At least thirty (30) days prior to the course date and not less than ten (10) days prior to the Continuing Education Advisory Committee meeting immediately preceding the course date, the provider shall apply to the Commissioner for course approval.~~ A provider shall apply to the Commissioner for course approval by submitting forms and materials to the Commissioner the first day of the month one full month prior to the date of the first course offering. The Commissioner shall grant or deny approval based upon information submitted in this section regarding each course or additional information regarding the course, if necessary. The Commissioner will assign the number of CEC hours awarded for an approved course and the line or lines of insurance for which the course qualifies.

(2) **Repeated approved course.** At least fourteen (14) days prior to the repetition of an approved course, the Commissioner shall be notified in writing of the repetition, providing course number, name, date, location and instructor's name.

(3) **Written approval required.** All courses shall require written approval.

(4) **Withheld or withdrawn approval.** The Commissioner may withhold or withdraw approval for any course. This withdrawal will not affect any CEC hours attained under the course previous to the withdrawal.

(5) **Minimum of one credit hour.** Courses submitted for approval must consist of a minimum of one credit hour of course instruction.

(6) **Continuing education course must be separate from meetings.** Courses conducted in conjunction with other meetings must have a separate continuing education course component. ~~The method to monitor attendance must be stated and approved by the Commissioner.~~

(7) **Content of courses.** Courses must be of a meaningful nature and shall not include items such as prospecting, motivation, sales techniques, psychology, recruiting, time management, phone etiquette, basic pre-licensing principles of adjusting, and subjects not relating to the adjuster's license.

(8) **Certificate of Course Completion.** At the completion of each course, the provider shall provide the insurance adjuster a "Certificate of Course Completion" Form.

(9) **List of adjusters completing course to Commissioner.** Within ten (10) business days after completion of each course, the provider shall provide the Commissioner a list of all insurance adjusters who completed the course on the ~~Provider Continuing Education Reporting~~ Course Completion Form. This list shall contain the course number, date of completion and license numbers of all insurance adjusters completing the course. If the list is not reported within ten (10) business days, a late report fee of $50.00 shall be paid to the Insurance Department. Failure to pay the late report fee may result in revocation of provider approval. Continued late filing may also result in loss of approval.

(10) **Course records maintained four (4) years.** Providers shall maintain course records for at least four (4) years. The Commissioner may order an examination of a provider, at the provider's expense, for good cause shown.

(g) ~~**Correspondence and video courses.**~~ **Self study and distance learning courses.**

~~(1) **Correspondence courses.** An insurance adjuster who satisfactorily completes an approved course by correspondence and provides proof of satisfactory completion as specified by the Commissioner will receive credit for the number of hours assigned by the Commissioner for completion of the course.~~

~~(2) **Video courses.** In order for an insurance adjuster to receive credit for viewing an approved course presented by video cassette, the insurance adjuster must view the video cassette under the supervision of an approved instructor and swear by affidavit that (s)he has viewed the video cassette in its entirety. The affidavit must be submitted to the provider.~~ The Insurance Commissioner shall determine appropriate guidelines and standards for self-study and distance learning CEC offerings. The guidelines and standards shall include authentication of the registered licensee, technology requirements for course delivery and testing protocols. Guidelines and standards shall be reviewed and updated as appropriate and published on the Commissioner's website annually. Failure to follow the guidelines and standards established by the Commissioner may result in denial of continuing education credit for the adjuster and revocation of the course approval and or provider status for the Provider.

(h) **Repeating courses.** An insurance adjuster may repeat a course within the ~~twelve~~ twenty-four month period if the maximum credits designated for the course were not attained in the first attempt. By repeating the course, the adjuster may not during the twelve month period earn more than the maximum credits designated for the course. An adjuster may repeat a course after two (2) license renewal dates have elapsed and receive the maximum credits designated for the course.

(i) **Extension of time.** For good cause shown, the Commissioner may grant an extension of time during which the requirements imposed by the act may be completed. The extension shall not exceed twelve (12) months. The extension will not alter the requirements or due date of the succeeding twelve-month period. "Good cause" includes disability, natural disaster, or other extenuating circumstances. Each request for extension of time shall be in writing from the licensee and shall include details and any documentation to support the request. Each request must be received by the Commissioner no less than thirty (30) days before the expiration of the ~~twelve~~ twenty-four month period.

(j) **Continuing education advisory committee.**

(1) There shall hereby be established the Continuing Education Advisory Committee. This committee shall consist of representatives from the Agents Licensing Division, and representatives from the industry (not to exceed three (3) individuals) as designated by the Commissioner. Members of the Advisory Board established by 36 O.S. § 6221 may also serve on the Continuing Education Advisory Committee. The committee shall meet at least quarterly and additionally as required. Members of the committee shall serve without pay and shall not be reimbursed for any expenses associated therewith.

(2) Prior to the Commissioner's approval or disapproval of a course in 365:25-3-14(e), the Continuing Education Advisory Committee will review the course submitted and make its nonbinding recommendation to the Commissioner on granting or denying approval based upon information submitted pursuant to 365:25-3-14(e) and additional information regarding the course, if necessary. Each course approval shall be valid for a period of ~~twelve (12) months~~ no longer than two (2) years, unless the course has a material change. Material changes to courses require course resubmission for overall course review and approval. Course materials may be resubmitted as requested for review at the time of expiration. ~~This subsection shall apply to all existing approved continuing education courses at the time this rule becomes effective. Such courses must be resubmitted for approval within twelve (12) months of the effective date of this rule.~~ All existing courses previously approved and current with the Commissioner shall be submitted in accordance with the expiration date as granted by the Commissioner unless the course has a material change, as previously detailed.

(k) **Severability provision.** If any provision of this section, or application of such provision to any person or circumstances, shall be held invalid, the remainder of the section, and the application of such provision to person or circumstances other than those as to which it is held invalid, shall not be affected thereby.

365:25-3-16. Examination exemptions ~~for limited representatives~~

~~(a) No written examination may be required of an applicant for a limited insurance representative license in the following lines:~~ Applicants for the following licenses are cognizant of and capable of fulfilling the responsibilities of the license without an examination:

(1) ~~personal effects travel,~~ limited lines producers,

(2) ~~travel accident,~~ surplus lines brokers,

(3) ~~Uniform Commercial Code nonfiling,~~ aircraft title producer license if the applicant was licensed as a title insurance producer prior to November 1, 2006,

~~(4) prepaid legal,~~

~~(5) job loss, and~~

~~(6) credit life and credit accident and health.~~

~~(b) A written examination may be administered to applicants for a limited insurance representative license in the following lines:~~

~~(1) credit property, and~~

~~(2) crop hail.~~

~~(c) Prior to the issuance of a license for credit life, credit accident and health or credit property, the applicant must submit a sworn affidavit, as provided by the Insurance Commissioner, attesting to the understanding of pertinent matter.~~

SUBCHAPTER 5. BAIL BONDSMEN

PART 5. GENERAL PROVISIONS PERTAINING TO BAIL BONDSMEN

365:25-5-40. Computation of time in 59 O.S. §1332

(a) In computing any period of time in 59 O.S. §1332, 12 O.S. §2006(A) will be followed. 12 O.S. §2006(A) states, in pertinent part, as follows: *~~[T]~~he day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a ~~Saturday, a Sunday or a~~ legal holiday as defined by Section 82.1 of Title 25 of the Oklahoma Statutes or any other day when the office of the court clerk does not remain open for public business until ~~4:00 p.m.~~ the regularly scheduled closing time, in which event the period runs until the end of the next day which is not ~~a Saturday, a Sunday or~~ a legal holiday ~~as defined by the Oklahoma Statutes~~ or a ~~any other~~ day when the office of the court clerk does not remain open for public business until ~~4:00 p.m.~~ the regularly scheduled closing time. Unless otherwise provided by law, when the period of time prescribed or allowed is less than eleven (11) days, intermediate legal holidays and any other day when the office of the court clerk does not remain open for public business until the regularly scheduled closing time shall be excluded from the computation.*

(b) The defendant shall be returned to custody within ninety days or the forfeiture shall be paid on the ninety-first day, and the time begins to run as follows:

(1) If the bondsman dates the return receipt, then the days start running the next day.

(2) If the bondsman doesn't date the return receipt but the insurer or professional does, then the days start running the next day.

(3) If neither the bondsman nor the insurer or professional dates the return receipt, then the days start running the day after the order and judgment of forfeiture was mailed.

SUBCHAPTER 17. CONSUMER PROTECTION IN ANNUITY TRANSACTIONS REGULATION

365:25-17-8. Mitigation of responsibility

(a) The Insurance Commissioner may order:

(1) An insurer to take reasonably appropriate corrective action for any ~~senior~~ consumer harmed by the insurer's, or by its insurance producer's, violation of this regulation;

(2) An insurance producer to take reasonably appropriate corrective action for any ~~senior~~ consumer harmed by the insurance producer's violation of this regulation; and

(3) A general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale, of annuities to consumers, to take reasonably appropriate corrective action for any ~~senior~~ consumer harmed by the insurance producer's violation of this regulation.

(b) Any applicable penalty under Sections 619 and 1435.13 of Title 36 of the Oklahoma Statutes for a violation of Section 365:25-17-7(a), (b), or (c)(2) of this regulation may be reduced or eliminated at the discretion of the Insurance Commissioner if corrective action for the ~~senior~~ consumer was taken promptly after a violation was discovered.

[OAR Docket #07-1114; filed 5-21-07]

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

[OAR Docket #07-1193]

RULEMAKING ACTION:
PERMANENT final adoption

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]

AUTHORITY:
Commissioner of Labor; 40 O.S. 165.1 et seq.; 40 O.S. 197.1 et seq.

DATES:
Comment period:
February 15, 2007 through March 19, 2007

Public hearing:
March 19, 2007
Adoption:
March 20, 2007
Submitted to Governor:
March 23, 2007
Submitted to House:
March 23, 2007
Submitted to Senate:
March 23, 2007
Gubernatorial approval:
April 23, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule resulted in approval on May 17, 2007
Final adoption:
May 17, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed rules amendments to Subchapter 1, 380:30-1-2, add the terms "Electronic means" to the definitions so as to coincide with the changes made to statutory provisions in Title 40, Section 165.2, which took effect on November 1, 2006. The proposed amendments also add the terms, "Claimant" and "Respondent" to the definitions.

The proposed amendments to Subchapter 3, 380:30-3-2, adjust the language deleting the requirement of the claimant's social security number from the Claimant Wage Claim form to mirror the changes done under Federal law.
CONTACT PERSON:
Elizabeth J. Stefanik, (405) 528-1500, x 231

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. § 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

380:30-1-2. Definitions

"Commissioner", as used in these Rules, means the Commissioner of Labor or the Commissioner's designee.

"Bona fide disagreement" means, as used in 40 O.S. 165.4, a dispute in which the employer holds an honest and sincere belief that the wages claimed are not owed so long as that belief is supported objectively by the facts and circumstances and the employer took reasonable steps to ascertain the facts and circumstances.

"Claimant" means the same as "employee" or someone claiming wages due on behalf of a deceased employee.

"Department" and **"Agency"** mean the Department of Labor and/or the Wage & Hour Division of the Department of Labor.

"Earned and due" means that wages derived from labor or professional services are presently and immediately matured and enforceable and the time for payment has arrived. The term "earned and due" necessitates that all conditions precedent to payment have happened, have been met or have been performed. If the employment agreement is based either in whole or in part on payment of commissions, the terms of the agreement will control the time when commissions are earned and due. The Department of Labor has jurisdiction over only those claims for wages that are earned and due at the time the wage claim is filed. Any claims for "future wages" will be summarily rejected by the compliance officer or dismissed by the administrative hearing officer.

"Electronic means" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, electronic debit cards, and transfers initiated by telephone.

"Employee" means any person permitted to work by an employer. Employee shall not include: Business owners, independent contractors, volunteers, co-partners, or joint venturers. For purposes of these rules, those persons who are permissibly exempt from the Workers' Compensation statute, as defined in 85 O.S. § 3, shall be considered "business owners" and not employees. A person who, pursuant to the terms of an employment agreement, has as their only form of compensation a potential interest in the proceeds or profits of a business (commonly called "working for sweat equity"), shall be considered a business owner and not an employee.

"Employer" means every individual, partnership, firm association, corporation, the legal representative of a deceased individual, or the receiver, trustee or successor of an individual, firm, partnership, association or corporation, employing any person in this state. "Employer" shall also include county, city, and municipal corporations, and all other local government entities. "Employer" shall not include the State of Oklahoma or any entity or branch of the United States government operating in this State.

"Established policy" means a statement, written or oral, or a course of conduct from or by the employer, of general applicability to all similarly situated employees regarding the business affairs of the employer. An "established policy" includes a written employment contract, a written employee manual or employment policy, or a written promise by the employer. An

"Established policy" also includes a verbal or implied promise by the employer that is supported by evidence of a past course of conduct consistent with the promise.

"Independent contractor" means one who renders service in the course of independent employment or occupation according to his own methods and is subject to his employer's control only as to the end product or final result of his work and not as to the means whereby it is to be accomplished. The following factors are considered significant in determining the employment relationship and whether a person is an employee or an independent contractor:

(A) the nature of the contract between the parties, whether written or oral;

(B) the degree of control which, by the agreement, the employer may exercise on the details of the work

or the independence enjoyed by the contractor or agent;

(C) whether or not the one employed is engaged in a distinct occupation or business for others;

(D) the kind of occupation with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;

(E) the skill required in the particular occupation;

(F) whether the employer or the workman supplies the instrumentalities, tools and the place of work for the person doing the work;

(G) the length of time for which the person is employed;

(H) the method of payment, whether by the time or by the job;

(I) whether or not the work is a part of the regular business of the employer;

(J) whether or not the parties believe they are creating the relationship of master and servant; and

(K) the right of either to terminate the relationship without liability. No one factor is controlling, and the relationship must be based on the set of facts peculiar to the case.

"Offsets" means deductions (as defined in this Subchapter); the value of any of the employer's money or property retained by the employee after termination; the amount of any prior overpayment of wages to the employee; and the amount of any prior valid final judgment obtained in a court of record or through an administrative agency, by the employer against the employee.

"Respondent" means the same as "Employer."

SUBCHAPTER 3. WAGE CLAIM PROCEDURES

380:30-3-2. Employee wage claim form

(a) An employee, or the survivor of an employee, who has not been paid wages due may file a claim on a form provided by the Department. The Department shall keep a record of each claim filed and the disposition of the claim.

(b) The wage claim form shall request information regarding the dates the work was performed, the rate of pay, the reasons the wages have not been paid in full and the amount of money due, the full name of the claimant, the full name of the employee if the claimant is the survivor of the employee, ~~the social security number of the employee,~~ the street address of the claimant, the telephone number for the claimant, if any, the physical location where the work was performed, the name of the immediate supervisor of the employee, the name of the employer, the address of the employer, and any information regarding bonuses, sick leave, annual leave or other advantages due the claimant. The claimant shall provide evidence in support of the claim within the claimant's possession, including time cards, personal time records, payroll check stubs, W-2 statements, written wage agreements, statements from witnesses who have direct knowledge regarding the hours worked and the wage agreement, and all other documents which substantiate the employment relationship.

(c) The Department shall notify the respondent of the filed claim.

[OAR Docket #07-1193; filed 5-24-07]

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

[OAR Docket #07-1194]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 70. Elevator Safety Act Rules [NEW]
AUTHORITY:
Commissioner of Labor; 59 O.S. Section 3023(B), Elevator Safety Act
DATES:
Comment period:
February 1, 2007 through March 5, 2007
Public hearing:
March 5, 2007
Adoption:
March 20, 2007
Submitted to Governor:
March 23, 2007
Submitted to House:
March 23, 2007
Submitted to Senate:
March 23, 2007
Gubernatorial approval:
April 23, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 17, 2007
Final adoption:
May 17, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Chapter 70. Elevator Safety Act Rules [NEW]
Gubernatorial approval:
August 24, 2006
Register publication:
24 Ok Reg 29
Docket Number:
06-1278
INCORPORATIONS BY REFERENCE:
Incorporated standards:
The rules incorporate by reference the following: The American Society of Mechanical Engineers ("ASME") Safety Code for Elevators and Escalators, ASME A17.1, latest edition and most current addenda; Safety Code for Existing Elevators and Escalators, ASME A17.3, latest edition and most current addenda; Safety Standard for Platform Lifts and Stairway Chairlifts, ASME A18.1, latest edition and most current addenda; Safety Standard for Belt Manlifts, ASME A90.1, latest edition and most current addenda; Safety Requirements for Personnel Hoists and Employee Elevators, ASSE A10.4, latest edition; the National Electrical Code, NFPA 70, latest edition and current addenda; the American Welding Society ("AWS") AWS D1.1, current Code Edition and addenda; the National Electric Code ("NEC") current code and addenda; the Americans with Disabilities Act ("ADA") regarding accessibility, current code and addenda; the National Elevator Industry Education Program; the ASME QEI-1 Standards for the Qualification of Elevator Inspectors; the International Code Council; the International Building Code, current code and addenda; the Oklahoma Administrative Procedures Act.
Incorporating rules:
380:70-1-2; 380:70-3-2; 380:70-3-4; 380:70-3-5; 380:70-3-10; 380:70-3-11; 380:70-3-14; 380:70-5-1; 380:70-5-2; 380:70-5-3; 380:70-3-4;

380:70-5-7; 380:70-5-8; 380:70-7-2; 380:70-9-1; 380:70-11-8; 380:70-11-9; 380:70-11-10; 380:70-11-12; 380:70-11-13; Appendix A

Availability:

Oklahoma Department of Labor, 4001 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105; Hours: 8 a.m. through 5 p.m., Mondays through Fridays, excluding holidays.

ANALYSIS:

The purpose of these proposed rules is to establish initial administrative rules as required by newly enacted legislation, the Oklahoma Elevator Safety Act, O.S. Title 59, §§ 3020 et seq. These permanent rules will supercede the Emergency Elevator Safety Act Rules, promulgated on November 1, 2006. These rules address the licensing requirements applicable to the qualification and licensing of Elevator Contractors, Elevator Mechanics, and Elevator Inspectors; identify adopted National Standards applicable to elevators and conveyances; provide definitions; establish program administrative procedures; establish procedures for variances, appeals and hearings; establish continuing education requirements; establish acceptance criteria for existing installations; establish criteria for the permitting of new installation of elevators and conveyances; establish procedures for the repair and/or alteration of elevators and conveyances; establish accident/incident reporting and investigation procedures; establish inspection and reporting procedures; allow for the existence of municipal elevator inspection programs; and identify periodic testing requirements, plus associated fees for witnessing such testing.

CONTACT PERSON:

Elizabeth J. Stefanik, (405) 528-1500, x 231

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. § 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

380:70-1-1. Purpose

These rules are promulgated as required by Title 59 O.S. Section 3020 et seq. They are specific as to definitions, adopted national standards, rules and regulations for the safe construction, installation, inspection, operation, maintenance, repair, alteration and licensing of elevators and conveyances, as defined herein, and the licensing of elevator contractors, elevator mechanics, and elevator inspectors.

380:70-1-2. Definitions

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

"The Act" means the Oklahoma Elevator Safety Act, Title 59 of the Oklahoma Statutes, Sections 3020 et seq. and the Administrative Rules contained in this Chapter.

"Alteration" means any change, including major repair, made to an existing elevator, escalator, moving walkway or conveyance, its hoistway, enclosure, doors, and controls, other than the repair or replacement of damaged, worn, or broken parts necessary for normal operation. The changing of the speed governor shall be considered an alteration.

"Annually" means a period of twelve (12) calender months.

"ANSI" means the American National Standards Institute, 1819 L Street NW, 6th Floor, Washington, D.C., 20036.

"ASME" means the American Society of Mechanical Engineers, 3 Park Avenue, New York, NY, 10016-5990.

"ASSE" means the American Society of Safety Engineers, 1800 E. Oakton St., Des Plaines, IL., 60018.

"AWS" means the American Welding Society, 550 N.W. LeJune Road, Miami, Florida 33126.

"Chief Elevator Inspector" means the Chief Elevator Inspector appointed under the Act.

"Commissioner" means the Commissioner of Labor or his/her authorized representative.

"Certificate of Operation" means a document issued by the Commissioner of Labor, affixed to an elevator or conveyance that indicates it has been inspected, tested and found to be in compliance for operation as required by the Act.

"Conveyance" means any elevator, escalator, moving walkway, wheelchair lift or other such device subject to the provisions of the Act.

"Department" means the Elevator Inspection Bureau of the Safety Standards Division of the Oklahoma Department of Labor, 4001 North Lincoln Blvd. Oklahoma City, Oklahoma, 73105-5212.

"Deputy Inspector" means an inspector appointed by the Chief Elevator Inspector subject to the approval of the Commissioner under the provisions of the Act.

"Elevator" means any device for lifting or moving people, cargo, or freight within, or adjacent and connected to, a structure or excavation, and includes any escalator, power driven stairway, moving walkway or stairway chair lift. It does not mean any of the following:

(A) Amusement ride or device subject to inspection and regulation under the provisions of Section 460 et seq. of Title 40 of the Oklahoma Statutes;

(B) Mining equipment subject to inspection and regulation by the Department of Mines;

(C) Aircraft, railroad car, boat, barge, ship, truck, or other self-propelled vehicle or component thereof;

(D) Any boiler grate stoker or other similar firing mechanism subject to inspection under the provisions of the Oklahoma Boiler and Pressure Vessel Safety Act; or

(E) A dumbwaiter, conveyor, chain or bucket hoist, construction hoist or similar devices used for the primary purpose of elevating or lowering materials. This list is not exhaustive.

"Elevator Apprentice" means an unlicensed person registered with the Department of Labor who works under the direct supervision of a licensed elevator mechanic, licensed elevator contractor, or licensed elevator inspector.

"Existing Installation" means any elevator, escalator, moving walkway or other conveyance subject to the provisions of this Act in operation before the effective date of this Act.

"Freight Elevator" means an elevator used for carrying freight and on which only the operator and the person(s) necessary for loading and unloading are permitted to ride.

"Installation Permit" means a document issued by the Commissioner to a licensed elevator contractor upon receipt of an application to install or construct an elevator or conveyance

which indicates Department approval of the proposed installation or construction project.

"ICC" means the International Code Council, 5360 Workman Mill Road, Whittier, California, 90601-2298.

"Maintenance" means a process of routine examination, lubrication, cleaning, and adjustment of parts, components, and/or subsystems for the purpose of ensuring performance in accordance with the applicable Code requirements.

"May" means that an action or requirement is optional and non-mandatory.

"Mobility Restricted" means a person or persons unable to move freely without the aid of mechanical assistance such as walkers, wheelchairs, crutches or canes, and/or an inability to move freely because of a physical or mental disability, handicap or restriction.

"New Installation/New Construction" means a completely new elevator or conveyance installation or construction occurring on or after the effective date of this Act.

"NFPA" means The National Fire Protection Association, Inc., One Batterymarch Park, Quincy, Massachusetts, 02169-7471.

"Night Time Inspection" means any inspection that does not occur during "reasonable hours."

"Occurrence" means any event involving an elevator, escalator, moving walkway, wheel chair lift or other conveyance subject to the provisions of this Act, that the operation of which has caused personal injury or property damage.

"Owner-Occupied Private Residence" means a separate dwelling, or a separate apartment in a multiple dwelling/complex, which is occupied by the legal owner and/or his/her family.

"Professional Engineer" means a mechanical engineer registered as such in one or more states, or the equivalent certification registration if from another country.

"Reasonable Hours" means that period of time beginning one hour prior to normal advertised business hours and ending one hour after normal advertised business hours. For facilities normally open twenty-four (24) hours, reasonable hours shall be that period of time beginning at 7:00 a.m. and ending at 6:00 p.m.

"Red Tag" means a document issued by a licensed elevator inspector and attached to an elevator or conveyance declaring that any further operation of the elevator or conveyance shall constitute a violation of the Oklahoma Elevator Safety Act.

"Repair" means reconditioning or renewal of parts, components, and/or subsystems, not constituting an alteration, necessary to keep equipment in compliance with applicable Code requirements and for which a permit is not required.

"Responsible Party" means that person(s) so named and designated on an elevator contractors license required to have met and maintain training credentials and knowledge necessary to satisfy the requirements of the Act.

"Shall" means that an action or requirement as stated in this Chapter is mandatory.

"Special Inspector" means an inspector, licensed by the Department, who is regularly employed by an insurance company providing liability insurance on an elevator, escalator, moving walkway, chairlift or conveyance subject to the provisions of the Act.

"State Special" means the designation applied to an elevator or conveyance subject to the provisions of this Act that is of special or unique construction and cannot be constructed, installed and/or operated in accordance with the applicable ASME Code and the provisions of this Act.

"Temporarily Dormant" means an elevator or conveyance whose power supply has been disconnected by removing fuses and placing a padlock on the mainline disconnect switch in the "OFF" position.

"Temporary Certificate of Operation" means a document issued by a licensed elevator inspector granting the temporary continued operation of a non-compliant elevator or conveyance for a period not to exceed thirty (30) days so that repairs can be performed; or to a licensed elevator contractor for the temporary continued operation of an elevator or personnel hoist for a specified period of time not to exceed the length of the applicable construction project.

"Triennially" Means a period of thirty-six (36) calender months.

SUBCHAPTER 3. ADMINISTRATION

380:70-3-1. Responsibilities

Responsibility for the installation, alteration, operation, maintenance, inspection and reporting of accidents, incidents and/or occurrences for elevators, escalators, moving walkways, wheelchair lifts and conveyances shall be as follows:

(1) The equipment manufacturer shall be responsible for designing and manufacturing equipment in compliance with the applicable code.

(2) The person or firm installing or altering elevators, escalators, moving walkways, wheelchair lifts and conveyances shall be responsible for obtaining all permits and approvals. He/she shall be responsible for the safe operation of equipment during the installation until a Certificate of Operation has been issued and for conducting all tests required by these rules.

(3) The owner, his duly appointed agent, or the lessee shall be responsible for the safe operation and proper maintenance of elevators, escalators, moving walkways, wheelchair lifts and conveyances after the installation has been approved and a Certificate of Operation has been issued. The owner his duly appointed agent, or the lessee shall be responsible for conducting all periodic maintenance and/or testing as required by these rules.

(4) The owner, his duly appointed agent, or the lessee shall also be responsible for having conveyances subject to the provisions of this Act inspected as required by the Act. Failure to do so will subject the owner, his duly appointed agent, or lessee to penalties and/or administrative fines as provided by this Act and these rules.

(5) The owner, his duly appointed agent, or the lessee shall be responsible for reporting occurrences to the department as required in these rules and regulations.

(6) The inspector shall be responsible for the performance and reporting of inspections as required by this Act. Such inspections shall be performed in a professional

manner so as to factually document the "as found" condition of the conveyance at the time of the inspection without consideration of cost or inconvenience that may be incurred or caused as a result of the inspection.

380:70-3-2. Minimum construction standards for elevators, escalators, moving walkways, chairlifts or other conveyances; special construction

(a) **Construction.** All new elevators, escalators, moving walkways, chairlifts, and conveyances unless otherwise exempt, to be operated in this jurisdiction shall be designed, constructed, installed, inspected, repaired, altered, maintained and operated in accordance with the ASME Code, most current edition and the latest addenda thereto in effect, and these rules and regulations.

(b) **Special construction.** The provisions of this Chapter are not intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, code effectiveness, durability, and safety to those required by the ASME Code, provided that there is technical documentation to demonstrate the equivalency of the system, method, or device to the standards and provisions of this Act. If a device subject to the provisions of this Act is of special construction and cannot be constructed, installed and/or operated in accordance with the ASME Code and the provisions of this Act, details in the English language and United States customary units of the proposed construction and material specifications and calculations shall be submitted to the Chief Elevator Inspector for approval as a "State Special" before construction is started.

(c) **Miscellaneous.** The requirements of the Americans With Disabilities Act dealing with accessibility guidelines, as applicable, shall apply to all elevators and conveyances subject to the provisions of the Act.

380:70-3-3. Variances

(a) Any owner or user who believes that under his or her particular circumstances the rules and regulations promulgated by the Commissioner are unnecessary or impose an undue burden may request a variance from the applicable rule or regulation. The variance request shall be in writing and shall specify how safety equivalence is to be maintained in accordance with the provisions of this Chapter. The Commissioner may grant the variance, provided that the safety of employees or general public is not adversely affected. Any variance request on a new elevator installation must be submitted by the elevator contractor performing the installation. At the Department's discretion, the elevator owner may be requested to state, in writing, his concurrence with the requested variance.

(b) When there is reason to believe, or upon receipt of a complaint, that a variance does not provide the safety equivalence to the provisions of this Act, the Commissioner, after notice to the owner or user and complainant, may continue, suspend, revoke, or modify the conditions specified in any variance.

(c) No statement, act, or omission of the Commissioner of Labor, the Chief Elevator Inspector, Deputy Inspector or Special Inspector, other than a written variance described above, shall exempt any owner or user from full compliance with the terms of any law of the State of Oklahoma or rule of the Elevator Safety Act.

380:70-3-4. National standards, adoption and availability

(a) The following American National Standards are hereby adopted:

(1) Safety Code for Elevators and Escalators, ASME A17.1, latest edition and most current addenda.

(2) Safety Code for Existing Elevators and Escalators, ASME A17.3, latest edition and most current addenda.

(3) Safety Standard for Platform Lifts and Stairway Chairlifts, ASME A18.1, latest edition and most current addenda.

(4) Safety Standard for Belt Manlifts, ASME A90.1, latest edition and most current addenda.

(5) Safety Requirements for Personnel Hoists and Employee Elevators, ASSE A10.4, latest edition.

(6) The National Electrical Code, NFPA 70, latest edition.

(7) The International Building Code, latest edition.

(b) Standards referenced in this chapter are available for public viewing in the office of the Chief Elevator Inspector and may be purchased from the American Society of Mechanical Engineers, the National Fire Protection Association, the American Society of Safety Engineers, and the International Code Council.

(c) Compliance with the provisions of the Elevator Safety Act does not relieve an owner, operator, or licensed Elevator Contractor from the requirement to comply with Codes and Standards as may be adopted and enforced by the Construction Industries Board and the Office of the State Fire Marshal, or other such state or jurisdictional agency as may be required.

380:70-3-5. Inspection frequencies; variations

(a) Elevators, escalators, moving walkways, chairlifts and conveyances subject to the provisions of this Act shall be inspected for the purpose of issuing a Certificate of Operation in accordance with the following frequencies:

(1) Any hydraulic elevator or conveyance shall be inspected not less than once every 2 (two) years;

(2) Any wire rope elevator, regardless of floors, shall be inspected annually;

(3) Escalators and moving walkways shall be inspected annually;

(4) Wheelchair lifts shall be inspected triennially;

(5) Temporary elevators shall be inspected at each installation/erection; and

(6) Any elevator or other such conveyance subject to the provisions of this Act located in a structure whose occupants are mobility restricted, such as hospitals, nursing homes and residential care facilities, shall be inspected annually;

(7) Any other type of elevator or conveyance not addressed under these provisions, in the Act or rules, shall be inspected annually.

(b) Elevators and conveyances located in owner-occupied private residences shall be exempt from the provisions of these rules, except:

(1) All such devices shall be designed, constructed, and installed in accordance with the applicable ASME Code and this Act.

(2) New installations shall receive a Final Acceptance Inspection from the Department in accordance with the provisions of this Act.

(3) Any elevator or conveyance located in an owner-occupied private residence shall be evaluated and tested by a licensed elevator mechanic or inspected by a licensed elevator inspector as provided in this Chapter, prior to a transfer of title or ownership of the property.

(4) All occurrences shall be reported to the Department and investigated in accordance with the provisions of this Act and these Rules.

(c) Based upon documentation of such actual service conditions by the owner or user of the operating equipment, the Commissioner may, at his/her discretion, permit variations in the inspection frequency as provided in the Act.

(d) The inspections herein required shall be made by the Commissioner, Chief Elevator Inspector, Deputy Inspector or a Special Inspector as provided for in the Act. Inspectors shall have free access during reasonable hours, to any premises in the state where an elevator, escalator, moving walkway, wheelchair lift, conveyance or other device covered by this Act, is being installed, constructed, repaired, altered, or operated, for the purpose of ascertaining whether such device is being constructed, installed, repaired , altered and/or operated in accordance with the provisions of the Act. Inspections may be conducted without prior notice.

(e) Anytime the Chief or Deputy Elevator Inspectors shows up for a scheduled inspection of an elevator or conveyance and said inspection cannot be conducted and therefore needs to be rescheduled, the Department will still charge the fee for the labor and costs associated with the originally scheduled inspection in accordance with the fees listed in 59 O.S. 3024(B)(15), in addition to any other fines or penalties assessed.

380:70-3-6. Requests for night time inspections

(a) **Night time Inspections.** The Commissioner may allow for the night time inspection of elevators or conveyances subject to the provisions of the Act if such inspection is in the best interest of business and safety.

(b) **New installation/New construction.** Requests for night time inspections of new elevator or conveyance installation/construction shall be made on forms provided by the Department and shall be received by the Department not less than five (5) working days prior to the requested inspection date.

(c) **Existing installations.** Requests for night time inspections of existing elevator or conveyance installations shall be made as far in advance of the requested date as is reasonably possible, but in no case less than thirty (30) working days prior to the requested date of inspection.

380:70-3-7. Assignment and application of state identification numbers

(a) Upon completion of the installation of an elevator or conveyance, or at the time of the initial certificate inspection of an existing installation, each elevator or conveyance shall be identified by a unique six digit state identification number. The six digit state identification numbers shall begin with the capital letter "E" and shall be followed by a five digit numeric identification number.

(b) The state identification number shall appear on all Certificates of Operation issued pursuant to the provisions of this Act.

(c) State identification numbers, once issued shall not be reissued.

(d) State identification numbers shall be permanently affixed to, stamped or etched onto the elevator or conveyance by the installing contractor for new installations and by the owner/user or their designated agent for existing installations.

380:70-3-8. Certificates of Operation

(a) Any conveyance inspected in accordance with the provisions of this Act and found to be, in the opinion of the inspector, safe for continued operation and in compliance with the requirements of this Act, and upon payment of the required fee to the Department, shall be issued a Certificate of Operation by the Department.

(b) All Certificates of Operation issued by the Department shall be maintained in a suitable frame under transparent cover.

(c) All Certificates of Operation issued by the Department shall contain at a minimum the name and complete mailing address of the structure where the conveyance is installed or erected, the state identification number assigned to the conveyance, the date of the most recent inspection and the expiration date of the Certificate of Operation.

(d) The required Certificates of Operation shall be posted conspicuously as follows:

(1) inside elevator cars, or

(2) inside escalator and moving walkway machinery rooms, or

(3) in some other location acceptable to the Department.

(e) If the Certificate of Operation is not conspicuously displayed in, upon, or adjacent to the conveyance for viewing by the general public, the conveyance must be equipped with a sign, placard, or other device informing those persons utilizing the conveyance of the location of the valid Certificate of Operation.

(f) When an elevator or conveyance with a valid Certificate of Operation undergoes an alteration or is remodeled, the Certificate of Operation becomes invalid. To release the altered or remodeled elevator for use by the general public, the elevator must pass an inspection conducted by the Department.

380:70-3-9. Temporary Certificates of Operation

(a) Temporary Certificates of Operation may be issued for established elevators or conveyances after the required inspection to renew a Certificate of Operation subject to the following conditions:

(1) When a routine inspection is performed and the inspector finds that the elevator or conveyance does not comply with the provisions of the Act, the inspector will explain what the violations are, what repairs are required, and shall also document them on an inspection report and/or checkoff list. Upon agreement of a reinspection date between the inspector and the owner or lessee of not more than 60 days, the inspector may issue a Temporary Certificate of Operation for the elevator or conveyance.

(2) Elevators or conveyances granted a Temporary Certificate of Operation shall be re-inspected prior to the expiration date of the Temporary Certificate of Operation. If any of the conditions that caused the issuance of a Temporary Certificate of Operation are found to have not been corrected, no further Certificates shall be issued and the Chief Elevator Inspector shall be consulted about future operations of the unit including but not limited to extensions of time, restricted operations or up to being Red Tagged.

(3) In addition to any other fee provided for in the Act, a fee for the issuance of a Temporary Certificate of Operation shall be accessed.

(4) The issuance of a Temporary Certificate of Operation shall be reported to the Department by the inspector within 24 hours or the first working day after its issuance.

(b) Temporary Certificates of Operation may be issued for new elevators or conveyances at the request of a licensed elevator contractor for elevators or conveyances and personnel hoists in accordance with the following requirements:

(1) **Issuance for Elevators.** The Chief Elevator Inspector may allow the temporary use of any elevator for passenger or freight service during its new installation or alteration under the authority of a Temporary Certificate of Operation, issued for each class of service. Such limited certificates shall not be issued for elevators until the elevator has been tested with a rated load, and the car safety, hoistway door interlocks, car door switch, and terminal stopping devices have been tested to determine the safety of the equipment for the specified construction purposes.

(2) **Issuance for Personnel Hoists.** The Chief Elevator Inspector may allow the temporary use of any personnel hoist under the authority of a Temporary Certificate of Operation. Such limited certificate shall not be issued until the personnel hoist has been tested with a rated load, and the car safety, hoistway door interlocks, car door switch, and terminal stopping devices have been tested to determine the safety of the equipment.

(3) **Expiration.** Temporary Certificates of Operation issued in accordance with Subsections (b)(1) and (b)(2) shall expire pursuant to the following:

(A) Temporary Certificates of Operation for new elevators or conveyances may be issued for a period not to exceed ninety (90) days.

(B) Temporary Certificates of Operation for personnel hoists may be issued for a period of time not to exceed the length of the applicable construction project.

(C) Such certificates may be renewed at the discretion of the Chief Elevator Inspector upon receiving a written request showing justifiable cause for renewal.

380:70-3-10. Noncomplying conveyances

(a) Whenever the Commissioner or his/her duly appointed representative determines that an elevator or conveyance is subject to the provisions of this Act and that the operation of such conveyance is exposing the public to an unsafe condition likely to result in serious personal injury or property damage, he/she may immediately order in writing that the use of the elevator or conveyance be stopped until such time as it is determined that the conveyance has been made safe for use by the public. Any such written order shall constitute an immediate suspension of any valid Certificate of Operation granted under the provisions of this Act.

(b) Whenever the Commissioner or his/her duly appointed representative determines that the provisions of this Act and these rules and regulations have not been complied with, he/she may refuse to issue or renew, or may revoke or suspend a Certificate of Operation.

(c) Written notification as required in subsection (a) of this section may be in the form of a "Red Tag" affixed to the elevator or conveyance at the time of inspection by the elevator inspector stating that any further operation of the conveyance is in violation of the provisions of the Elevator Safety Act.

(d) Any elevator or conveyance "Red Tagged" shall be rendered disabled by the owner/user or their authorized agent or contractor in the presence of the elevator inspector issuing the "Red Tag" and such elevator or conveyance shall remain inoperative until further operation is authorized by the Commissioner after reinspection and found to be in compliance with the provisions of this Act .

380:70-3-11. Appeals and/or hearings

Any denial of an issuance of a Certificate of Operation, Temporary Certificate of Operation, or any order issued by the Commissioner, or any Red Tag notification may be appealed and the appropriate party(ies) shall be afforded the opportunity for a hearing pursuant to the provisions of the Administrative Procedures Act, if written request is received by the Department within fifteen days (15) of the denial letter or notification.

380:70-3-12. Operation of unsafe conveyance

(a) No person shall operate, permit to be operated or use any elevator or conveyance subject to the provisions of this Act if such person knows, or reasonably should know that such operation or use could expose the public to an unsafe condition which is likely to result in personal injury or property damage.

(b) Any licensed elevator contractor, licensed elevator mechanic or licensed elevator inspector that fails to immediately report an unsafe conveyance to the Chief Elevator Inspector shall be guilty of a misdemeanor and subject to such fine and/or imprisonment as provided for in the Act.

380:70-3-13. Operation without Certificate; operation not in accordance with Act or Rules; operation after refusal to issue or after revocation of Certificate

(a) No person shall operate, use or permit to be operated any elevator or conveyance subject to the provisions of this Act, without a valid Certificate of Operation unless the absence of a valid certificate is the result of the Commissioner's failure to inspect such elevator or conveyance.

(b) No person shall operate, use or permit to be operated any elevator or conveyance subject to the provisions of this Act, other than in accordance with this Act and the rules and regulations promulgated hereunder.

(c) No person shall operate, use or permit to be operated any elevator or conveyance subject to the provisions of this Act, after the Commissioner has refused to issue or has suspended or revoked the Certificate of Operation for such elevator or conveyance.

380:70-3-14. Interfering with Inspector

No person, firm or corporation shall interfere with, obstruct or hinder by force or otherwise, the Commissioner of Labor or his/her authorized representatives while in the performance of their duties, or refuse to properly answer questions asked by such officers pertaining to the law over which he/she has supervision under the provisions of this Act, or refuse them admittance to any place where an elevator or conveyance is located which is affected by this Act.

380:70-3-15. Penalties

(a) Any person violating the provisions of the Act and this Chapter shall be guilty of a misdemeanor and, upon conviction, subject to a fine of not more than Five Hundred Dollars ($500.00) for the first offense and up to One Thousand Dollars ($1,000.00) for each additional offense, or imprisonment in the county jail for not more than ten (10) days, or both such fine and imprisonment. Each day's violation shall constitute a separate offense. Conviction as provided herein shall not preclude any filing of a civil action.

(b) The Commissioner shall have subpoena powers and shall have the right to seek injunctive relief to prevent the operation of elevators and/or conveyances lacking a Certificate of Operation after November 1, 2006, or failing inspection.

(c) For any violation of the Elevator Safety Act, including failure to pay any invoice issued by the Department as directed by instruction on the invoice, the Commissioner may assess an administrative fine of not more that Five Hundred Dollars ($500.00), which fine may be assessed in addition to any other penalty provided pursuant to this Act.

SUBCHAPTER 5. LICENSES

380:70-5-1. Elevator Contractor's License: Issuance, denial and renewal

(a) Upon the effective date of this Chapter, no elevator or conveyance subject to the provisions of this Act shall be installed in this state by any sole proprietor, firm or corporation not having first been issued at the time of the construction or installation a valid elevator contractor's license, issued by the Department of Labor. There shall be a six (6) month grace period from the date of enactment of this Chapter to allow new and existing elevator contractors an opportunity to comply with the provisions of this section.

(b) Any sole proprietor, firm or corporation wishing to engage in the business of installation, alteration, service, repair, replacement or maintenance of elevators, escalators, moving walkways, wheelchair lifts, or other such conveyances within the state of Oklahoma shall make application for an elevator contractor's license to the Oklahoma Department of Labor.

(c) No license shall be granted to any sole proprietor, firm or corporation that has not demonstrated the requisite qualifications and abilities. Duly authorized applicants for an elevator contractor's license must have in their employ licensed elevator mechanic(s) who perform the work described herein.

(d) Application for elevator contractor's license shall be on forms provided by the Department and shall contain, as a minimum, the following information:

(1) If a person or sole proprietor, the name, residence and business address of the applicant;

(2) If a partnership, the name, residence and business address of each partner;

(3) If a domestic corporation, the name and business address of the corporation and the name and residence address of the principal officer of said corporation;

(4) If a corporation other than a domestic corporation, the name and address of the local agent located in the State of Oklahoma who shall be authorized to accept service of process and/or official notices;

(5) The approximate number of licensed elevator mechanics expected to be employed by the elevator contractor applicant, and if applicable, satisfactory evidence that the employees are or will be covered by workers' compensation insurance;

(6) Verification of liability insurance as required by the Chapter;

(7) Such other information as the Chief Elevator Inspector may require;

(8) Designation of at least one but not more than two responsible parties to be named on the license. Such responsible parties shall have and maintain the training credentials required for a valid contractor's license. Documentation of satisfactory completion of the required training and all subsequent refresher training shall accompany the application;

(A) In the absence of such responsible party in the employ of the contractor, the contractor shall not be

allowed to perform elevator or conveyance installation, service, repair, alteration, testing or maintenance work in the State of Oklahoma.

(B) Responsible party(ies) may be changed or added to the license at any time by providing written notice to the Department of such change.

(9) Written notice of change shall be provided to the Department when any item on the application changes.

(e) Upon approval of an application and receipt of fees as provided for by the Act, the Commissioner may issue the elevator contractor's license.

(f) Upon receipt of fees as established in the Act, and such additional documentation as may be required by the Commissioner, a license may be issued to a sole proprietor, firm or corporation holding a valid license from a state or jurisdiction having standards substantially equal to those contained in this Act.

(g) The Department may deny approval or renewal of an elevator contractor's license for cause. The Department shall mail written notice to the applicant of the denial, the reason for the denial, and a statement that the applicant may appeal to the Commissioner provided their written request is received by the Department within fifteen (15) days of the date of the denial notice.

(h) The Department shall notify holders of valid elevator contractor's licenses not more than sixty (60) days prior to the expiration date of the license that it must be renewed prior to the last day of the month in which it was initially issued. Elevator Contractor's licenses not renewed on or before the expiration date shall become invalid.

(i) Elevator Contractor's licenses not renewed prior to the expiration date shall be subject to late fee and renewal fees as provided for in the Act.

(j) Elevator contractors may have in their employ elevator inspectors licensed in accordance with the provisions of this Chapter for the purpose of witnessing and certifying conveyance tests as required by the Act, this Chapter and the applicable ASME Code(s).

380:70-5-2. Elevator Mechanic's License: Issuance, denial, and renewal

(a) Upon the effective date of this Chapter, no person shall work as an elevator mechanic to install, service, repair, alter, remodel or maintain any elevator or conveyance subject to the provisions of this Act and this Chapter without having first been issued a valid elevator mechanic's license by the Department. There shall be a six (6) month grace period after the effective date of this Chapter to allow new and existing elevator mechanics to comply with the requirements of this Section.

(b) No license shall be granted to any person who has not sufficiently demonstrated their qualifications and abilities. Applicants for an elevator mechanic's license must demonstrate the following qualifications:

(1) An acceptable combination of documented experience and education credits: Not less than three (3) years work experience in the elevator industry, in construction, maintenance and service/repair, as verified by current and previous employers licensed to do business in this state or other such jurisdiction having an elevator program substantially equal to this Act; Satisfactory completion of a written examination administered by the Chief Elevator Inspector on the most recent referenced codes, standards, and this Act;

(2) Any person who furnishes the Commissioner with acceptable and verified proof that they have previously worked in elevator construction, maintenance, or repair may, upon making application for an elevator mechanic's license and paying the license fee, be entitled to receive a license without an examination. They shall have worked without direct or immediate supervision for an elevator contractor licensed to do business in this state or other jurisdiction having a program substantially equal to this Act. This employment shall not be less than three (3) years immediately prior to the effective date of this Act;

(3) Provide certificates of completion demonstrating successful passage of a mechanic's examination of a nationally recognized training program for the elevator industry such as the National Elevator Industry Education Program or its equivalent; or

(4) Provide certificates of completion of an apprenticeship program for elevator mechanic's registered with the Bureau of Apprenticeship and Training, of the U.S. Department of Labor or a state apprenticeship council;

(5) A license may be issued to an individual holding a valid elevator mechanic's license from a state having standards substantially equal to those of this Act, upon application and payment of such fees as provided for in this Act, without examination.

(c) Applications for an elevator mechanic's license shall be on forms provided by the Department.

(d) Elevator mechanic's licenses shall be valid for a period of one (1) year and expire on the last day of the month of initial issuance. The Department shall notify holders of valid elevator mechanic's licenses not less than sixty (60) days prior to the expiration date of the license that it must be renewed within the next sixty (60) days. Elevator mechanic's licenses not renewed on or before the expiration date shall become invalid.

(e) Elevator mechanic's licenses not renewed on or before the expiration date shall be subject to late fee and renewal fees as provided for in the Act.

(f) Elevator mechanic's licenses once issued become the property of the licensee and must be carried on his/her person at all times when working on elevators or conveyances and made available upon request by the Commissioner, Chief or Deputy Elevator Inspector, or any Special Inspector.

(g) The Department may deny approval or renewal of an elevator mechanic's license for cause. The Department shall mail written notice to the applicant of the denial, the reason for the denial, and a statement that the applicant may be afforded the opportunity for a hearing pursuant to the provisions of the Administrative Procedures Act, provided their written request is received by the Department within fifteen (15) days of the date of the denial notice

(h) Whenever an emergency exists in this state due to disaster, act of God or work stoppage and the number of persons in the state holding licenses granted by the Commissioner is

insufficient to cope with the emergency, temporary elevator mechanic's licenses may be issued. A licensed elevator contractor shall notify the Chief Elevator Inspector when there are no licensed personnel available to perform elevator or conveyance work. The licensed elevator contractor may request that the Chief Elevator Inspector issue temporary elevator mechanic's licenses to persons certified by the licensed elevator contractor to have an acceptable combination of documented experience and education to perform elevator work without direct or immediate supervision. Any person certified by a licensed elevator contractor to have an acceptable combination of documented experience and education to perform elevator work without direct or immediate supervision shall immediately seek a temporary elevator mechanic's license from the Chief Elevator Inspector and shall pay such fees as provided for in this Act. Each such license shall recite that it is only valid for a period of thirty (30) days from the date of issuance and while employed by a licensed elevator contractor that certified the individual as qualified. It shall be renewable as long as the shortage of license holders shall continue, as determined by the Chief Elevator Inspector.

380:70-5-3. Elevator Inspector's License: Issuance, denial, and renewal

(a) No elevator inspector's license shall be granted to any person unless he or she demonstrates to the satisfaction of the Commissioner or Chief Elevator Inspector that he/she meets the current ASME QEI-1 Standards for the Qualification of Elevator Inspectors and/or state standards as described in this Chapter.

(b) Applicants for a license to inspect elevators or conveyances for the purpose of recommending the issuance of Certificates of Operation as required by this Act shall be required to meet the following qualifications:

(1) Have at least one (1) year experience in designing, installing, maintaining or inspecting elevators, escalators and other such conveyances;

(2) Have successfully passed the written examination for elevator inspectors administered by an organization accredited by the ASME to certify elevator inspectors in accordance with the ASME, QEI-1 Standard.

(3) An Elevator Inspector's license may be granted to an individual not satisfying the requirements contained in 380:70-5-3(b)(1) and (2) at the discretion of the Commissioner upon the review of documents attesting to comparable qualifications.

(4) Have no financial interest in any business or operation which manufactures, installs, repairs, modifies or services elevators, escalators, or other such conveyances. This qualification does not prohibit employees of insurance companies insuring elevators and conveyances from obtaining a license as an elevator inspector.

(c) The Commissioner may appoint a Chief and Deputy Elevator Inspector who at the time of appointment are not in possession of a valid ASME QEI Certification, but are in a trainee status, provided they successfully complete the required examination within eighteen (18) months of appointment.

(d) Applications for an elevator inspector's license shall be on forms provided by the Department.

(e) Elevator inspector licenses shall be valid for a period of one (1) year and shall expire each year on the last day of the month of initial issuance. Elevator inspector's licenses not renewed on or before the expiration date shall become invalid.

(f) Elevator inspector's licenses for special inspectors may be issued and renewed upon receipt of payment of such fees as provided for in the Act and receipt of documentation on company letterhead from the inspectors employer that the licensee is a full time employee of the company.

(g) Elevator inspector's licenses not renewed prior to the expiration date shall be subject to late fees and renewal fees as provided for in this Act.

(h) The Department may deny approval or renewal of an elevator inspector's license for cause. The Department shall mail written notice to the applicant of the denial, the reason for the denial, and a statement that the applicant may be afforded the opportunity for a hearing pursuant to the provisions of the Administrative Procedures Act, provided their written request is received by the Department within fifteen (15) days of the date of the denial notice

380:70-5-4. Elevator Apprentice Registration

(a) Upon the effective date of this Act, no person shall function in the capacity of an elevator apprentice without first having been registered as an elevator apprentice with the Department. There shall be a six (6) month grace period from the date of enactment of this Chapter to allow new and existing elevator apprentices an opportunity to comply with the provisions of this Section.

(b) Application for elevator apprentice registration shall be on forms provided by the Department and shall document enrollment in an elevator apprentice program recognized by the United States Department of Labor.

(c) Upon approval of an application and receipt of fees as provided for by this Act, the Commissioner may register an elevator apprentice.

(d) Elevator apprentice registration shall be valid for a period of one (1) year and expire on the last day of the month of initial issuance. The Department shall notify holders of valid elevator apprentice registrations not less than sixty (60) days prior to the expiration date of the registration that it must be renewed within the next sixty (60) days. Elevator apprentice registrations not renewed prior to the expiration date shall become invalid.

(e) Elevator apprentice registration not renewed prior to the expiration date shall be subject to late fees and renewal fees as provide for in this Act.

(f) The Department may deny approval or renewal of an elevator apprentice registration for cause. The Department shall mail written notice to the applicant of the denial, the reason for the denial, and a statement that the applicant may be afforded the opportunity for a hearing pursuant to the provisions of the Administrative Procedures Act, provided their written request is received by the Department within fifteen (15) days of the date of the denial notice

380:70-5-5. License not required

A licensed elevator contractor is not required for removing or dismantling elevators or conveyances which are destroyed as a result of a complete demolition of a secured building or structure, or where the hoistway or wellway is demolished back to the basic support structure whereby no access is permitted therein to endanger the safety and welfare of a person.

380:70-5-6. Conflicts of interest

An elevator inspector shall not engage in the sale of any service, article or device relating to elevators or conveyances or their appurtenances covered by this Act.

380:70-5-7. Continuing education

(a) The renewal of all licenses granted under the provisions of this Section shall be conditioned upon the submission of evidence of successful completion of course(s) designed to ensure the continuing education of the holder of a license on new and existing provisions of this Act and the Codes and Standards referenced herein. Such course(s) shall consist of not less than eight (8) hours of instruction that shall be attended and successfully completed within the year immediately preceding the renewal. Eight (8) hours of training need not be continuous but may be an accumulation of shorter periods of instruction that equal at least eight (8) hours.

(b) The course(s) shall be taught by instructors through continuing education providers that may include, but shall not be limited to, association seminars, labor training programs, career technology centers, and the Department. The Chief Elevator Inspector shall approve the continuing education providers.

(c) A holder of a license who is unable to complete the continuing education course required under this Section prior to the expiration of their license due to a temporary disability may apply for a waiver from the Department.

380:70-5-8. Suspension/revocation of license, registration, or certification

(a) Any license or registration issued in accordance with the provisions of this Act may be suspended or revoked by the Commissioner of Labor after due investigation for the incompetence or untrustworthiness of the licensee or registrant, or for the willful falsification of any matter or statement contained in his/her application, or in a report of any inspection made by him/her. Written notice of any such suspension shall be transmitted by the Commissioner of Labor to the licensee and his employer, not more than ten (10) days following the suspension or revocation. Any person whose license, certificate or registration has been suspended or revoked shall be entitled to a hearing as provided by the Oklahoma Administrative Procedures Act, if written request for such hearing is received by the Department within fifteen (15) days of the date of suspension/revocation letter.

(b) Licenses, certificates and registrations may be suspended indefinitely or for some other shorter period of time as determined by the Commissioner.

(c) Any person whose license, certificate or registration has been suspended or revoked pursuant to the provisions of this Section may petition the Commissioner for reinstatement of the suspended or revoked document. Such petition shall be in writing and shall include such documentation as may be requested by the Commissioner to verify that any deficiency(ies) or condition(s) have been corrected.

(d) The Commissioner may communicate with employers and educational institutions as may be needed to verify that the deficiency(ies) and/or conditions have been corrected.

(e) Reinstatement of any license, certificate or registration shall be subject to a reinstatement fee as provided in this Act.

380:70-5-9. Replacement licenses, certificates, registrations

The Department may issue replacements for lost or destroyed licenses, certificates and registrations upon payment of a replacement fee as provided for in this Act.

SUBCHAPTER 7. EXISTING INSTALLATIONS

380:70-7-1. Existing installation, definition

Existing installation shall mean any elevator, escalator, moving walkway or other conveyance subject to the provisions of this Act in operation before the effective date of this Act.

380:70-7-2. Minimum standards for existing installations

(a) **Maintenance.** Existing installations subject to the provisions of this Act shall be maintained in accordance with the original manufacturer's installation, operation and maintenance requirements. For those installations where the original manufacturer's requirements are not available, they shall be operated, repaired and maintained in accordance with the Safety Code for Existing Elevators and Escalators, ASME A17.3, good engineering practices, current acceptable industry standards and this Act.

(b) **Existing installation requirements.** Existing installations in operation before the enactment date of this Act shall be subject to the following requirements contained in the Safety Code for Existing Elevators and Escalators, ASME A17.3:

(1) Electrically-powered elevator driving machines shall be equipped with a friction brake applied by a spring or springs or by gravity and released electrically;

(2) The car of every elevator suspended by wire ropes shall be provided with one or more safety devices. These safeties shall be attached to the car frame and one safety shall be located within or below the lowest members of the car frame (safety plank);

(3) Operating devices for electrically-powered or electrically-controlled elevators shall be of the enclosed electric type;

(4) Rope or rod operating devices activated directly by hand, or rope operating devices activated by wheels, levers or cranks shall not be used;

(5) Elevator hoistways shall be enclosed throughout their height and all hoistway landing openings shall be protected with doors or gates. Hoistway enclosures shall

be constructed to have a fire resistive rating of not less than one (1) hour;

(6) Each elevator car shall be permanently enclosed on all sides and the top, except the sides for entrance and exit. Car side enclosures shall be of such strength and so designed and installed that when subjected to a pressure of 75 pounds applied horizontally at any point on the walls of the enclosure, the deflection will not exceed one inch;

(7) Car top enclosures shall be so designed and installed as to be capable of sustaining a load of not less than 100 pounds at any one (1) point;

(8) An emergency exit with cover shall be provided in the top of all elevator cars. The exit opening shall have an area of not less than 400 square inches and shall not measure less than 16 inches on any side. The exit shall be so located as to provide a clear unobstructed passage through it. The exit cover shall open outward and be hinged or otherwise attached to the car top and arranged to be opened from the top of the car only;

(9) A door or gate shall be provided at each entrance to the car;

(10) Doors shall be of horizontally or vertically sliding type. Gates shall be of the vertically sliding or horizontally sliding collapsible type located not more than 1-3/4 inches from the car sill. Gates shall extend from a point not less than one inch above the car floor to not less than six (6) feet above the car floor;

(11) Vertically sliding gates when in the fully opened position shall provide an entrance of not less than six (6) feet in height. Such gates shall be provided with pull straps to facilitate closing of the gate;

(12) Each car door shall be equipped with a car door or gate electric contact so located as to be inaccessible from inside the car door and shall stop the car when the gate is opened a maximum of two (2) inches.

(c) **Exceptions.** Existing installations in warehouses of not more than two (2) floors that are not accessible to the general public are exempt from Sub-Section (b)(4) through (b)(12) of this Section provided that all of the following conditions are met:

(1) The warehouse shall be used solely for the purpose of storing materials and products;

(2) Hoistways that are not fully enclosed shall be protected by guards to prevent access to the hoistways by other than elevator personnel;

(3) All capabilities of operating the elevator from the car or platform shall be removed;

(4) Riders shall not be permitted to ride the car or platform; and

(5) A sign stating "Absolutely No Riders Permitted" in letters not less than one (1) inch high on a contrasting background shall be posted at each entrance to the elevator.

(d) **Time extension for compliance.** Upon the recommendation of a licensed elevator inspector, an existing installation may be granted an extension from compliance to the provisions of this Section, at the discretion of the Chief Elevator Inspector. All such extension requests shall be in writing and contain a list of non-compliant conditions and indicate the required date of compliance. All such extension requests shall be subject to approval of the Chief Elevator Inspector.

(e) **Conflicts.** If a conflict exists between the requirements of the original manufacturer's instructions and recommendations and the ASME Code, the Chief Elevator Inspector shall make a determination as to which requirement is to take precedence.

380:70-7-3. Conditions not covered

All conditions not covered in these rules and regulations shall be referred to the Chief Elevator Inspector for consideration on a case by case basis.

SUBCHAPTER 9. NEW INSTALLATIONS

380:70-9-1. New installation requirements; conflicts

(a) The design, construction, installation, inspection and operation of all new installations of elevators, escalators, moving walkways and other conveyances subject to the provisions of this Act shall conform to the rules of this Section and the Safety Code for Elevators and Escalators, ASME A17.1, most current edition and addenda thereto and/or the Safety Standard for Platform Lifts and Stairway Chairlifts, ASME A18.1, most current edition and addenda thereto, and/or the Safety Standard for Belt Manlifts, ASME A90.1, most current edition and addenda thereto, and the National Electric Code, NFPA 70, as applicable.

(b) All new installations subject to the provisions of this Act to be installed within this State shall be designed by a professional engineer familiar with elevators and conveyances. Documents and/or specification packages submitted to the Department for review subject to the issuance of an installation permit shall bear the signature of a professional engineer.

(c) If there exists a conflict between the requirements of this Act, its rules and regulations, and any of the codes or standards referenced herein, the most stringent requirement as determined by the Chief Elevator Inspector shall be applied.

380:70-9-2. Installation permits

(a) No elevator, escalator, moving walkway or other such conveyance subject to the provisions of this Act shall be installed in this State without first being issued an installation permit by the Department to a licensed elevator contractor to perform the installation.

(b) Application for an installation permit shall be made on forms furnished by the Department and shall be submitted by the installing licensed elevator contractor. Each application for a permit shall be accompanied by copies of specifications and accurately scaled, full dimensioned plans showing the location of the installation in relation to the plans and elevation of the building; the location of the machinery room and the equipment to be installed therein, relocated or altered; and all structural supporting members thereof, including foundations, and shall specify all materials to be employed and all loads to be supported or conveyed. Such plans and specifications shall be

sufficiently complete to illustrate all details of construction and design.

(c) Applications for installation permits shall be submitted to the Department sufficiently in advance of the requested start date to allow for a complete and thorough review of the plans and specifications.

(d) Upon receipt of an application for installation and payment of all prescribed fees, the Department shall review the application for compliance with the provisions of this Act and these rules and regulations. The Department may issue an installation permit or shall notify the applicant in writing of the reasons the installation permit was denied.

(e) Any applicant who has been denied an installation permit by the Department may be afforded the opportunity for hearing in accordance with the Administrative Procedures Act, provided a written request is received by the Department within fifteen (15) days of the date denial notice.

(f) Installation permits shall be conspicuously posted at the place of installation or construction and shall remain so posted until an acceptance inspection has been performed and a Certificate of Operation has been issued.

(g) Permits issued in accordance with this Section may be revoked for the following reasons:

(1) Where any false statements or misrepresentations as to the material facts in the application, plans or specifications on which the permit was based;

(2) Where the permit was issued in error and should not have been issued in accordance with this Act, and the rules, regulations and codes cited herein;

(3) Where the work detailed under the permit is not being performed in accordance with the provisions of the application, plans or specifications or with this Act, the rules, regulations and codes cited herein or conditions of the permit; or

(4) Where the elevator contractor to whom the permit was issued fails or refuses to comply with any order of the Commissioner, Chief or Deputy Elevator Inspector.

(h) Permits issued under the provisions of this Act shall expire:

(1) If the work authorized by such permit is not commenced within six (6) months after the date of issuance, or within a shorter period of time as the Chief Elevator Inspector in his discretion may specify at the time the permit is issued; or

(2) If the work is suspended or abandoned for a period of sixty (60) days, or such shorter period of time as the Chief Elevator Inspector in his/her discretion may specify at the time the permit is issued, after the work has been started. For good cause, the Chief Elevator Inspector may allow extension of the forgoing period at his/her discretion.

380:70-9-3. Pre-Inspection Checklist for new elevator installations

The installing licensed elevator contractor shall cause to be completed and delivered to the Deputy Inspector upon his arrival to conduct the initial certificate inspection of an elevator or conveyance, a pre-inspection checklist for new elevator installations.

380:70-9-4. Conditions not covered

All conditions not covered by this Act, the rules and regulations and interpretations of codes cited herein and standard requirements shall be referred to the Chief Elevator Inspector for consideration on a case by case basis.

SUBCHAPTER 11. GENERAL REQUIREMENTS

380:70-11-1. Report of inspection

(a) A report of inspection shall be completed and submitted to the Department for every inspection conducted as required by the provisions of the Act and this Chapter. Reports of inspection shall be on forms acceptable to the Department.

(b) Special Inspectors shall submit reports of inspection to the Department within thirty (30) days of the completion of the inspection.

(c) Reports of inspection shall be provided to the owner/operator, contractor or his/her authorized agent at the time of the inspection or soon thereafter, but in no instance more than thirty (30) days following the completion of the inspection.

380:70-11-2. Report of occurrence

(a) The owner of any conveyance regulated under the provisions of this Act, or his authorized agent, shall within 24 hours notify the Commissioner of each and every occurrence involving such elevator or conveyance subject to the provisions of this Act when:

(1) The occurrence results in death or injury requiring medical treatment by a physician, other than first aid. First aid means the one time treatment or observation of scratches, cuts not requiring stitches, minor burns, splinters or contusions or a diagnostic procedure, including examination and x-rays, which does not ordinarily require medical treatment even though provided by a physician or other licensed personnel; or

(2) The occurrence results in damage to the device indicating a substantial defect in design, mechanics, structure or equipment, affecting the future safe operation of the device. No reporting is required in the case of normal wear and tear.

(b) The Commissioner, without delay, after notification and determination that an occurrence involving injury or property damage has occurred, shall make a complete a thorough investigation of the occurrence.

(c) No person, following an occurrence as specified in subsection (a), shall operate, attempt to operate, use or move or attempt to move such elevator or conveyance, or part thereof, without the approval of the Commissioner, unless so as to prevent injury to any person or persons.

(d) No person, following an occurrence as specified in subsection (a), shall remove or attempt to remove from the premises any damaged or undamaged part of such elevator or

conveyance, or repair or attempt to repair any damaged part necessary to a complete a thorough investigation.

(e) The Department must initiate its investigation within 24 hours of being notified.

380:70-11-3. Preparation for inspection

(a) The owner or user shall prepare each elevator or conveyance for inspection. For new/remodeled installations this preparation is completed by the licensed elevator contractor. Proper preparation for inspection includes verification that all control and safety devices of the conveyance are connected and functioning.

(b) If necessary, the inspector may require the owner or licensed elevator contractor to isolate hazardous energy sources. The inspector may add his/her personal lock to the hazardous energy isolation to assure his personal safety.

380:70-11-4. Temporarily dormant elevator/conveyance

(a) An elevator or conveyance may be classified as temporarily dormant when it is to be taken out of service for a prolonged period of time. Any elevator or conveyance classified as temporarily dormant shall:

(1) Have its power supply disconnected by removing fuses and placing a padlock on the mainline disconnect switch in the "OFF" position;

(2) Have the elevator cars shall be parked and the hoistway doors shall be in the closed position and latched;

(3) Have all elevator hoistway and floor access doors and gates be clearly labeled indicating that the elevator is out of service;

(4) Have a suitable seal installed on the mainline disconnect switch by a licensed elevator inspector; and

(5) Be in temporarily dormant status renewable on an annual basis that shall not exceed a five-year period.

(b) A temporarily dormant elevator or conveyances shall not be used again until it has been put in safe running order and is deemed safe for use as determined by a licensed elevator inspector.

380:70-11-5. Insurance requirements

Licensed elevator contractors shall submit to the Chief Elevator Inspector, an insurance policy or certified copy thereof, issued by an insurance company authorized to do business in this State, to provide general liability coverage of at least one million dollars for injury or death of any number of persons in any one occurrence, and with coverage of at least five hundred thousand dollars for property damage in any one occurrence and the statutory workers compensation insurance coverage.

380:70-11-6. Cities and municipalities: Concurrent inspection and licensing programs

(a) Notwithstanding any other provision, cities and municipalities may engage in the safety inspection of existing elevators and related conveyances, the permitting and inspection of new or modernized elevators and conveyances, and the licensing of city/municipal elevator inspectors, provided that such programs meet the following requirements:

(1) The inspection and safety requirements of the program shall be at least equal to or exceed the requirements of this Act.

(2) The city/municipal inspectors licensing requirements shall be at least equal to or exceed the elevator inspector licensing requirements contained in this Act.

(b) The following exemptions shall be applicable to cities and municipalities that have established elevator safety programs meeting the requirements of subsection (a) of this section:

(1) Elevators, escalators and conveyances routinely inspected by city/municipal inspectors shall be exempt from inspection and any associated fees as provided for in this Act.

(2) City and municipal inspectors licensed in accordance with the provisions of a recognized city or municipal elevator safety program shall be exempt from the licensing requirements and any associated fees as provided for in this Act.

(c) Immediately upon the disestablishment or termination of any city or municipal elevator safety program all exemptions allowed in subsection (b) of this section shall be voided and the applicable provisions of this Act shall become immediately effective.

380:70-11-7. Inspection of exempted conveyances

The Commissioner may provide for the inspection of elevators or conveyances that are exempt from the provisions of this Act upon receiving a written request from the owner or his/her authorized agent. These inspections will be performed and a fee charged as provided for in this Act. Upon completion of the inspection, the inspector will notify the owner or his/her authorized agent of any safety code violations. Correction of the code violations in exempt elevators or conveyances is solely at the discretion of the owner.

380:70-11-8. Major repairs and alterations: Permits

(a) Prior to the alteration or major repair of any elevator or conveyance subject to the provisions of this Act, an alteration permit shall be obtained from the Department. Applications for alteration permits shall be on forms provided by the Department and shall be submitted by the installing licensed elevator contractor. The application shall require the submission of detailed plans and specifications bearing the seal of a registered professional engineer familiar with elevators and conveyances.

(b) All alterations and major repairs to elevators and conveyances shall be made in conformity with the requirements of the applicable ASME Code(s) and this Chapter.

(c) Upon receipt of an application for an alteration permit to perform an alteration or major repair, and the required plan and specifications, the Department shall review the application for compliance with the Act and this Chapter. The Department may issue an alteration permit or shall notify the applicant in writing of the reason(s) the alteration permit was denied.

(d) Any applicant who has been denied a permit or alteration of major repair by the Department may appeal that denial to the Commissioner, provided written request to appeal is received by the Department within fifteen (15) days of the date of the applicant's notice of denial.
(e) When an elevator or conveyance with a valid Certificate of Operation undergoes an alteration or major repair, the Certificate of Operation shall become invalid until such time as the conveyance undergoes an inspection by a licensed elevator inspector. Reports of such alteration or major repair shall be filed with the Department within thirty (30) days of the inspection and shall be on forms acceptable to the Department.
(f) If the Report of Inspection required by this Chapter indicates that there is a failure to comply with the plans and specifications approved by the Department, or provisions this Act, the Certificate of Operation may be denied. The Department shall notify the owner of the conveyance in writing of the reason(s) for the denial.
(g) An owner who has been denied an operating permit by the Department may appeal that denial to the Commissioner, provided a written request to appeal is received by the Commissioner within fifteen (15) days of the date of the owner's notice of denial.

380:70-11-9. Remodeled conveyances
(a) When an elevator or conveyance is remodeled, the remodeled portions must comply with the Safety Code for Existing Elevators and Escalators in effect at the time the remodeling contract is signed. The portions of the elevator or conveyance which are not remodeled must continue to meet the requirements of the current adopted edition of the Safety Code for Existing Elevators and Escalators.
(b) The licensed elevator contractor is responsible for arranging inspections and correcting code violations.

380:70-11-10. Periodic testing
(a) Periodic testing of elevators covered under ASME, A17.1, 8.11.1.3 shall be as outlined in **Appendix A.** Such tests shall be performed by a licensed elevator mechanic and witnessed and reported by a licensed elevator inspector.
(b) Fees for the labor required to have the Chief Elevator Inspector or a Deputy Elevator Inspector witness any periodic testing as prescribed in **Appendix A** shall be in accordance with the fee schedule listed in Title 59 of the Oklahoma statutes, Section 3024(B)(15).

380:70-11-11. Emergency keys
Keys for the emergency operation of elevators and conveyances subject to the provisions of this Act shall be kept on the premises in a location readily accessible to firefighters and emergency personnel, but not where they are available to the public.

380:70-11-12. Welding
(a) Whenever welding is to be performed on elevators or conveyances subject to the provisions of this Act, or any of their parts, all such weldment, except tack welds later incorporated into final weldment, shall be performed by welders qualified in accordance with the requirements of ANSI/AWS D1.1 or the latest AWS requirements applicable to the specific materials to be welded.
(b) Welder certification testing shall be performed by Weld Test Facilities licensed in accordance with the Oklahoma Welding Law, Title 59 of the Oklahoma Statutes, Section 1624 et seq.

380:70-11-13. Maintenance, repair, and replacement
All elevators and conveyances subject to the provisions of this Act shall have a written Maintenance Control Program in place to maintain the equipment in compliance with ASME A17.1, Section 8.6. Such program shall at a minimum:
(1) Include a listing of examinations, maintenance, and tests of equipment at scheduled intervals in order to ensure that the installation conforms to the requirements of ASME A17.1, Section 8.6;
(2) Contain instructions for locating the Maintenance Control Program that shall be provided in or on the controller along with instructions on how to report any corrective action that might be necessary to the responsible party;
(3) Shall be maintained in a central location and be accessible to the elevator personnel; and
(4) Contain maintenance records that shall document compliance with the requirements of ASME A17.1, Section 8.6 and shall include records on the following activities:
(A) Description and dates of maintenance tasks performed;
(B) Description and dates of examinations, tests, adjustments, repairs, and replacements;
(C) Description and dates of call backs (trouble calls) or reports that are reported to elevator personnel by any means, including corrective action taken; and
(D) Written record of the findings on the firefighter's service operation required by A17.1, sub-section 8.6.10.1.

380:70-11-14. Conditions not covered
All cases not specifically covered by this Act and these rules and regulations shall be referred to the Chief Elevator Inspector for consideration on a case by case basis.

APPENDIX A. PERIODIC TESTING TABLES [NEW]

		Category One		Category Five	
A17.1 Reference Section	Equipment Type **Periodic Tests**	Requirement	Interval Months	Requirement	Interval Months
8.11.2	Electric Elevators	8.11.2.2	12	8.11.2.3	60
8.11.3	Hydraulic Elevators	8.11.3.2	12	8.11.3.4	60
8.11.4	Escalators and Moving Walks	8.11.4.2	12	N/A	N/A
8.11.5.1	Sidewalk Elevators	8.11.2.2 & 8.11.3.2	12	8.11.2.3 & 8.11.3.4	60
8.11.5.6	Special purpose personnel elevators	8.11.2.2 & 8.11.3.2		8.11.2.3 & 8.11.3.4	60
8.11.5.7	Inclined Elevators	8.11.2.2 & 8.11.3.2		8.11.2.3 & 8.11.3.4	60
8.11.5.9	Screw-column elevators	8.11.2.2 & 8.11.3.2		8.11.2.3 & 8.11.3.4	60
8.11.5.12	Limited-Use/Limited Application Elevators	8.11.2.2 & 8.11.3.2		8.11.2.3 & 8.11.3.4	60
8.11.5.13	Construction Use Elevators	8.11.2.2 & 8.11.3.2		8.11.2.3 & 8.11.3.4	60
	Seismic Tests				
8.4.10	Electric Elevators	8.4.10.1	12	N/A	N/A
8.4.11	Hydraulic Elevators	N/A	N/A	8.4.11.2	60
8.5.4	Escalators	8.5.4	12	N/A	N/A

[OAR Docket #07-1194; filed 5-24-07]

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

[OAR Docket #07-1168]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
Subchapter 1. General Provisions
435:10-1-4. Definitions [AMENDED]
AUTHORITY:
Title 59 O.S., Section 489, Board of Medical Licensure and Supervision
DATES:
Comment period:
February 15, 2007 to March 19, 2007
Adoption:
March 22, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule resulted in approval on May 18, 2007.
Final adoption:
May 18, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
The definitions section was amended to add "doctor-patient relationship", "patient", "supervision and control" and "surrogate".
CONTACT PERSON:
Jan Ewing, Deputy Director, 405-848-6841, #104

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

435:10-1-4. 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 Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, 59 O.S. §§ 480 et seq.

"APA" means either or both Article I and Article II, as applicable of the Administrative Procedures Act, 75 O.S.1991, §§ 250 **et seq.**, as amended.

"Applicant" means a person who applies for licensure from the Board.

"Board" means the Oklahoma Board of Medical Licensure and Supervision.

"Doctor-patient relationship" means a person has a medical complaint/issue, which has been addressed by the doctor and there is a correlation between the complaint/issue and the treatment/procedure performed or drug given/prescribed/dispensed.

"Foreign applicant" means an applicant who is a graduate of a foreign medical school.

"Foreign medical school" means a medical school located outside of the United States.

"Patient" means the patient and/or patient surrogate.

"Secretary" means the Secretary of the Board.

"Supervision and Control" means the physical presence of the supervising physician in the office or operating suite before, during and after the treatment or procedure and includes diagnosis, authorization and evaluation of the treatment or procedure with the physician/patient relationship remaining intact.

"Surrogate" means individuals closely involved in patients' medical decision-
making and care and include:

(A) spouses or partners;
(B) parents;
(C) guardian; and
(D) other individuals involved in the care of and/or decision-making for the patient.

[OAR Docket #07-1168; filed 5-23-07]

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

[OAR Docket #07-1169]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
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]
AUTHORITY:
Title 59 O.S., Section 489, Board of Medical Licensure and Supervision
DATES:
Comment period:
February 15, 2007 to March 19, 2007
Adoption:
March 22, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2007.
Final adoption:
May 18, 2007

Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
435:10-4-6. Medical licensure examination [AMENDED]
435:10-4-7. Licensure by endorsement [AMENDED]
Gubernatorial approval:
October 26, 2006
Register publication:
24 Ok Reg 213
Docket number:
06-1379
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
The amendments allow applicants ten (10) years to pass all steps of the licensure examination. In rule 435:10-4-7 the reference to a special license was deleted. The special license, except for a residency training license, is no longer available.
CONTACT PERSON:
Jan Ewing, Deputy Director, 405-848-6841, #104

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 4. APPLICATION AND EXAMINATION PROCEDURES FOR LICENSURE AS PHYSICIAN AND SURGEON

435:10-4-6. Medical licensure examination

(a) Upon submission and approval of a completed application for licensure by examination, and the payment of all fees, an applicant may sit for an examination approved by the Board. The Board has adopted the USMLE as its licensure examination. The passing score for the licensure examination is set at seventy-five percent (75%).

(b) In order to sit for the licensure examination, the applicant shall provide the Board with all information required by 59 O.S. § 494.1 on a form created or approved by the Board.

(c) Submission of an application shall not guarantee an applicant the ability to sit for the licensure examination. No person shall sit for licensure examination until approved to do so by the Board.

(d) The Board recognizes as acceptable for licensure the USMLE, NBME, FLEX and LMCC examinations. However, the Board will not accept test scores or combined FLEX scores from multiple sittings of the FLEX. In addition, the Board will accept the following combinations of those examinations:

(1) NBME part I or USMLE step 1, **plus** NBME part II or USMLE step 2, **plus** NBME part III or USMLE step 3;

(2) FLEX component 1 plus USMLE step 3; or

(3) NBME part I or USMLE step 1, **plus** NBME part II or USMLE step 2, **plus** FLEX component 2.

(e) The factoring of scores or combination of scores taken from separate examinations is acceptable only as set forth in (d)(1) through (d)(3) of this Section.

(f) All steps of the licensure examination must be passed within ~~seven (7)~~ ten (10) years unless otherwise prohibited by applicable law

(g) The following applies to all applicants regarding examination failures unless otherwise prohibited by applicable law:

(1) Any applicant who fails any part of a licensing examination three times will not be eligible for a license. A score of incomplete shall be considered a failing score. The USMLE Step 2-Clinical Knowledge and Step 2-Clinical Skills shall be considered as separate steps.

(2) If a combination of NBME, FLEX and/or USMLE is utilized, any applicant who has failed more than six (6) examinations will not be eligible for a license.

(3) If an applicant has achieved certification by an American Board of Medical Specialties (ABMS) Board, an exception to 435:10-4-6 (g)(1) and (2) may be granted by a vote of the Board.

(h) As with the initial application, the Board may make additional inquiry of the applicant to provide additional information as necessary.

435:10-4-7. Licensure by endorsement

(a) The Board may license an applicant by endorsement based upon the applicant's current license in another state, the District of Columbia, U.S. territory, or Canada and who has passed a medical licensure examination allowed by 59 O.S. § 493.3(A)(2), and who has complied with all other current licensure requirements of the Act.

(b) The Board has approved for the purpose of a medical licensure examination the FLEX, USMLE, National Board and LMCC examinations or acceptable combinations thereof. All steps of the licensure examination must be passed within ~~seven (7)~~ ten (10) years unless otherwise prohibited by applicable law.

(c) The following applies to all applicants regarding examinations failures unless otherwise prohibited by applicable law:

(1) Any applicant who fails any part of a licensing examination three times will not be eligible for a license. A score of incomplete shall be considered a failing score. The USMLE Step 2-Clinical Knowledge and Step 2-Clinical Skills shall be considered as separate steps.

(2) If a combination of NBME, FLEX and/or USMLE is utilized, any applicant who has failed more than six (6) examinations will not be eligible for a license.

(3) If an applicant has achieved certification by an American Board of Medical Specialties (ABMS) Board, an exception to 435:10-4-7 (c) (1) and (2) may be granted by a vote of the Board.

(d) To apply for licensure by endorsement, an applicant shall submit an application as required by 435:10-4-4 and 435:10-4-5, as applicable.

(e) In addition, the applicant shall provide information to the Board, on a form created by the Board, in regard to the applicant's current license and previous examination.

(f) In the event an applicant is not qualified for licensure by endorsement, the applicant may, upon payment of applicable fees, sit for licensure examination authorized by this rule ~~or~~

~~apply for a special license as set forth in Subchapter 11 of this Chapter~~.

[OAR Docket #07-1169; filed 5-23-07]

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

[OAR Docket #07-1170]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
Subchapter 21. Abortions [NEW]
435:10-21-1. Informed consent [NEW]
AUTHORITY:
Title 59 O.S., Section 489, Board of Medical Licensure and Supervision
DATES:
Comment period:
February 15, 2007 to March 19, 2007
Adoption:
March 22, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule resulted in approval on May 18, 2007.
Final adoption:
May 18, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
435:10-21-1. Informed consent [NEW]
Gubernatorial approval:
October 26, 2007
Register publication:
24 Ok Reg 214
Docket number:
06-1380
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
This rule states that failure to comply with the informed consent section of Title 63 O.S., Section 1-738.2 shall be subject to disciplinary action by the Board.
CONTACT PERSON:
Jan Ewing, Deputy Director, 405-848-6841, #104

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 21. ABORTIONS

435:10-21-1. Informed consent

(a) No abortion shall be performed in this state except with the voluntary and informed consent of the woman upon whom the abortion is to be performed.

(b) Requirements for obtaining voluntary and informed consent are set forth in Title 63, O.S., §1-738.2.

(c) Any physician performing an abortion in violation of Title 63, O.S., §1-738.2 shall be subject to disciplinary action by the Board.

[OAR Docket #07-1170; filed 5-23-07]

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

[OAR Docket #07-1171]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
Subchapter 3. Licensure of Physical Therapists and Assistants
435:20-3-1.1. Training outside the U.S. [AMENDED]
AUTHORITY:
Title 59 O.S., Section 887.5, Board of Medical Licensure and Supervision
DATES:
Comment period:
January 2, 2007 to February 2, 2007
Adoption:
March 22, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule resulted in approval on May 18, 2007.
Final adoption:
May 18, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
This rule was amended to correct the passing scores for the TOEFL. The passing scores as established by the Federation of State Boards of Physical Therapy were incorrectly reported to us. The listening comprehension and reading comprehension scores need to be switched.
CONTACT PERSON:
Jan Ewing, Deputy Director, 405-848-6841, #104

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 3. LICENSURE OF PHYSICAL THERAPISTS AND ASSISTANTS

435:20-3-1.1. Training outside the U.S.

(a) Pursuant to requirements set out in Title 59 O.S. § 887.6, a foreign-educated physical therapist whose native language is not English shall submit evidence of having passed the:

(1) Test of:

(A) English as a Foreign Language (TOEFL) with a score of at least 560 or 220 computer equivalent; and

(B) Spoken English (TSE) with a score of at least 50; and

(C) Written English (TWE) with a score of at least 4.5 or

(2) Test of English as a Foreign Language Internet-based Test (TOEFL iBT) with a total score of at least 89 and:

(A) a score of at least 24 on the Writing section

(B) a score of at least 26 on the Speaking section

(C) a score of at least ~~18~~ 21 on the Reading section

(D) a score of at least ~~21~~ 18 on the Listening section.

(b) A foreign-educated physical therapist applying for licensure in the State of Oklahoma shall submit verification of the equivalency of the applicant's education to that attained by entry-level graduates training the United States at the time of graduation.

(c) Assessment of equivalency may be performed by a professional education credentials service approved by the Board using the following standards:

(1) **Graduation on or before May 31, 2001:**

(A) The minimum equivalent education credentials of a foreign educated physical therapist should be a bachelor's degree in physical therapy with all credits being earned at an institution of higher learning that confers at least a bachelor's degree in physical therapy which is approved by the country's Ministry of Education/Health.

(B) The minimum number of semester hour credits should be one-hundred-twenty (120). A semester hour credit is equal to fifteen (15) hours of classroom instruction per semester. For courses with laboratory component, a semester hour credit is also equal to thirty (30) hours of laboratory instruction per semester. For clinical courses, a semester hour credit is equal to forty-eight (48) hours of clinical instruction per semester.

(i) Fifty (50) semester hour credits shall be the minimum number required in general education.

(ii) The applicant has the opportunity to meet the objective of one hundred twenty (120) semester hour credits by utilizing additional elective credits in either general or professional education beyond the minimal requirements.

(iii) Sixty (60) semester hour credits shall be the minimum required in professional education. A grade of "C" or better will be required in each professional education course.

(2) **Graduation after May 31, 2001:**

(A) The minimum equivalent education credentials of a foreign educated physical therapist should be a master's degree in physical therapy with all credits being earned at an institution of higher learning that confers at least a master's degree in physical therapy which is approved by the country's Ministry of Education/Health.

(B) The minimum number of semester hour credits should one-hundred-seventy (170). A semester hour credit is equal to fifteen (15) hours of classroom instruction per semester. For courses with laboratory component, a semester hour credit is also equal to thirty (30) hours of laboratory instruction per semester. For clinical courses, a semester hour credit is equal to forty-eight (48) hours of clinical instruction per semester.

(i) Ninety (90) semester hour credits shall be the minimum number required in general education.

(ii) The applicant has the opportunity to meet the objective of one-hundred-seventy (170) semester hour credits by utilizing additional elective credits in either general or professional education beyond the minimal requirements.

(iii) Eighty (80) semester hour credits shall be the minimum required in professional education. A grade of "C" or better will be required in each professional education course.

(3) **Minimum course requirements.**

(A) **General education.** A minimum of one semester course must be successfully completed in each category of general education unless otherwise noted.

(i) Humanities

(I) English

(II) English composition

(III) Speech or oral communication

(IV) Foreign language (other than native language)

(V) Literature

(VI) Art

(VII) Music

(ii) Physical science: A one semester course in chemistry and a one semester course in physics must be successfully completed.

(I) Chemistry with laboratory (Organic or Inorganic)

(II) Physics with laboratory

(III) Geology

(IV) Astronomy

(iii) Biological science

(I) Biology

(II) Anatomy

(III) Physiology

(IV) Zoology

(V) Kinesiology

(VI) Neuroscience

(VII) Genetics
(iv) Social science
(I) History
(II) Geography
(III) Sociology
(IV) Economics
(V) Government
(VI) Religion
(v) Behavioral science
(I) Psychology
(II) Anthropology
(III) Philosophy
(IV) Ethics
(vi) Mathematics
(I) Statistics
(II) Algebra
(III) Pre-calculus
(IV) Calculus
(V) Trigonometry
(VI) Geometry

(B) **Professional education.**

(i) Basic health sciences: A minimum of one semester course is required in each of the following topics.

(I) Human anatomy (specific to physical therapy)
(II) Human physiology (specific to physical therapy)
(III) Neurological science
(IV) Kinesiology or functional anatomy
(V) Psychology
(VI) Pathology

(ii) Clinical sciences: The essential element of physical therapy education is teaching the student to assess and treat appropriately across the spectrum of age. Therefore any education course work should contain all of the following:

(I) Clinical medicine pertinent to physical therapy. This should include but not be limited to: neurology, orthopedics, pediatrics, geriatrics.
(II) Physical therapy course work to include but not limited to: physical agents, musculoskeletal assessment and treatment, neuromuscular assessment and treatment, cardiopulmonary assessment and treatment.

(iii) Clinical education: Clinical education must include physical therapist-supervised demonstrated application of physical therapy theories, techniques, and procedures. The applicant must have a minimum of two (2) clinical affiliations of no less the 800 hours total which are supervised by a physical therapist.

(iv) Related professional course work: A minimum of three (3) semester courses are required from the following topics in related professional course work - professional ethics, administration, community health, research, education techniques, and medical terminology.

(d) Pursuant to 59 O.S. § 887.6, foreign-educated physical therapists applying for licensure must submit verification of having successfully completed an eight-hundred (800) hour (at least 120 days) interim supervised clinical practice period under the continuous and immediate supervision of an Oklahoma licensed physical therapist. The Board will issue an interim permit to the applicant for the purpose of participating in the supervised clinical practice period. The time period of an initial interim permit shall not exceed six (6) months.

(1) The interim supervised clinical practice period must be completed in Oklahoma at a facility that serves as a clinical education facility for students enrolled in an accredited program education physical therapists or physical therapist assistants in Oklahoma.
(2) The supervising physical therapist shall submit an evaluation of the applicant's performance at the end of four-hundred (400) hours of supervision. A final report will be submitted at the end of the second four-hundred (400) hours of supervision. These reports will be submitted on forms or evaluation tools determined by the Board.
(3) If the applicant's performance is unsatisfactory during the supervision period, or the applicant ceases working at the training facility for any reason, the supervising physical therapist must notify the Board in writing within five (5) working days.
(4) If the interim supervised clinical practice period is not satisfactorily completed within a six-month period, the Board may issue a second interim permit for an additional six month period. A third permit will not be issued.

(e) The interim supervised clinical practice period may be waived for foreign-educated physical therapists at the discretion of the Board, if:

(1) the applicant for licensure is able to verify the successful completion of one (1) year of clinical practice in the United States or the District of Columbia, or
(2) the applicant is able to document exceptional expertise acceptable to the Board in the fields of research, education, or clinical practice.

(f) The interim supervised clinical practice period may be shortened for foreign-educated physical therapists at the discretion of the Board.

[OAR Docket #07-1171; filed 5-23-07]

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

[OAR Docket #07-1172]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
Subchapter 5. Annual Renewal/Continuing Education

435:55-5-2. Requirements for renewal of license or registration [AMENDED]

AUTHORITY:
Title 59 O.S., Section 3004, Board of Medical Licensure and Supervision

DATES:
Comment period:
January 2, 2007 to February 2, 2007
Adoption:
March 22, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rule resulted in approval on May 18, 2007.
Final adoption:
May 18, 2007
Effective:
June 25, 2007

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATED BY REFERENCE:
n/a

ANALYSIS:
Amendments establish reinstatement requirements for licensees who were initially licensed through the grandfather clause or through the alternative qualifications requirements and states that dual license holders are only required to pay one renewal fee.

CONTACT PERSON:
Jan Ewing, Deputy Director, 405-848-6841, #104

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 5. ANNUAL RENEWAL/CONTINUING EDUCATION

435:55-5-2. Requirements for renewal of license or registration

(a) **Purpose.** The purpose of this section is to set out the rules governing requirements for the renewal and replacement of license or registration.

(b) **Date required to renew.**

(1) A licensee or registrant must renew the license or registration every two years.

(2) The application and fee for the renewal shall be postmarked or hand delivered to the Board office not later than December 31st.

(3) Each applicant for renewal is responsible for renewing on or before the required date and shall not be excused from paying additional fees or penalties.

(c) **Renewal procedure.**

(1) At least thirty (30) days prior to December 31st, the Board will send an application for renewal and the amount of the renewal fee due. The applicant must complete the application and return it to the Board office with the required fee. The timely return of the completed renewal form shall be considered confirmation of the receipt of renewal notification.

(2) The renewal form for all applicants shall require in addition to other information, the preferred mailing address and primary practice address.

(3) The Board shall not consider the applicant to be renewed until it receives both the completed renewal form and the required fees set by the Board.

(4) The Board shall issue to a licensee or registrant who has met all requirements for renewal a renewal identification card.

(d) **Late renewal.**

(1) The Board shall notify a person who has not renewed after a period of more than thirty (30) days that their license or registration is inactive.

(2) A person whose license or registration is inactive for not more than thirty (30) days may renew by paying to the Board the required renewal fee and a penalty fee as established by the Board in OAC 435:1-1-7. Fees.

(3) A person whose license or registration has been inactive for more than thirty (30) days but less than one (1) year from the last day for renewal may renew by paying to the Board the unpaid renewal fees, plus a late penalty as established by the Board in OAC 435:1-1-7. Fees.

(4) A person whose license or registration has been lapsed more than twelve months wishing to re-enter the practice of Orthotics and Prosthetics ~~shall meet all application requirements in effect at the time reinstatement is requested. In addition, the applicant~~ must submit an application in accordance with OAC 435:55-3-4 and may be required to meet one or more of the following:

(A) Practice under the direct supervision of a licensed Orthotist and/or Prosthetist for up to ninety (90) days.

(i) The supervising Orthotists and/or Prosthetist(s) shall provide to the Committee a report on the applicant's performance prior to licensure.

(ii) Upon a personal appearance by the applicant, the Committee has the discretion to change the level of supervision to indirect supervision.

(B) Provide proof of continued education as required or obtain such before reinstatement.

(C) Retake and pass the Oklahoma Orthotic/Prosthetic state approved licensure exam.

(D) Make personal appearance before the Advisory Committee.

(e) **Replacement of license or registration.** The Board will replace a lost, damaged or destroyed certificate or identification card upon application and payment of fees established by the Board. Applications must include an affidavit detailing the loss or destruction of the original certificate or identification card, or be accompanied by the damaged certificate or card.

(f) Dual license holders. A person who holds both an Orthotist license and a Prosthetist license will be required to pay one renewal fee in order to renew both licenses.

[OAR Docket #07-1172; filed 5-23-07]

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

[OAR Docket #07-1162]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Appendix A. Pay Band Schedule [REVOKED]
Appendix A. Pay Band Schedule [NEW]
AUTHORITY:
The Administrator of the Office of Personnel Management; 74 O.S., §§ 840-1.6A, 840-2.1, 840-2.17, 840-5.16 and 4121.
DATES:
Comment period:
February 16, 2007 to March 22, 2007
Public hearing:
March 23, 2007
Adoption:
March 23, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
April 24, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2007.
Final adoption:
May 18, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
None.
INCORPORATIONS BY REFERENCE:
None.
ANALYSIS:
The amendment to Appendix A is to reflect a 5.0 percent upward increase to the minimum, maximums and midpoints of the classified pay bands. The proposed amendment was based upon an analysis of classified pay structure while considering market pay movement, the positioning of current classified average pay in the pay bands, and costs.
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 JULY 1, 2007:

APPENDIX A. PAY BAND SCHEDULE [REVOKED]

APPENDIX A. PAY BAND SCHEDULE [NEW]

PAY BAND	MINIMUM	MIDPOINT	MAXIMUM
A	$12,889	$17,185	$21,481
B	$13,508	$18,011	$22,514
C	$14,291	$19,054	$23,818
D	$15,407	$20,542	$25,678
E	$16,948	$22,597	$28,246
F	$18,642	$24,856	$31,070
G	$20,507	$27,343	$34,179
H	$22,558	$30,077	$37,596
I	$24,981	$33,308	$41,635
J	$27,464	$36,618	$45,773
K	$30,020	$40,026	$50,033
L	$33,021	$44,028	$55,035
M	$36,653	$48,870	$61,088
N	$40,685	$54,247	$67,809
O	$45,566	$60,755	$75,944
P	$51,491	$68,654	$85,818
Q	$58,185	$77,580	$96,975
R	$65,749	$87,665	$109,581

[OAR Docket #07-1162; filed 5-22-07]

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

[OAR Docket #07-1187]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. General Course in Method of Operation
535:1-5-5.1. Complaint confidentiality [AMENDED]
Subchapter 7. Individual Proceedings
535:1-7-4.Failure to appear and/or failure to comply [AMENDED]
AUTHORITY:
Title 51 O.S. 24A et seq., Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.3, 353.5 - 353.7, 353.9, 353.11, 353.18; 353.20, 353.22, 353.24 - 353.26, 353.29, 353.30; and Title 75 O.S., Section 302, 305, 307, and 309; and Title 63 O.S., Sec 2-201, 2-208 and 2-210. Title 51 Sec. 24 A.5(3) and Title 59 O.S. Sec. 353.7(15).
DATES:
Comment period
February 15, 2007 through March 20, 2007
Public hearing:
March 27, 2007
Adoption:
March 27, 2007
Submitted to Governor:
March 29, 2007
Submitted to House:
March 29, 2007
Submitted to Senate:
March 29, 2007
Gubernatorial approval:
May 4, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 24, 2007
Final adoption:
May 24, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTION:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The revision removing (c) of 535:1-5-5.1 is at the recommendation of our Assistant Attorney General since the open record act controls record releases. The revision adding (b) to 535:1-7-4 explains failure to comply with Board orders may result in additional sanctions by the Board.
CONTACT PERSON:
Mr. Bryan H. Potter, Executive Director, Oklahoma State Board of Pharmacy, 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488, Telephone number (405) 521-3815

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

SUBCHAPTER 5. GENERAL COURSE IN METHOD OF OPERATION

535:1-5-5.1. Complaint confidentiality

(a) In order to encourage the public and affected individuals to come forward with complaints regarding registrants and fully share the particulars; the Board will hold all informant or complainant names, addresses or other personal information as confidential and shall not release this information.

(b) The Board shall use all complainant or informant information provided in conducting its investigations. The Board may use this information in cases filed against registrants. However, the confidential information listed in (a) above will be redacted from case files prior to providing the information to the public.

~~(c) The Board shall not release information on unsubstantiated complaints regarding registrants. Substantiated complaints are referred for administrative action or Board action and are available less complainant confidential information.~~

SUBCHAPTER 7. INDIVIDUAL PROCEEDINGS

535:1-7-4. Failure to appear or failure to comply

(a) Any defendant or accused who fails to appear as directed, after first having received proper notice, may be determined to have waived his right to present a defense to the charges alleged in the complaint and a suspension, revocation or other disciplinary action may be ordered by the Board if it appears, after having reviewed the evidence, that the violation alleged did in fact occur.

(b) Failure to comply with the Board's order(s) may result in additional sanctions by the Board.

[OAR Docket #07-1187; filed 5-24-07]

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

[OAR Docket #07-1188]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Interns, Preceptors and Training Areas
535:10-5-4. Intern Practice requirements [AMENDED]
Subchapter 7. Pharmacist Licensure
535:10-7-6. Reciprocity licensure applicants [AMENDED]
535:10-7-8. Foreign pharmacy graduates licensure applicants [AMENDED]
Subchapter 11. Pharmacist Administration of Immunizations
535:10-11-3. D.Ph. administering of immunization requirements [AMENDED]
535:10-11-4. Immunization registration ~~of D.Ph.~~ [AMENDED]
535:10-11-5. D.Ph. training requirements for administration of immunizations [AMENDED]
535:10-11-6. Records [AMENDED]
AUTHORITY:
Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.9, 353.11, 353.16A, 353.18, 353.20, 353.22, and 353.24 - 353.26 and 364.

DATES:
Comment period:
February 15, 2007 through March 20, 2007
Public hearing:
March 27, 2007
Adoption:
March 27, 2007
Submitted to Governor:
March 29, 2007
Submitted to House:
March 29, 2007
Submitted to Senate:
March 29, 2007
Gubernatorial approval:
May 4, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 24, 2007
Final adoption:
May 24, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTION:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rule change in 535:10-5-4(a) allows slightly looser supervision **only for non-dispensing pro-practice rotations.**

The change in 535:10-7-6(d) removes a continuing education requirement on an initial pharmacist licensure issued under Title 59 O.S. Section 353.9(D). Continuing education (CE) is required by Title 59 O.S. Section 353.11 on "renewals". This change restores equity to initial pharmacist licensure requirements.

The change in 535:10-7-8(b)(3) raises the number of Oklahoma intern hours required of graduates of foreign pharmacy schools to make it closer to that required for graduates of ACPE approved domestic colleges of pharmacy.

The changes in 535:10-11-3 improves clarity and adds continuing education and CPR required of all individuals who administer immunizations and refers to the licensure requirement for pharmacist who participate in immunizations.

The changes in 535:10-11-4 (1)(A) describes Oklahoma licensed intern participation in immunizations.

The change in 535:10-11-5 corrects the name of SWOSU from "school" to "college" of pharmacy.

The change in 535:10-11-6 (a) clarifies record requirements.
CONTACT PERSON:
Mr. Bryan H. Potter, Executive Director, Oklahoma State Board of Pharmacy located at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Phone number (405) 521-3815 and FAX number (405) 521-3758.

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:

535:10-5-4. Intern practice requirements

(a) **Supervision requirement.** An intern may practice in an approved training area only under the immediate visual supervision of a preceptor, except as described in 535:10-5-4-(a)(3). See also 535:10-5-2.

(1) A preceptor may supervise only one intern at a time.

(2) A ratio of one (1) faculty preceptor with up to two (2) interns will be allowed in a pro-practice rotation.

(3) Non-dispensing pro-practice rotations are to be supervised by a preceptor, but immediate visual supervision is not required.

(b) **Professional Conduct.** Interns will be held accountable to the rules and violations of professional conduct. The professional conduct rules for interns will be the same as required by 535:10-3-1.1 and 535:10-3-1.2 for pharmacists.

(c) **Employment notification.** All licensed pharmacy interns shall notify the Board of Pharmacy, in writing, of the place of their non-college practice within ten (10) days of going to work and/or termination of this practice location. The pro-practice employment location notification will be the responsibility of the college or school of pharmacy.

SUBCHAPTER 7. PHARMACIST LICENSURE

535:10-7-6. Reciprocity licensure applicants

(a) Reciprocity applicants, as defined in 535:10-7-2, shall meet the requirements set forth in 535:10-5, 535:10-7-4, 535:25 and this Subchapter and Title.

(b) Reciprocity applicants shall have a minimum of one year's experience obtained as an intern and/or as a pharmacist.

(c) Reciprocity applicants shall submit to the Board a completed "NABP Official Application for Transfer of Pharmaceutical licensure" and the required Oklahoma fee by the deadline set by the Executive Director.

~~(d) Reciprocity applicants shall submit proof to the Board of at least fifteen (15) clock hours of continuing education obtained through the satisfactory completion of an accredited program. Applicants shall obtain these continuing education credit hours in the appropriate year as set by the Executive Director~~.

535:10-7-8. Foreign pharmacy graduates licensure applicants

(a) Foreign pharmacy graduate applicants shall meet the requirements set forth in 535:10-7-4, 535:25 and this Subchapter and Title.

(b) Foreign pharmacy graduate applicants, as defined in 535:10-7-2 shall:

(1) First, submit a copy of applicant's valid NABP FPGEC Certificate to the Board;

(2) second, apply and be approved for an Oklahoma intern certificate as required by 535:10-5-2; and,

(3) third, complete 1,000 ~~500~~ hours of internship in Oklahoma within 12 ~~6~~ months of licensure as an Oklahoma intern.

(A) The foreign pharmacy graduate intern and the preceptor shall satisfactorily report these hours on forms supplied by the Board.

(B) The foreign pharmacy graduate intern is subject to all Board rules.

(c) Upon satisfactorily completing the requirements of this section, a foreign pharmacy graduate may make application for the NAPLEX (licensure by examination) as set forth in 535:10-7-5.

SUBCHAPTER 11. PHARMACIST ADMINISTRATION OF IMMUNIZATIONS

535:10-11-3. D.Ph. administering of immunization requirements

(a) A D.Ph. must have completed an approved training course and received registration for immunizations with the Board as stated in 535:10-11-4 prior to administering immunizations.

(b) A D.Ph. shall administer immunizations only on the patient specific prescription order of a prescribing practitioner.

(c) The Board will maintain a register of those pharmacists who have been approved for immunizations.

(d) A D.Ph. with immunization registration must maintain ongoing competency through required training, e.g. CPR and continuing education.

535:10-11-4. Immunization registration ~~of D.Ph.~~

(a) In order to obtain and maintain eligibility to administer immunizations an applicant must be registered as a D.Ph. in Oklahoma and have successfully completed an approved training described in 535:10-11-5.

(b) Each D.Ph. immunization registrant is subject to the rules regarding applicants in Subchapter 535:25-3.

(c) Prior to administering immunizations, each D.Ph. shall be registered with the Board as an immunization registrant.

(1) Each D.Ph. shall apply to be placed on the immunization register by completing a form furnished by the Board and paying the $25 fee.

(2) A permit will be sent to the D.Ph. indicating their immunization registration.

(d) An Oklahoma licensed intern who has successfully completed an approved immunization training program described in 535:10-11-5, while working under an Oklahoma licensed pharmacist preceptor with an immunization registration, shall be exempt from immunization registration. Such intern shall provide proof of such successfully completed immunization training program upon request of the Board.

535:10-11-5. D.Ph. training requirements for administration of immunizations

(a) The following is a list of approved pharmacist training programs for administration of immunizations:

(1) Programs that include training in immunizations offered by the two state colleges of pharmacy:

(A) Southwestern Oklahoma State University (SWOSU) College ~~School~~ of Pharmacy

(B) University of Oklahoma (OU) College of Pharmacy

(2) Immunization programs approved by the American Council on Pharmaceutical Education (ACPE).

(3) Immunization programs offered by the American Pharmaceutical Association (APHA).

(4) Immunization programs offered by the National Community Pharmacy Association (NCPA).

(5) Immunization programs offered by the American Society of Health System Pharmacists (ASHP).

(b) Each D.Ph must have successfully completed one of these training courses in immunization prior to registering with the Board or administering immunizations prescribed by an Oklahoma licensed prescribing practitioner.

535:10-11-6. Records

(a) ~~Separate records~~ Records of these immunizations will be kept on file by the pharmacy. The files will include, but not be limited to, the following:

(1) Patient name (Parent name, if patient is a minor)

(2) Address of patient

(3) Prescribing practitioner

(4) Immunization order

(5) Name, Manufacturer, Lot no., Expiration Date

(6) Date for continued dose regimen if required

(b) Such records must be readily available for inspection in the pharmacy.

(c) Records or reports will be sent to the State Health Department, if required.

(d) Report of immunization to prescribing physician, if requested.

[OAR Docket #07-1188; filed 5-24-07]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 13. EMERGENCY / DISASTER PHARMACY RESPONSE

[OAR Docket #07-1189]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
535:13-1-1. Purpose [NEW]
535:13-1-2. Reserved [NEW]
535:13-1.3. Declaration of Emergency [NEW]
535:13-1-4. Pharmacy Emergency / Disaster Response [NEW]

AUTHORITY:
Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18, 353.20, 353.22, 353.24 - 353.26, 353.29 and 354.

DATES:
Comment period
February 15, 2007 through March 20, 2007
Public hearing:
March 27, 2007
Adoption:
March 27, 2007
Submitted to Governor:
March 29, 2007
Submitted to House:
March 29, 2007
Submitted to Senate:
March 29, 2007
Gubernatorial approval:
May 4, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 24, 20007
Final adoption:
May 24, 2007
Effective:
July 1, 2007

SUPERSEDED EMERGENCY ACTION:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The revisions in 535:13-1-1 through 535:13-1-4 describe emergency / disaster pharmacy response rules that may be used following an emergency / disaster declaration by the Governor and a finding by the Board that normal distribution channels have been disrupted.
CONTACT PERSON:
Mr. Bryan H. Potter, Executive Director, Oklahoma State Board of Pharmacy located at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Phone number (405) 521-3815 and FAX number (405) 521-3758.

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:

535:13-1-1. Purpose
(a) The rules of this chapter define what procedures pharmacies and pharmacists may use to accommodate patient medication needs in the event of an emergency / disaster situation which disrupts the normal prescription drug distribution channels.
(b) The rules of this chapter will maintain controls to protect public health while allowing emergency actions to accommodate patient medication needs during such emergencies or disasters.

535:13-1-2. [RESERVED]

535:13-1-3. Declaration of emergency
Emergency / disaster pharmacy response rules may be used when the governor of Oklahoma makes a disaster or emergency declaration and the Board finds this disaster or emergency disrupts the normal prescription drug distribution channels in the state of Oklahoma.

535:13-1-4. Pharmacy Emergency / Disaster Response
(a) If a patient from the area affected by the emergency / disaster declaration requests a refill of a non-controlled maintenance medication, the pharmacist should make an attempt to contact the original prescribing practitioner for authorization to dispense refills.
(1) If the prescribing practitioner cannot be contacted; and if in the pharmacist's professional judgment, the dispensing of the medication is essential to the patient's health and safety, the pharmacist may dispense a one time emergency supply up to a 30-day supply of such medication.
(2) The prescription should be marked as an "Emergency" prescription for a person displaced or affected by such disaster.
(b) If a patient from the area affected by the emergency / disaster requests refills of controlled dangerous substance (CDS), the pharmacist should make an attempt to contact the original prescribing practitioner for authorization to dispense refills.
(c) If the pharmacist is unable to contact the prescribing practitioner regarding a CDS prescription, then they must check with the federal Drug Enforcement Agency (DEA) and Oklahoma Bureau of Narcotics (OBN) to see if they have approved an emergency dispensing of CDS for patients affected by the emergency / disaster.
(1) If the federal DEA and OBN approve dispensing CDS in an emergency or disaster situation; and, if in the pharmacist's professional judgment the dispensing of the medication is essential to the patient's health and safety, the pharmacist may dispense up to the allowed limit set by DEA and OBN not to exceed a ten (10) day supply of CDS medication.
(A) The patient should provide identification and a prescription vial or some means of determining the person has been prescribed such medication.
(B) The prescription should be marked as an "Emergency" prescription for a person displaced or affected by the disaster.
(2) If emergency CDS dispensing is NOT approved by the federal DEA and OBN the patients will have to be referred to a healthcare professional.

[OAR Docket #07-1189; filed 5-24-07]

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

[OAR Docket #07-1190]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Pharmacies
535:15-3-2. Pharmacy responsibilities [AMENDED]
535:15-3-4-1. Pharmacy licensing requirement [AMENDED]
535:15-3-6. Required library reference books or computer sources [AMENDED]
535:15-3-12. Transfer of prescription refill information [AMENDED]
535:15-3-18. Pharmacy prescription drug purchases records [NEW]
535:15-3-21. Prescription fill, refill and partial fill records and reports [AMENDED]
Subchapter 5. Hospital Pharmacies
535:15-5-7.6. Pharmacy technician annual permit requirement [AMENDED]
Subchapter 6. Hospital Drug Room ~~Rules~~
535:15-6-9. Emergency room pre-packaged medications formulary [AMENDED]
Subchapter 13. Pharmacy Supportive Personnel
535:15-13-5. Supervision of pharmacy technicians [AMENDED]
535:15-13-8. Technician annual permit requirement [AMENDED]
535:15-13-13. Pharmacy technician training [AMENDED]
AUTHORITY:
Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18, 353.20, 353.22, 353.24 - 353.26, 353.29 and 354.
DATES:
Comment period
February 15, 2007 through March 20, 2007
Public hearing:
March 27, 2007

Adoption:
March 27, 2007
Submitted to Governor:
March 29, 2007
Submitted to House:
March 29, 2007
Submitted to Senate:
March 29, 2007
Gubernatorial approval:
May 4, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 24, 2007
Final adoption:
May 24, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTION:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:

The revision in 535:15-3-2 corrects to pharmacy manager where pharmacist manager was used to stay consistent within the paragraph. It adds notification of separation for suspected or confirmed drug or pharmacy related violation to the responsibility of the pharmacy manager and pharmacy.

Changes in 535:15-3-4.1 more fully describe ownership information and the requirement that ownership be fully and completely disclosed, as well as the corporate registered agent requirement.

The changes in pharmacy library requirements were requested by registrants to allow more flexibility in the pharmacy library in 535:15-3-6.

The rule revision in 535:15-3-12, 535:15-3-21, and 535:15-6-9 each correct an incorrect cite.

The rule revision in 535:15-3-18 describe prescription drug purchase and inventory record requirements, as well as describe the responsibility to use professional judgment in prescription drug purchase decisions.

The revisions in 535:15-5-7.6 and 535:15-13-8 clarify the Pharmacy Board technician permit is only for technicians working in a licensed pharmacy and may only be renewed while so employed.

The change in 535:15-13-5 is to clarify that an intern may not supervise a technician nor may a technician certify the completion of a prescription filled by a technician.

Additionally changes in 535:15-13-8 brings the rule into compliance with the law change that converted renewals to annually by birth month, and a modernization of renewal notice requirements.

The addition to technician training in 535:15-13-13 of an board approved annual law seminar each calendar year for licensed technicians is an effort to assure technicians have a understanding of the law under which they work. And that such technicians' law knowledge is up to date and they fully understand law violation consequences.

CONTACT PERSON:

Mr. Bryan H. Potter, Executive Director, Oklahoma State Board of Pharmacy located at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Phone number (405) 521-3815 and FAX number (405) 521-3758.

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. PHARMACIES

535:15-3-2. Pharmacy responsibilities

(a) **Pharmacy staffing responsibility.** Each pharmacy shall employ an adequate number of pharmacists to perform the practice of pharmacy as defined by the Oklahoma Pharmacy Act with reasonable safety.

(b) **Pharmacy ~~Pharmacist~~ manager.** Each pharmacy, in order to obtain and maintain a pharmacy license, must have a registered pharmacist as the pharmacy manager.

(1) A pharmacy manager (i.e. pharmacist in charge) is designated by his signature on the original pharmacy application or by the appropriate notification to the Board as required in 535:15-3-10(a), and is responsible for all aspects of the operation related to the practice of pharmacy. These responsibilities include, but are not limited to the:

(A) supervision of all employees as they relate to the practice of pharmacy;

(B) establishment of policies and procedures for safekeeping of pharmaceuticals that satisfy Board requirements, including security provisions when the pharmacy is closed;

(C) proper record keeping system for the purchase, sale, delivery, possession, storage, and safekeeping of drugs;

(D) proper display of all licenses;

(E) annual controlled drug inventory; and,

(F) maintenance of prescription files;

(2) No pharmacist may serve as a pharmacy manager in more than one pharmacy at a time.

(3) A pharmacy manager shall work sufficient hours in the pharmacy to exercise control and meet the responsibilities of the pharmacy manager.

(c) **Pharmacy ~~Pharmacist~~ manager's and pharmacy's responsibilities.** The following describe responsibilities of the pharmacy and pharmacy ~~pharmacist~~ manager.

(1) Where the actual identity of the filler of a prescription is not determinable, the manager of the pharmacy and the pharmacy where the prescription was filled will be the subject of any charges filed by the Board of Pharmacy.

(2) The pharmacy and the pharmacy manager are responsible to establish and maintain effective controls against prescription errors or misfills.

(3) The pharmacy and/or pharmacy manager shall notify the Board immediately of the separation of employment of any pharmacist, pharmacy intern, or pharmacy technician for any suspected or confirmed drug or pharmacy related violation. If the pharmacy manager (PIC) is terminated for such reason, the owner or other person in charge of the pharmacy shall notify the Board.

(d) **Responsibility for automated pharmacy systems.** This subsection describes the responsibilities of the pharmacy and the pharmacy ~~pharmacist~~ manager for automated pharmacy systems.

(1) Prior written notice must be provided to the Board of the installation or removal of automated pharmacy systems. Such notice must include, but is not limited to the:

(A) name and address of the pharmacy,

(B) name of pharmacy manager,

(C) name of the manufacturer & model of system.

(2) The system being implemented should conform to Board automated pharmacy system guidelines.

(3) The pharmacy shall monitor the automated pharmacy system with a quality assurance program.

(e) **Responsibilities for personnel identification.** The pharmacy ~~pharmacist~~ manager and the pharmacy are responsible to assure that the public be able to distinguish pharmacy technicians, auxiliary support personnel, and/or interns from any pharmacist in the pharmacy.

(1) All pharmacy technicians, auxiliary support personnel, and/or interns must wear a designation tag and be distinctly identifiable from a practicing pharmacist.

(2) Designation tags must be clear, readable and lettered with "Rx Tech", "Tech", "Clerk", or "Intern".

(3) All pharmacy interns, technicians or clerks must identify themselves as such on any phone calls initiated or received while performing pharmacy functions.

535:15-3-4.1. Pharmacy licensing requirement

(a) Every pharmacy conducting interstate and/or intrastate transactions in Oklahoma must be licensed as required under Title 59, O.S., Section 353.18(A).

(b) Every pharmacy shall list the corporate registered agent and address as required on their new and/or renewal application.

(c) Every applicant for pharmacy license issued under Title 59 O.S. Section 353.18 shall fully and completely disclose ownership as required by the Board on their new and/or renewal application.

535:15-3-6. Required library reference books or computer sources

A pharmacy library shall contain the following current reference books or computer sources:

(1) **Oklahoma law books.** The latest copy of Oklahoma State Laws and Rules Pertaining to the Practice of Pharmacy and a recent copy of Oklahoma State Bureau of Narcotics & Dangerous Drugs Control Rules.

(2) **Library menu.** A recent copy of any two of the following:

(A) USP/NF (3 years or latest edition);

(B) Merck Manual (3 years or latest edition);

(C) Remington (6 years);

(D) A toxicology reference (3 years);

(E) ~~Physicians Drug Reference [PDR] (2 years)~~

~~(F)~~ Mosby's Drug Consult (2 years);

(F ~~G~~) Facts and Comparisons (2 years);

(G ~~H~~) ASHP, American Hospital Formulary Service (AHFS) Drug Information (2 years);

~~(I) PDR Pocket Guide (2 years)~~

(H ~~J~~) Monthly Prescribing Reference (MPR) (2 years);

(I ~~K~~) Drug Information Handbook (2 years);

(J ~~L~~) Thomson Micromedex, USP-DI (2 years); and/or,

(K) ~~One current~~ Current computer professional pharmacy reference program, approved by the Board (not duplicating a hard copy reference) e.g. one or two of the following:

(i) ~~Micro Medix~~ Thomson Micromedex, USP-DI

(ii) Clinical Pharmacology

(iii) Facts and Comparisons

(iv) Natural Medicines Comprehensive Database

(v) Trissel's 2 Clinical Pharmaceutical Database

(vi) Unlimited internet access to internet professional pharmacy reference program, e.g. WEB MD

535:15-3-12. Transfer of prescription refill information

For the purpose of refill dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements:

(1) the transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies:

(A) for up to the number of originally authorized refills remaining on Rx Only drugs that are not controlled; or

(B) on a **one-time** basis only, the transfer of original prescription and refill information for a controlled dangerous substance **(CDS)** listed in Schedules III, IV or V for the purpose of refill dispensing. However, pharmacies electronically sharing a real-time, online database may transfer up to the maximum refills permitted by law and the prescriber's authorization.

(2) the transfer must be communicated orally directly between two licensed pharmacists and/or licensed interns;

(3) both the original and the transferred prescription drug order must be maintained for a period of five years from the date of last refill;

(4) the pharmacist transferring the prescription drug order information shall:

(A) write the word "void" on the face of the invalidated prescription drug order; and

(B) record on the reverse of the invalidated prescription drug order the following information:

(i) the name and address of the pharmacy to which such prescription drug order is transferred;

(ii) the last name and registration number of the pharmacist receiving the prescription drug order information;

(iii) the last name and registration number of the pharmacist transferring the prescription drug order information;

(iv) the date of the transfer; and

(v) as required in federal DEA rules, pharmacies must exchange and document the sending and receiving pharmacy DEA number on a controlled dangerous substance prescription transfer.

(5) the pharmacist receiving the transferred prescription drug order information shall:

(A) write the word "transfer" on the face of the transferred prescription drug order, see 535:15-3-12 (8); and

(B) record on the transferred prescription drug order the following information:

(i) the date of the original prescription (refills are allowed only as prescribed for a one-year maximum from original prescription date on non-scheduled, as stated in 535:15-3-11 (b) et seq. and up to five refills for no more than six months on Schedule III-V, as stated in ~~475:30-1-1(a)~~ 475:30-1-11 (a));

(ii) the original prescription number and the number of refills authorized on the original prescription drug order;

(iii) the number of valid refills remaining and the date of last refill;

(iv) the name and address of the pharmacy from which such prescription information is transferred;

(v) the last name and registration number of the pharmacist transferring the prescription drug order information; and,

(vi) as required in federal DEA rules, pharmacies must exchange and document the sending and receiving pharmacy DEA number on a controlled dangerous substance prescription transfer.

(6) pharmacies with computer systems shall invalidate the prescription drug order in their system for purposes of filling or refilling, but shall maintain the information for refill history purposes;

(7) if the computer system has the capacity to store all of the information required in (4) and (5) of this paragraph, the pharmacist is not required to record this information on the original or transferred prescription drug order.

(8) the computer system used by the pharmacy receiving the transfer must be able to show that a CDS or scheduled prescription is a transferred prescription. (This is to prevent the possible second transfer of a Scheduled prescription in violation of federal law and 535:15-3-12 (1).)

535:15-3-18. Pharmacy prescription drug purchase records

(a) All prescription purchases (e.g. invoices, etc.) and inventory records shall be maintained and be readily retrievable for a period of at least 2 years.

(b) A pharmacist and/or pharmacy shall exercise careful professional judgment regarding where they purchase the pharmacy's drugs to assure a safe and sanitary drug supply is maintained. Prescription drug purchases may only be made from entities licensed to sell such drugs.

535:15-3-21. Prescription fill, refill and partial fill records and reports

(a) **Dangerous drugs.**

(1) Refills may be entered on the back of each original prescription.

(2) Refills may be kept by using an automated data processing system to maintain the refill information.

(b) **Controlled dangerous Substances (CDS) - Schedule II.** No refills are allowed on Schedule II CDS.

(c) **Controlled dangerous Substances (CDS) - Schedule III, IV and V Hard copy method.** The refills are entered on the back of the original (hard copy) prescription according to Oklahoma Bureau of Narcotics and Dangerous Drugs' rules in OAC 475:30-1-11 et seq.

(d) **CDS automated data processing method.** A pharmacy may elect to use an automated data processing system to maintain the prescription files including the original information the refill information. **Caution**: The pharmacy must maintain complete and retrievable prescription records for five years whether you use logbooks, nightly reports, or a manual system. If the pharmacy elects the automated system certain compliance reports will be required.

(1) **Nightly reports.** Nightly reports will be required for Schedule II's and for Schedule III, IV and V's. These reports will include but are not limited to:

(A) Schedule II reports will include the information in ASAP/NABP Committee on Standardization's Computerized Compliance Reports (e.g run date, run by, Rx #, drug name, dose form, quantity, date written, date dispensed; pharmacist, patient and prescriber names, DEA number, and patient and prescriber addresses.)

(B) Schedule III, IV and V's reports will include the same information as in (A) above, except patient and prescriber address are not required. These reports may be mixed or be Schedule III, IV or V specific.

(C) These nightly reports shall be verified, signed and dated by the pharmacist as required. (See CFR 1306.22 (b) (3), et seq.)

(D) These reports must be kept for five years.

(2) **Logbook or file alternate procedure.** In lieu of the nightly reports procedure for Schedule II, III, IV & V's provided in 535:15-3-21, the pharmacy may choose to use the following method:

(A) The pharmacy shall maintain a bound log book, or separate file, in which each individual pharmacist involved in such refill dispensing shall sign a statement (in the manner described in CFR 1306.22 (b)) each day, attesting to the fact that the refill information entered into the computer that day has been reviewed by them and is correct as shown.

(B) Such a book or file must be maintained at the pharmacy employing such a system for a period of five years after the date of dispensing the appropriately authorized refill.

(3) **Refill reports.** Any pharmacy using an automated data processing system to track refills shall be able to print such reports as required in CFR 1306.22 (b) et seq.

(4) **Audit reports.** If an automated data processing system is used to maintain refill information, the ability to print upon request the following Controlled Dangerous Substance (CDS) audit reports is required. The following required audit reports must include the information in ASAP/NABP Committee on Standardization's Computerized Compliance Reports:

(A) CDS Audit Report by Drug
(B) CDS Audit Report by Prescriber
(C) CDS Audit Report by Pharmacist
(D) Patient Profile Report

SUBCHAPTER 5. HOSPITAL PHARMACIES

535:15-5-7.6. Pharmacy technician annual permit requirement

(a) Annual permit requirements for pharmacy technicians are set forth in this Title, in 535:15-13-8 and in 535:25.
(b) No pharmacy technician permit shall be issued or continued for an applicant or permit holder who fails to meet and maintain the requirements in 535:25-3 and 535:25-7 or who violates the rules in 535:25-9.
(c) A pharmacy technician must be employed in a licensed pharmacy to be eligible to renew their pharmacy technician permit.

SUBCHAPTER 6. HOSPITAL DRUG ROOM ~~RULES~~

535:15-6-9. Emergency room pre-packaged medications formulary

(a) Each hospital drug room may choose the medicines to be included in their emergency room (ER) pre-packaged medications formulary within the requirements and limits listed below. This formulary shall be included within the policies and procedures of the hospital drug room. These pre-packaged medications shall be administered only as allowed in 535:15-6-8 for a maximum of a 72-hour supply.
(b) Type of Medication defined or parameters for choice **[**Limits**]**
(1) Controlled Dangerous Substances (CDS):
(A) Hydrocodone / acetaminophen combination [one]
(B) Codeine/acetaminophen combination [one]
(C) Propoxyphene/acetaminophen combination [one]
(D) Hydrocodone containing antitussive preparation [one]
(2) ACE inhibitor: per ER formulary [two]
(3) Anti-nausea: per ER formulary [two]
(4) Anti-viral: per ER formulary [two]
(5) Anti-coagulant: per ER formulary [two]
(6) Antihistamine: per ER formulary [two]
(7) Anti-hypertensive: per ER formulary [three]
(8) Antimicrobial: per ER formulary [unlimited]
(9) Asthma: per ER formulary [one]
(10) Beta blocker: per ER formulary [two]
(11) Diuretic: per ER formulary [two]
(12) Ear: antibiotic/steroid or antibiotic/ steroid/pain combination
(13) Eye: antibiotic or antibiotic/steroid combination
(14) Miscellaneous:
(A) terbutaline
(B) oral contrast media
(15) Muscle relaxant: per ER formulary [two non-CDS]
(16) Pain: per ER formulary [two non-CDS]
(17) Proton pump inhibitor per ER formulary [one]
(~~19~~ 18) Steroid: per ER formulary [three]

SUBCHAPTER 13. PHARMACY SUPPORTIVE PERSONNEL

535:15-13-5. Supervision of pharmacy technicians

(a) All tasks performed by pharmacy technicians must be in a licensed pharmacy in Oklahoma and must be accomplished under the immediate and direct supervision of a pharmacist who is currently licensed by the Board. An intern cannot supervise a technician.
(b) A pharmacy technician may perform certain non-judgmental functions of dispensing as enumerated in this Subchapter, provided that whenever the pharmacist leaves the prescription department, other than for in-pharmacy counseling of a patient, all dispensing functions listed shall cease.
(c) A ratio of no more than two pharmacy technicians per supervising pharmacist on duty shall be maintained.
(d) A pharmacy intern working in the pharmacy will not affect or change this ratio.
(e) The pharmacist must certify, by reviewing, the completed prescription for accuracy and completeness before the prescription is released from the prescription department. An intern cannot certify the completion of a technician filled prescription.

535:15-13-8. Technician annual permit requirement

(a) Each pharmacy technician in Oklahoma shall obtain a permit annually before practicing as such. A pharmacy technician must be employed in a licensed pharmacy to be eligible to renew their pharmacy technician permit.
(1) Upon meeting the qualifications listed in 535:15-13-4 and 535:25, applicants shall apply for a pharmacy technician permit on the form provided by the Board accompanied by such fee authorized by the legislature and in the agency fee schedule.
(2) After the pharmacy technician has completed their portion of the application they must submit it to the pharmacy manager or designated pharmacist who has conducted the technician training for review and signature.
(3) The pharmacy manager or designated pharmacist must first verify the applicant's completion of Phase I of the Board approved pharmacy technician training program. The signature by the pharmacist verifying technician training indicates that there is written training verification in the pharmacy available for Board inspection.
(4) Each pharmacy technician who desires to continue to work as a tech shall annually, on or before the last day of the registrants' birth month ~~1st of February each year~~, send to the Board of Pharmacy such fee authorized

by the legislature and in the agency fee schedule, with a completed Board application signed by the supervising pharmacist and the technician. Renewal ~~applications~~ notice will be sent to the technician's address on file in the Board office either electronically or by mail.

(b) The Board shall, at a minimum, consider the following factors in reviewing qualifications of persons who apply for a pharmacy technician permit within the state:

(1) any drug or alcohol related convictions of the applicant under any federal, state, or local laws;

(2) the furnishing of any false or fraudulent material in any application made to the Board;

(3) suspension or revocation by federal, state, or local government of any license currently or previously held by the applicant for the distribution of any drugs, including controlled substances;

(4) compliance with permitting requirements under previously granted permits, if any; and,

(5) any use or abuse of an illegal CDS substance or a positive drug screen for such CDS substance or its' metabolite; and,

(6) any other factors or qualifications the Board considers relevant to and consistent with the public health and safety.

(c) The Board shall have the right to deny a permit to an applicant if it determines that the granting of such a permit would not be consistent with the public health and safety.

[OAR Docket #07-1190; filed 5-24-07]

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

[OAR Docket #07-1191]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 17. Nuclear Pharmacy
535:15-17-3. Definitions [AMENDED]
535:15-17-5. General requirements [AMENDED]
535:15-17-7. Minimum Equipment [AMENDED]
AUTHORITY:
Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18, 353.20, 353.22, 353.24 - 353.26, 353.29 and 354.
DATES:
Comment period
February 15, 2007 through March 20, 2007
Public hearing:
March 27, 2007
Adoption:
March 27, 2007
Submitted to Governor:
March 29, 2007
Submitted to House:
March 29, 2007
Submitted to Senate:
March 29, 2007
Gubernatorial approval:
May 4, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 24, 2007
Final adoption:
May 24, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTION:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rule revisions in 535:15-17-3 update definitions, in 535:15-17-5 and 535:15-17-7 make changes for changes from the federal Nuclear Regulatory Commission to the Oklahoma Department of Environmental Quality Control authority over nuclear substances. They include cyclotron products for use in Positron Emmision Tomograph (PET). They change labeling requirement to include amount of radioactivity and calibration date and time. They make changes in general requirements and in minimum equipment requirements.
CONTACT PERSON:
Mr. Bryan H. Potter, Executive Director, Oklahoma State Board of Pharmacy located at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Phone number (405) 521-3815 and FAX number (405) 521-3758.

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 17. NUCLEAR PHARMACY

535:15-17-3. Definitions

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

"Authentication of Product History" means identifying the purchasing source, the ultimate fate, and any intermediate handling of any component of a radiopharmaceutical or other drug.

"Nuclear Pharmacy" means a pharmacy which provides radiopharmaceutical services~~,~~ and shall be licensed by the Board as a retail pharmacy.

"Practice of Nuclear Pharmacy" means a patient-oriented service that embodies the scientific knowledge and professional judgment required to improve and promote health through the assurance of the safe and efficacious use of radiopharmaceuticals and related drugs.

"Qualified Nuclear Pharmacist" means a pharmacist who holds a current license issued by the Board, and who is either listed as ~~a~~ an authorized user on a radioactive material users license or certified as a Nuclear Pharmacist by the Board of Pharmaceutical Specialties or satisfies each of the following requirements:

(A) Meets minimal standards of training for status as an Authorized Nuclear Pharmacist (ANP), as specified by the Oklahoma Department of Environmental Quality Control, or if in another state the Nuclear Regulatory Commission, or appropriate agreement state nuclear regulatory agency.

(B) Has successfully completed a minimum of 200 contact hours of instruction in nuclear pharmacy and the safe handling and use of radioactive materials from a ~~nationally~~-accredited college of pharmacy, or other training program recognized by the Nuclear Regulatory Commission, with the following subjects covered:

(i) radiation physics and instrumentation,

(ii) radiation protection,

(iii) mathematics pertaining to the use and measurement of radioactivity,

(iv) radiation biology,

(v) radiopharmaceutical chemistry;

(C) Has attained a minimum of 500 hours of clinical/practical nuclear pharmacy training under the supervision of a qualified nuclear pharmacist in, but not limited to, the following areas, as described in the current American Pharmaceutical Association (APhA) Nuclear Pharmacy Practice Standards:

(i) procuring radioactive materials,

(ii) compounding radiopharmaceuticals,

(iii) performing routine quality control procedures,

(iv) dispensing radiopharmaceuticals,

(v) distributing radiopharmaceuticals,

(vi) implementing basic radiation protection procedures,

(vii) consulting and educating the nuclear medicine community, patients, pharmacists, other health professionals, and the general public;

(D) Keeps documentation of experience and training available in the pharmacy for Board review.

"Quality Assurance Procedures" means all activities necessary to assure the quality of the process used to provide radiopharmaceutical services, including authentication of product history and maintenance of all records as required by pertinent regulatory agencies.

"Quality Control Testing" means the performance of appropriate chemical~~, biological~~ and physical tests on compounded radiopharmaceuticals and the interpretation of the resulting data to determine their suitability for use in humans and animals.

"Radiopharmaceutical Services" means, the procurement, storage, handling, compounding, preparation, labeling, quality control testing, dispensing, distribution, transfer, record keeping and disposal of radiochemicals, radiopharmaceuticals and ancillary drugs, and also includes quality assurance procedures, radiological health activities, any consulting activities associated with the use of radiopharmaceuticals, health physics, and any other activities required for provision of pharmaceutical care.

"Radiopharmaceutical" means any substance which exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any nonradioactive reagent kit or nuclide generator which is intended to be used in the preparation of any such substance but does not include drugs such as carbon-containing compounds or potassium-containing salts which contain trace quantities of naturally occurring radionuclides. The term "radiopharmaceutical" also includes any product that ~~which~~ is labeled with a radionuclide or intended solely to be labeled with a radionuclide.

535:15-17-5. General requirements

(a) A permit to operate a nuclear pharmacy shall only be issued to a person who is, or who employs a qualified nuclear pharmacist. All personnel performing tasks in the preparation and distribution of radiopharmaceuticals and ancillary drugs shall be under the direct supervision of a qualified nuclear pharmacist, who shall be in personal attendance when the pharmacy is open for business. The nuclear pharmacist-in-charge shall be responsible for all operations of the pharmacy.

(b) The permit to operate a nuclear pharmacy is effective only so long as the pharmacy also holds a current Radioactive Material License ~~license~~ issued by the Oklahoma Department of Environmental Quality Control, or if in another state the Nuclear Regulatory Commission, or appropriate agreement state nuclear regulatory agency. Copies of ~~the Nuclear Regulatory Commission~~ inspection reports from Oklahoma Department of Environmental Quality Control, or if in another state the Nuclear Regulatory Commission, or appropriate agreement state nuclear regulatory agency shall be ~~made~~ available ~~upon request~~ for Board inspection.

(c) Nuclear pharmacies shall have adequate space and equipment, commensurate with the scope of services required and provided, meeting minimal space requirements established for all pharmacies in the state. All pharmacies handling radiopharmaceuticals shall include, but not be limited to, the following areas: radiopharmaceutical preparation/dispensing area; radioactive material shipping/receiving area; radioactive material storage area; and radioactive waste decay area.

(d) The nuclear pharmacy professional service area shall be secured from unauthorized personnel and must be totally enclosed and lockable.

(e) Nuclear pharmacies shall maintain records of acquisition, inventory and disposition of all radioactive drugs and other radioactive materials in accordance with Board and Nuclear Regulatory Commission statutes and regulations.

(f) Nuclear pharmacies shall compound and dispense radiopharmaceuticals in accordance with accepted standards of radiopharmaceutical quality assurance, including compounded sterile products. The Board recognizes that the preparation of radiopharmaceuticals involves the compounding skills of the nuclear pharmacist to assure that the final drug product meets accepted professional standards.

(g) A radiopharmaceutical shall be dispensed only to a licensed practitioner authorized by the Oklahoma Department of Environmental Quality Control, or if in another state the Nuclear Regulatory Commission ~~and/~~or appropriate agreement state nuclear regulatory agency~~(s)~~ to possess, use and administer such drug. A radiopharmaceutical shall be dispensed only upon receipt of a prescription or medication order from such licensed practitioner. Otherwise**,** a radiopharmaceutical may be transferred to a person who is authorized to possess and use such drug for non-clinical applications as described in 535:15-17-5 subsection (k) below Separate records will be

kept for these transfers and sales, see drug supplier permit rules in 535:15-7.

(h) A nuclear pharmacy, upon receiving an oral prescription order for a radiopharmaceutical, shall immediately have the prescription order reduced to writing, or recorded in a data processing system.

(1) This writing or record shall contain at least the following:

(A) the name of the institution and prescriber, or prescribers' agent;

(B) the date of dispensing (or calibration) and the calibration time of the radiopharmaceutical;

(C) the name of the procedure;

(D) the name of the radiopharmaceutical;

(E) the dose or quantity of the radiopharmaceutical;

(F) the serial number assigned to the order for the radiopharmaceutical;

(G) any specific instructions; and

(H) the initials of the pharmacist who dispensed the order.

(2) Whenever an order is for a therapeutic or blood-product radiopharmaceutical, the patient's name must be obtained and recorded prior to dispensing.

(i)

(1) The immediate outer container shield of a radiopharmaceutical to be dispensed shall be labeled with:

(A) the name and address of the pharmacy;

(B) the name of the prescriber;

(C) the date of dispensing (or calibration);

(D) the serial number assigned to the order for the radiopharmaceutical;

(E) the standard radiation symbol;

(F) the words "Caution Radioactive Material";

(G) the name of the procedure;

(H) the radionuclide and chemical form;

(I) the amount of radioactivity and the calibration date and time;

(J) if a liquid, the volume;

(K) if a solid, the number of items or weight;

(L) if a gas, the number of ampules or vials;

(M) the expiration date and time; and,

(N) the name of the patient or the words e.g. "Per Physician's Orders" in the absence of a patient name.

(2) When the prescription is for a therapeutic or blood-product radiopharmaceutical, the patient name shall appear on the label. The requirements of this sub-section shall be met when the name of the patient is readily retrievable from the physician upon demand.

(j) The ~~immediate~~ inner container label of a radiopharmaceutical to be dispensed shall be labeled with, but not limited to:

(1) the standard radiation symbol;

(2) the identity of the radionuclide;

(3) the amount of radioactivity and the calibration date and time;

(~~3~~4) the name of the procedure; and

(~~4~~5) serial number of the radiopharmaceutical.

(k) When a radiopharmaceutical is dispensed under the authority of an Investigational New Drug Application (IND), the nuclear pharmacy records shall include an investigator's protocol for the preparation of the radiopharmaceutical, a copy of the institutional radiation safety committee or equivalent radioactive use oversight committee approval, a copy of the Institutional Review Board approval form (or letter), and a letter from the manufacturer (sponsor) indicating that the physician requesting the radiopharmaceutical is a qualified investigator.

(l) Each nuclear pharmacy shall have an adequate library and a current copy of state and federal regulations governing the safe storage, handling, use, dispensing, transport and disposal of radiopharmaceuticals.

535:15-17-7. Minimum equipment

(a) A nuclear pharmacy shall be exempt from the physical requirements in Section 535:15-3-4, Subsections (3) through (8) and (10) through (11).

(b) The professional area of the pharmacy shall have at least the following equipment:

(1) Radionuclide Dose Calibrator;

(2) Refrigerator;

(3) Single or multiple channel scintillation counter with solid state detector (e.g. NaI(Tl) or Ge(Li));

(4) Radiochemical fume hood and filter system with suitable air sampling equipment when dispensing or preparing volatile radiopharmaceuticals;

(5) Area survey meter;

(6) At least two GM survey meters (including one high-range meter);

(7) Microscope and hemacytometer, when dispensing or preparing particle size dependent radiopharmaceuticals;

(8) Laminar airflow ~~air flow~~ hood and appropriate supplies to ensure sterile practices for parenteral solutions;

(9) Syringe and vial radiation shields;

(10) Appropriate shielded drawing station;

(11) Decontamination supplies;

(12) Appropriate supplies to perform quality assurance testing;

(13) Appropriate transport shields for syringes and vials; and

(14) Transport containers which meet the U.S. Department of Transportation regulations, and other labels and supplies for shipping radioactive materials.

[OAR Docket #07-1191; filed 5-24-07]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 25. RULES AFFECTING VARIOUS REGISTRANTS

[OAR Docket #07-1192]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Applicants, Registrants, and Applications
535:25-3-3. Qualifications and requirements for registrant applicants [AMENDED]
535:25-3-7. Change requirements and notification [AMENDED]
Subchapter 5. General Requirements or Procedures
535:25-5-5. Prescription drug (Rx Only) purchase and record requirements [NEW]
AUTHORITY:
Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18, 353.20, 353.22, 353.24 - 353.26, 353.29 and 354.
DATES:
Comment period
February 15, 2007 through March 20, 2007
Public hearing:
March 27, 2007
Adoption:
March 27, 2007
Submitted to Governor:
March 29, 2007
Submitted to House:
March 29, 2007
Submitted to Senate:
March 29, 2007
Gubernatorial approval:
May 4, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 24, 2007
Final adoption:
May 24, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTION:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The revision in 535:25-3-3 and in 535:25-3-7 describes ownership disclosure required for all entities licensed under authority of Title 59 OS Section 353.18. These rules further describe in 535:25-3-7 when ownership changes for purposes of new license, permit or certificate requirements.

These rules revisions in 535:25-5-5 describe registrant record requirements and purchase record requirements for prescription drugs.
CONTACT PERSON:
Mr. Bryan H. Potter, Executive Director, Oklahoma State Board of Pharmacy located at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Phone number (405) 521-3815 and FAX number (405) 521-3758.

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. APPLICANTS, REGISTRANTS, AND APPLICATIONS

535:25-3-3. Qualifications and requirements for registrant applicants

(a) The Board shall consider at least the following factors in reviewing the qualifications of registrants or applicants, license e.g.:

(1) Any charges, convictions, receipt of deferred sentence or deferred prosecution, or pleading of no contest of the applicant or registrant under any federal, state, or local laws relating to drug samples, drug distribution, or distribution of controlled substances;

(2) Any felony charges, convictions, receipt of deferred sentence or deferred prosecution, or pleading of no contest of the applicant or registrant under federal, state, or local laws;

(3) The applicant's or registrant's past experience with prescription drugs, including controlled substances;

(4) The furnishing by the applicant or registrant of fictitious, false, misleading, or fraudulent material in any application (original, new or renewal) or failing to provide information relevant to this application;

(5) The suspension or revocation by federal, state, or local government of any license currently or previously held by the applicant or registrant;

(6) Compliance with licensing requirements under previously granted licenses, if any;

(7) Compliance with requirements to maintain and/or make available to the State Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this section;

(8) Abuse of alcohol or habit-forming drugs, or use of illegal CDS drugs or positive drug screen for such illegal substance or its' metabolite;

(9) Practicing as a registrant without reasonable skill and safety by reason of use and/or abuse of drugs, narcotics, chemicals or any other type of material, or as a result of any mental or physical condition; and,

(10) Any other factors or qualifications the Board considers relevant to and consistent with the public health and safety.

(b) The applicant shall be forthright and open in the provision of information to the Board in the application process. No license, permit or certificate shall be awarded to an applicant who does not provide the Board with complete open and honest responses to all requests for information.

(c) The applicant shall be candid in regards to providing information related to any academic misconduct, malpractice, legal, or disciplinary action.

(d) The applicant shall fully and completely disclose ownership of any pharmacy, wholesaler, manufacturer packager, medical gas supplier or medical gas distributor or any other person licensed under Title 59 O.S. Section 353.18.

(~~d~~e) The Board shall have the right to deny a license to an applicant or registrant if it determines that the granting of such a license would not be consistent with the public health and safety.

535:25-3-7. Change requirements and notification

(a) Change of name, ownership, and/or location shall require a new license on all business permits, certificates or licenses (e.g. pharmacy, wholesaler, packager, manufacturer, medical gas supplier and distributor, training areas, parenteral, drug supplier, etc.)

(1) A change of ownership occurs when:

(A) the original owner(s) transfers 20% or more of the ownership of the entity owning the license, permit or certificate to another owner;

(B) a change of 20% or more of the ownership of the entity owning the license, permit or certificate occurs (for example, when the corporation owning the license, permit or certificate sells 20% or more of the stock); or

(C) a change of ownership form occurs (for example, from a sole proprietor ownership to a partnership, limited liability company or corporation).

(2) Any ownership change not reported as a change of ownership because it involves a transfer of less than 20% of the ownership of the entity owning the license, permit or certificate must be reported at the next renewal of the entity license, permit or certificate.

(3) For publicly traded corporations, a routine sale of stock is not a change of ownership. (Note: a publicly traded corporation is a corporation owned by stockholders who are members of the general public and who trade shares publicly, often through a listing on a stock exchange.)

(b) Changes of ownership and/or location will require a special inspection and special inspection fee.

(c) Every applicant for change or renewal of license, permit or certificate shall meet the requirements in 535:25 at a minimum.

(d) Changes in any information required for licensure must be reported to the Board within ten (10) days (e.g. for businesses the manager, contact person, phone, etc. and/or for individuals name, address, etc.)

SUBCHAPTER 5. GENERAL REQUIREMENTS OR PROCEDURES

535:25-5-5. Prescription drug (Rx only) purchases and record requirements

(a) All registrants shall keep adequate records to assure prescription drugs are legally received and/or distributed or dispensed, as appropriate. Such records shall include, but not be limited to, all prescription drug purchase (e.g. invoices, etc.) and inventory records and shall be maintained and be readily retrievable for a period of at least 2 years.

(b) Prescription drug purchases may only be made from entities licensed to sell prescription drugs. A registrant shall exercise professional judgment regarding the purchase of prescription drugs in order to assure a safe, sanitary and legal prescription drug supply is maintained.

[OAR Docket #07-1192; filed 5-24-07]

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

[OAR Docket #07-1224]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 2. General Provisions [AMENDED]
580:10-2-1 [AMENDED]
580:10-2-2 [AMENDED]
Subchapter 5. Use of Public Areas of Capitol and Plazas [AMENDED]
580:10-5-6 [AMENDED]
Subchapter 7. Use of State Capitol Park [AMENDED]
580:10-7-3 [AMENDED]
Subchapter 9. Operation of Buildings Owned, Used Or Occupied By Or On Behalf of the State [AMENDED]
Part 1. Smoking [AMENDED]
580:10-9-3 [AMENDED]
Part 4. Access to the J. Howard Edmondson and Robert S. Kerr Office Buildings [AMENDED]
580:10-9-16 [AMENDED]
Part 5. General Operations of public Buildings Managed by the Department of Central Services [AMENDED]
580:10-9-21 [AMENDED]
580:10-9-24 [NEW]
AUTHORITY:
Department of Central Services; 74 O.S., Section 63
DATES:
Comment Period:
February 15, 2007 to March 19, 2007
Public Hearing:
March 19, 2007
Adoption:
March 22, 2007
Submitted to Governor:
March 29, 2007
Submitted to House:
March 29, 2007
Submitted to Senate:
March 29, 2007
Gubernatorial approval:
May 4, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 24, 2007
Final adoption:
May 24, 2007
Effective date:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Revised rules provide clarification to the definition of public area in order to ensure consistent application of minimum standards and criteria administered by the Department of Central Services for the operation of public buildings managed or controlled by the Department of Central Services. Prohibition of profit making events is clarified. The operating hours of the Kerr and Edmondson Buildings in Tulsa is revised in addition to correcting the

security of said buildings from the Capitol Patrol to the Department of Public Safety.

CONTACT PERSON:

Gerry Smedley, Administrative Rules Liaison, (405) 522-8519; Department of Central Services, 2401 N. Lincoln Blvd., Suite 206, Oklahoma City, OK 73105 or gerry_smedley@dcs.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 2. GENERAL PROVISIONS

580:10-2-1. Purpose

This Chapter provides information and establishes procedures for the Director of the Department of Central Services to administer the operations of all buildings or property owned, used or occupied by or on behalf of the ~~state~~ State and controlled by the Department of Central Services, including the Capitol, Capitol plazas, and the State Capitol Park.

580:10-2-2. Definitions

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

"Art" means fine art of museum quality representing the highest quality of art objects available to include paintings, graphic arts, art photography and sculpture, aesthetically aligned with recognized values, created by the conscious use of skill and creative imagination.

"Art exhibit" means an exhibit composed primarily of art.

"Capitol" means the State Capitol Building.

"Capitol Complex" means the property and buildings of the State of Oklahoma bordered by 28th Street on the north, south bound Lincoln Boulevard on the west, 18th Street on the South, and north bound Lincoln Boulevard on the east, to the point of beginning on 28th Street.

"Capitol Conference Center" means Room 104 of the Capitol.

"Commercial activity" means selling or offering merchandise, food or services for the benefit of an individual or business entity organized for profit.

"Concourse Theater" means Room C50 located in the concourse between the Will Rogers Building and the Sequoyah Building.

"CPC" means the State Capitol Preservation Commission.

"Demonstration" means a gathering of persons which may include demonstrating, picketing, speech making, marching, holding of vigils and other like forms of conduct which involve the communication or expression of views engaged in by one or more persons, the conduct of which has the effect, intent or propensity, to draw a crowd or onlookers.

"Department" means the Department of Central Services.

"Director" means the Director of Central Services.

"Event" means an assembly or gathering of people for a single purpose.

"Exhibit" means a display whether free standing or affixed to structures.

"Plaza" means the outdoor area adjacent to the Capitol under the authority of the Department of Central Services.

"Private purpose" means an event or exhibit subject to special admission requirements.

"Public area" means those portions of the ~~Capitol~~ property for general visitation or use under the control of the Department of Central Services.

"Public purpose" means an event or exhibit for general visitation or use.

"Reservation" means an accommodation the Department approves and a sponsor secures in advance for an event, art exhibit, demonstration, exhibit or meeting.

"Sponsor" means an individual that requests use of a public area on behalf of an individual, group or state agency.

"State agency" means any state board, bureau, commission, department, authority, public trust, interstate commission, the Judiciary, the Legislature, or the Office of the Governor.

"State Capitol Park" or **"park"** means all portions of the State Capitol grounds and within such boundaries as are located in the State Capitol Complex, including the Governor's Mansion and all properties within the public right-of-way along Lincoln Boulevard north from the north boundary line of Northeast 13th Street to the south boundary line of Northeast 28th Street and along Business Route 66, known as Northeast 23rd Street, from the east edge of Santa Fe Street east to the west edge of Kelley Avenue in Oklahoma City, Oklahoma, as designated on the amended plat filed in the office of the Secretary of state as File Number 155 in the State Property Records. [74 O.S., §1811.4]

SUBCHAPTER 5. USE OF PUBLIC AREAS OF CAPITOL AND PLAZAS

580:10-5-6. Provisions for events, exhibits and art exhibits

(a) The following provisions apply to all events, exhibits or art exhibits:

(1) Sponsors shall confine events, exhibits and art exhibits to the public areas specified in the reservation and shall not relocate to, install, or erect additional paraphernalia in other areas of the Capitol or plazas unless the Department grants prior approval.

(2) No intoxicating beverage or low-point beer will be dispensed or consumed on state property.

(3) Use of cooking or heating elements of any kind is prohibited.

(4) Placement of materials of any kind on structures, fixtures or vehicles in a state parking lot in conjunction with an event, exhibit or art exhibit is prohibited.

(5) Unless authorized in the reservation application, affixing banners, signs, or materials in any manner on or in the Capitol or plazas, or to an appurtenance of the Capitol or plaza is prohibited. The Department may remove and dispose of, or cause to be removed and disposed of, the signs or banners without notice.

(A) Plaza. Use of handheld signs and signs on hand sticks are allowed.

(B) Capitol. Unless authorized in a reservation, signs or banners of any kind are prohibited in the Capitol.

(6) No individual or group may restrict access to, from or within the Capitol or a plaza.

(7) No individual or group shall cause unreasonable risk to works of art, public property or persons within the Capitol or plaza.

(8) The Department prohibits commercial activity, collection of fees, solicitation of money, or fund raising events which solicit or collect money, in the Capitol or on a plaza. State agencies and non-profit organizations that sell goods to benefit or promote the function of the agency or non-profit organization may request an exemption from the Director.

(9) Events, exhibits or art exhibits for the purpose of promoting a profit making organization or individual are prohibited <u>except as otherwise provided by law</u>. Display of business cards or other means the Department considers promotional are prohibited.

(10) Use of audio devices may be restricted or altered to a decibel level which does not disturb or disrupt other persons in the Capitol or on a plaza.

(11) The Department may order or seek to cause cessation of an event, exhibit or art exhibit which may pose a hazard, as determined by the Department, to an individual, group, building, contents of the building, or building fixtures and appurtenances.

(12) A sponsor shall place electrical cords and cables used for events, exhibits or art exhibits so that the cords and cables limit potential hazard to persons in the area. Electrical cords and cables must be placed out of walkways unless secured to the floor.

(13) Compressed gas cylinders are prohibited for use in conjunction with an event, exhibit or art exhibit, unless specifically identified and approved in the reservation.

(14) Waste accumulation of any kind in any area or manner so as to create a potential hazard to health, safety or property is prohibited.

(15) Open flames (including candles), confetti, balloons, rice, birdseed or other similar substances in conjunction with events, exhibits or art exhibits are prohibited.

(16) All reptiles, animals and fowl, with the exception of assistance dogs and law enforcement canines, are prohibited in the Capitol or on a plaza.

(b) **Requirements at end of event, exhibit or art exhibit.** A sponsor shall remove all materials used in conjunction with or created by an event, exhibit or art exhibit immediately following the conclusion of the event, exhibit or art exhibit.

(c) **Unauthorized events or activities.** <u>Sponsors shall confine events, exhibits and art exhibits to the purpose of the event specified in the reservation.</u> Security personnel will be notified upon detection of unauthorized events or activities.

SUBCHAPTER 7. USE OF STATE CAPITOL PARK

580:10-7-3. Park use information

(a) **Conditions.** The provisions of this section shall apply to the use of the State Capitol Park, which includes all demonstrations or events approved by the Director pursuant to this Subchapter.

(1) Individuals may carry handheld signs, placards and banners. Affixing or securing signs, placards or banners to a building, fixture, tree or any other fixed structure is prohibited.

(2) Use of audio devices and musical instruments may be restricted or altered to a decibel level which does not disturb other persons.

(3) Digging, which includes driving stakes into the ground, is prohibited.

(4) Injuring, removing, molesting, burning or vandalizing botanical, paleontological, archaeological or historical features and structures is prohibited.

(5) Contained fires may be authorized based upon intended use and climatological conditions.

(6) Discharging or setting off fireworks is prohibited. The Department may authorize the use of fireworks during holidays and events based upon intended use and climatological conditions.

(7) Assembling, congregating or acting individually in such a way as to obstruct sidewalks, walkways, or entrances and exits to buildings is prohibited.

(8) Possession of firearms, explosives, clubs, missiles, chemicals, incendiary devices, or other like devices is prohibited.

(9) The placement, setting up or erection of tents, sleeping bags, bed rolls, or bedding of any kind for the purpose of camping or remaining overnight is prohibited.

(10) Throwing stones, bottles or other objects with the intent to injure another person or damage property is prohibited.

(11) Use of a motorized vehicle on sidewalks or grounds shall be restricted to emergency, maintenance, construction, development, or authorized building access purposes as determined by the Department.

(12) Burial of human or animal remains is prohibited.

(13) No intoxicating beverage or low-point beer will be dispensed or consumed on state property.

(14) Waste accumulation of any kind in any area or manner so as to create a potential hazard to health, safety or property is prohibited.

<u>(15) Events, exhibits or art exhibits for the purpose of promoting a profit making organization or individual are prohibited, except as otherwise provided by law. Display</u>

of business cards or other means the Department considers promotional are prohibited.

(b) **Requirements at end of demonstration or event.** A sponsor shall remove all facilities, equipment, temporary structures and materials used in conjunction with or created by a demonstration or event immediately following the conclusion of the demonstration or event.

(c) **Unauthorized demonstrations and events.** Sponsors shall confine events, exhibits and art exhibits to the purpose of the event specified in the reservation. Security personnel will be notified upon detection of unauthorized demonstrations or activities.

SUBCHAPTER 9. OPERATION OF BUILDINGS OWNED, USED OR OCCUPIED BY OR ON BEHALF OF THE STATE

PART 1. SMOKING

580:10-9-3. Smoking Room Inspection Report

(a) **Use.** Any state agency that operates a state owned building and has designated a smoking room in such building must file an inspection report with the Department.

(b) **Forms.** The State Operated Building Smoking Room Inspection form related to this Part has been issued by the Department for use by agencies and is available on the Department website or upon request.

(c) **Content.** The inspection report must include the following information:

(1) The name of the state agency and division;

(2) Physical address of the building;

(3) The name of the building manager;

(4) Room number of the designated smoking room

(5) Room size, which must include the length, width, height, area and volume of the room;

(6) Distance from the designated smoking room exhaust to the nearest fresh air intake;

(7) Negative pressure measurements tested by an air pressure measurement device;

(8) A diagram of the designated smoking room which displays all entrances, HVAC supply vents and exhaust; and

(9) The name, title and address of person or company testing air pressure measurements, if other than the agency.

(10) Any other additional information the Department may determine necessary.

(d) **Signature and Attestation.** The inspection report must be signed and verified by the agency building manager and certified by the appointing authority prior to delivery to the Department.

(1) **Building Manager Verification.** The verification language of the building manager must read: As the Building Manager responsible for the operation of the building listed in this report, I hereby verify that the designated Smoking Room was inspected for compliance with the requirements of Oklahoma Statutes, Title 21, Section 1247, specifically: (list of statutory required items) and that the facts contained in this report are true.

(2) **Appointing Authority Certification.** The certification language of the appointing authority must read: I hereby certify that I have reviewed the contents of this report and that the above named Building Manager, an employee of this agency, is authorized to verify the information contained herein.

(e) **Original Signature.** At least one copy of the inspection report delivered to the Department must contain an original signature of the agency building manager and appointing authority.

(f) **Due Date.** The inspection report is due by October 1, 2002. Thereafter, an inspection report shall be filed whenever a new smoking room is designated or an existing designated smoking room is structurally changed in any way.

PART 4. ACCESS TO THE J. HOWARD EDMONDSON AND ROBERT S. KERR OFFICE BUILDINGS

580:10-9-16. Access to the J. Howard Edmondson and Robert S. Kerr Office Buildings, operating hours and access requirements

(a) The Kerr and Edmondson Buildings operating hours are from ~~6:00~~7:00 a.m. to ~~6:00~~ 5:00 p.m., Monday through Friday, excluding state holidays.

(b) During operating hours, the Kerr and Edmondson Buildings may be accessed by the public through the ~~East~~ North entrance ~~of the Kerr building and through the South entrance~~ of the Edmondson building only.

~~(c) Entrances are open from 6:00 a.m. to 6:00 p.m., Monday through Friday.~~

(~~d~~c) All persons entering the buildings shall submit to security screening requirements, including but not limited to magnetometer screening devices. Packages, briefcases, purses, and other container in the immediate possession of all persons shall be subject to inspection.

(~~e~~d) All state agencies located in the buildings shall compile and file a list of employees who are authorized by the chief administrative officer of the agency to access the building during time periods outside of the standard hours of operation established in this subchapter with the ~~Capitol Patrol~~ Department of Public Safety security personnel.

(1) The list shall state the name, established location of employment in the buildings and office telephone number for each employee on the list; and, the name and telephone number of an administrative employee of the agency for emergency contact purposes outside of the buildings.

(2) The list shall be filed and maintained by ~~Capitol Patrol~~ Department of Public Safety security personnel.

(3) Information provided on the list shall be reviewed regularly and revisions filed with ~~Capitol Patrol~~ Department of Public Safety security personnel immediately.

(~~f~~e) Persons in the buildings and on the grounds immediately surrounding the buildings shall at all times comply with official

signs of prohibitory, regulatory, or directory nature and with the lawful direction of law enforcement and other authorized individuals.

(~~g~~f) Public entrances, operating hours and access requirements for the buildings are subject to change to ensure the health and safety of visitors and employees in the event of an emergency, disaster or other circumstances as determined by the Director.

PART 5. GENERAL OPERATIONS OF PUBLIC BUILDINGS MANAGED BY THE DEPARTMENT OF CENTRAL SERVICES

580:10-9-21. Purpose

The provisions of this Part provide minimum standards and criteria for the operation of public buildings managed or controlled by the Department of Central Services in order to provide a clean, safe and comfortable working environment for employees and the public of the State of Oklahoma. As used in this Part, the term "public buildings" does not apply to buildings and property covered by rules in Subchapter 5 and Subchapter 7 of this Chapter. A list of buildings managed by DCS is maintained and accessible on the Department of Central Services website.

580:10-9-24. Use of public areas

(a) **Reservation.** Use of a meeting room by a state agency requires prior written approval of the Department.

(1) A state agency shall submit an application for a reservation to the Department.

(2) The application shall specify the desired date, time period and meeting room requested. The Department may request additional information determined necessary to facilitate the reservation.

(A) Use of audio visual devices, teleconferencing, voice or data outlets must be specified in a reservation request.

(B) Training to use audio visual devices or teleconferencing arrangements must be scheduled at least five (5) days prior to the approved reservation date.

(3) The Department may impose conditions and time limitations pursuant to the rules of this Part and state law.

(4) If the Department denies a request for a reservation, the Department will issue written notice to the requesting state agency indicating the reasons for denial.

(b) **Prioritization of meeting room reservations.** Except as otherwise provided, the Department shall issue approved reservations on a first-come, first-served basis and may limit the number of reservations for a meeting room.

(c) **Reservation limitations.** Reservations authorize meetings only in the specified meeting room during the specified time period.

(d) **Unauthorized meetings.** The Department may notify security personnel upon detection of unauthorized meetings.

(e) **Provisions for events, exhibits and art exhibits.** The provisions of section 580:10-5-6 shall apply to all events, exhibits, or art exhibits approved by the Department to be held in public areas of the property.

[OAR Docket #07-1224; filed 5-25-07]

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

[OAR Docket #07-1225]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 2. General Provisions [AMENDED]
580:15-2-1 [AMENDED]
580:15-2-2 [AMENDED]
580:15-2-6 [AMENDED]
580:15-2-7 [AMENDED]
Subchapter 4. Supplier Provisions [AMENDED]
580:15-4-2 [AMENDED]
580:15-4-4 [AMENDED]
580:15-4-5 [AMENDED]
580:15-4-6 [AMENDED]
580:15-4-7 [AMENDED]
580:15-4-8 [AMENDED]
580:15-4-10 [AMENDED]
580:15-4-11 [AMENDED]
580:15-4-12 [AMENDED]
580:15-4-13 [AMENDED]
580:15-4-14 [AMENDED]
580:15-4-16 [AMENDED]
580:15-4-17 [AMENDED]
580:15-4-18 [AMENDED]
580:15-4-19 [AMENDED]
580:15-4-20 [REVOKED]
Subchapter 6. State Agency Provisions [AMENDED]
580:15-6-2 [AMENDED]
580:15-6-4 [AMENDED]
580:15-6-5 [AMENDED]
580:15-6-6 [AMENDED]
580:15-6-7 [AMENDED]
580:15-6-8 [REVOKED]
580:15-6-9 [REVOKED]
580:15-6-10 [AMENDED]
580:15-6-11 [REVOKED]
580:15-6-13 [REVOKED]
580:15-6-14 [AMENDED]
580:15-6-15 [AMENDED]
580:15-6-21 [AMENDED]
580:15-6-22 [REVOKED]
580:15-6-23 [REVOKED]
580:15-6-24 [REVOKED]
AUTHORITY:
Department of Central Services; 74 O.S., Section 85.5
DATES:
Comment Period:
February 15, 2007 through March 19, 2007
Public Hearing:
March 19, 2007
Adoption:
March 22, 2007
Submitted to Governor:
March 29, 2007
Submitted to House:
March 29, 2007
Submitted to Senate:
March 29, 2007

Gubernatorial approval:
May 4, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 24, 2007
Final adoption:
May 24, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rules amend clarify, revise and update information and references pertaining to state agency acquisitions and procurement requirements administered by the Purchasing Division of the Department of Central Services pursuant to the Oklahoma Central Purchasing Act. Rules expand bid protest procedures in conjunction with the Administrative Procedures Act. Revisions and revocations are proposed in an effort to reorganize the Chapter for easier use. Revocation of sections is primarily to enable relocation of the rule language and eliminate duplicate language.
CONTACT PERSON:
Gerry Smedley, Human Resources Director, (405) 522-8519, Department of Central Services, 2401 N. Lincoln Boulevard, Suite 206, Oklahoma City, OK 73105 or gerry_smedley@dcs.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 2. GENERAL PROVISIONS

580:15-2-1. Purpose

This ~~Chapter~~ subchapter provides information to suppliers that desire to sell acquisitions to state agencies, and to state agencies to ensure compliance with provisions of the Oklahoma Central Purchasing Act. These rules of the Purchasing Division of the Department of Central Services conform to requirements of the Oklahoma Central Purchasing Act, 74 O.S., Sections 85.1 et seq. Promulgation of these rules is by the Director of the Department of Central Services and pursuant to 74 O.S., Section 85.5, 74 O.S., Section 85.45s and 62 O.S., Section 41.5t.

580:15-2-2. Definitions

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

"Acceptable Electronic Signature Technology" means technology that is capable of creating a signature that is unique to the person using it; is capable of verification, is under the sole control of the person using it, and is linked to the data in such a manner that if the data is changed, the electronic signature is invalidated.

"Acquisition authority" means the dollar amount within which a state agency is approved to make acquisitions without submitting a requisition to the State Purchasing Director.

"Affiliates" means associated business entities or individuals that directly or indirectly control or can control other business entities, or individuals that associate with a business entity but derive financial benefit from another business entity.

"Aircraft" means any device now known, or hereafter invented, used, or designed for navigation of or flight in the air or airspace.

"All or none bid" means a bid in which the bidder states only an award for all items or services included in the solicitation will be accepted.

"All or none solicitation" means a solicitation in which the state indicates it will award a contract to a single supplier for all items or service included in the solicitation.

"Alteration" means a written modification to a contract.

"Alternate bid" means that with the submission of a bid that meets the requirements of the solicitation, a bidder, at the same time, includes another bid, which contains an intentional substantive variation to a basic provision, specification, term or condition of the solicitation.

"Amendment" means a written change, addition, alteration, correction, or revision to a solicitation issued by the state agency responsible for making the acquisition. The terms addendum and amendment are synonymous.

"Authorized signature" means a manual, electronic or digital identifier uniquely linked to a person the supplier authorizes to sign documents the supplier submits to the State Purchasing Director.

"Bid bond", "performance bond" or **"surety bond"** means a form of surety or guaranty that the State Purchasing Director may require bidders to submit with a bid.

"Business days" means Monday through Friday and is exclusive of weekends and state holidays.

"Certified procurement officer" or **"CPO"** means a state agency procurement official certified by the State Purchasing Director under the provisions of the Oklahoma Central Purchasing Act.

"Clarification" means a bidder's explanation of all or part of a bid that does not change, alter or supplement the bid.

"Closing date" means the date and time a solicitation specifies after which a bid is considered late and the Purchasing Division or state agency will not accept a bid.

"Commodity classification" means numeric designations the State Purchasing Director assigns to classify goods and services into similar categories.

"Commodity list" means a list of all items and services in a commodity classification.

"Competitive bidding" means a process of acquisition wherein bidders submit bids to the Purchasing Division or a state agency pursuant to terms, conditions and other requirements of a solicitation. The competitive bidding process may be electronic when the terms of the solicitation expressly permit electronic submission and the requirement of the statutes and/or rules are met.

"Days" means calendar days unless otherwise specified.

"Debar" or **"debarment"** means action taken by the State Purchasing Director to exclude any business entity from inclusion on the suppliers list, bidding, offering to bid, receiving an award of contract with the State of Oklahoma for

acquisitions by state agencies or a contract the Department of Central Services awards or administers.

"Department" or **"DCS"** means the Department of Central Services

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

"Electronic Record" means a record created, generated, sent, communicated, received, or stored by electronic means.

"Electronic Signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. Unless otherwise provided by this Chapter or law, an electronic signature may be used to sign a document and shall have the same force and effect as a written signature.

"Emergency acquisition" means an acquisition made by the State Purchasing Director or a state agency without seeking competitive bids to relieve an unforeseen condition believed to endanger human life, safety poses imminent danger to significant property or is condition certified by the Governor as a serious environmental situation.

"Firm bid" means an offer by a bidder which contains no conditions which may prevent acceptance; and which, by its terms, remains open and binding until the State Purchasing Director accepts or rejects the bid.

"Fiscal year" means the period of time from July 1 of a calendar year through June 30 of the succeeding calendar year.

"Fixed rate" means a rate the Department establishes for contracts for services a supplier provides to persons directly benefiting from the services.

"Forms" means documents the Director prescribes and requires suppliers and state agencies to use to provide information to the Department or Purchasing Division.

"Indefinite quantity contract" means a contract the State Purchasing Director or a state agency establishes based on historical usage of a service or product rather than a specified quantity of said service or product and which does not obligate the State to purchase any certain amount.

"Information technology" or "IT" *means any electronic information equipment or interconnected system that is used in the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information, including audio, graphic, and text.* [62 O.S., Section 41.5t.1]

"Internet" means the global information network of both federal and nonfederal systems that are linked together by a globally unique address and includes the subnetwork called the World Wide Web.

"Invitation to bid" or **"ITB"**means a type of solicitation a state agency or the State Purchasing Director sends to suppliers for submission of bids for acquisitions.

"Life Cycle Costing" means a procurement technique that takes into account demonstrable and documented operating, maintenance, the cost of money, other costs of ownership, usage, resale or residual value in addition to acquisition price in making an award on lowest and best or best value.

"Material deficiency" or **"material deviation"** means failure to provide information necessary to evaluate a solicitation.

"Minor deficiency" or **"minor informality"** means an immaterial defect in a bid or variation in a bid from the exact requirements of a solicitation that may be corrected or waived without prejudice to other bidders. A minor deficiency or informality does not affect the price, quantity, quality, delivery or conformance to specifications and is negligible in comparison to the total cost or scope of the acquisition.

"Noncollusion affidavit" means a document a supplier submits pursuant to the Oklahoma Central Purchasing Act with bids or for acquisitions by contract.

~~**"Nonbinding contract"** means a contract that the State Purchasing Director or a state agency establishes based on historical usage of a service or product rather than a specified quantity of said service or product and which does not obligate the State to purchase any certain amount. (Example: A contract to treat special head injuries based on the number of cases for the special treatment provided by the State for previous years.)~~

~~**"Nonencumbered contract"** means a contract that the State Purchasing Director or a state agency establishes that provides for an unspecified quantity of items or services, or an unspecified delivery date for goods and services, when a state agency encumbers funds for each order pursuant to the contract.~~

"Nonresponsive" means a bid that does not conform to essential requirements in a solicitation.

"Office of State Finance" or **"OSF"** means the Oklahoma Office of State Finance.

"Oklahoma Central Purchasing Act" means 74 O.S., Sections 85.1 et seq.

"Oklahoma Correctional Industries" or **"OCI"** means a program of the State Department of Corrections for utilization of inmate labor for the manufacture or production of items or products for use by state agencies.

"Oklahoma Information Technology Accessibility Standards" or **"IT Accessibility Standards"** or **"Standards"** means the accessibility standards adopted by the Office of State Finance together with the Department of Central Services, to address all technical standard categories of Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998 (P.L. 105-220), August 7, 1998 to be used by each state agency in the procurement of information technology, and in the development and implementation of custom-designed information technology systems, web sites, and other emerging information technology systems.

"Online Bidding" means an electronic procurement process in which state agencies receive bids from vendors for goods, services, construction, or information services over the Internet or other electronic medium in a real-time, competitive bidding event.

"Original Signature" means a manual handwritten symbol or mark by a person that serves as an identifier of that person, or an authorized electronic signature, from which a copy may be made.

"Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any goods, services, construction, or information services. The term also means all functions that

pertain to the obtaining of any goods, services, construction, or information services, including, but not limited to, the description of requirements, selection, and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

"Purchasing Division" or **"Division"** means the Purchasing Division of the Department of Central Services.

"Ratification" means the act of approving an unauthorized commitment made by a state agency.

"Reciprocity" means a preference, which the State Purchasing Director shall apply against the price an out of state bidder submits for an acquisition whose home state applies a similar preference against Oklahoma bidders.

"Registered supplier" means a supplier that registers with the Purchasing Division pursuant to 580:15-4-2.

"Remedy" means to cure, alter, correct or change.

"Request for proposal" means a type of solicitation a state agency or the State Purchasing Director provides to suppliers requesting submission of proposals for acquisitions.

"Request for quotation" means a simplified written or oral solicitation a state agency or the State Purchasing Director sends to suppliers requesting submission of a quote.

"Requisition number" means an identifier the state agency or Purchasing Division assigns to a requisition.

"Requisitioning unit" means the unit in a state agency responsible for making acquisitions.

"Responsive offer" means an offer a supplier submits, which conforms in all material respects to requirements a solicitation states.

"Responsible supplier" means a supplier who demonstrates capabilities in all respects to fully perform the requirements of a contract that may include, but not limited to, finances, credit history, experience, integrity, perseverance, reliability, capacity, facilities and equipment, which will ensure good faith performance.

"Reverse Auctioning" means a procurement method wherein bidders are invited to bid on specified goods or services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.

"Scheduled acquisition" means a recurring acquisition that consolidates multiple state agency requirements for a given commodity or group of commodities.

"Services" means the furnishing of labor, time, or effort by a contractor not required to deliver a specific end product, other than reports, which are merely incidental to required performance.

"Settlement agreement" means a document that reflects an agreement between the state and an individual or business entity that ratifies an unauthorized commitment.

"Solicitation" means a request or invitation by the State Purchasing Director or state agency for a supplier to submit a priced offer to sell acquisitions to the state. A solicitation may be an invitation to bid, request for proposal or request for quotation.

"State official" means a person that works for a department, state agency, trusteeship, authority, school district, fair board, advisory group, task force or study group supported in whole or in part by public funds or administering or operating public property.

"State Purchasing Director" means the director of the Purchasing Division of the Department of Central Services appointed by the Director of the Department or the Purchasing Director's designee.

"State Use Committee" means a committee that certifies severely disabled individuals and sheltered workshops as qualified organizations that contract with the state to provide products and services made by severely disabled individuals, and establishes the State Use Committee procurement schedule for state agency use pursuant to 74 O.S., Sections 3001 et seq.

"Statement of Work" means a detailed description of the work which a state agency requires a contractor or supplier to perform or accomplish.

"Supplier complaint" or **"performance evaluation"** means information a state agency or the Purchasing Division provides to the State Purchasing Director, in a manner the Director prescribes, that documents supplier performance.

"Supplier registration" means a process a supplier uses to register with the Purchasing Division to receive solicitations for commodities on a commodity list for a specified period of time. The process for bidder registration for the receipt of online solicitations may be a separate list. Online bidders may be required to prequalify and online solicitations may be restricted to prequalified online bidders.

"Suppliers list" means a list of individuals or business entities that desire notification of solicitations for specified commodity lists.

"Suspension" means action by the State Purchasing Director to exclude an individual or business entity from the suppliers list.

"Written, Writing, and in Writing" shall include handwriting, printing, typewriting and all other methods and means of forming letters and characters upon paper, ~~stone, wood~~, other materials, or any electronic medium, that can be read, retrieved, and reproduced. When used in these rules, a writing may include an electronic writing.

580:15-2-6. Bid submission document open for public inspection

(a) Documents a supplier submits in a bid are public records and shall be available for review, upon request, after a supplier is selected and the bid is awarded. ~~All bids submitted electronically~~ An electronic bid submitted through the online bidding process ~~are~~ is subject to the same public disclosure laws. ~~The State Purchasing Director may designate bidder's financial information or proprietary information confidential and reject all requests to disclose the information so designated. [74 O.S., Section 85.10].~~

(b) If the bidder submits information in a response to a solicitation that the bidder considers confidential or proprietary, the bidder shall:

(1) specifically identify what information is confidential or proprietary upon each page containing confidential or proprietary information;

(2) enumerate the specific grounds, based on applicable laws which support treatment of the material as exempt from disclosure, and explain why disclosure is not in the best interest to the public; and

(3) conspicuously mark on the outside of the bid packet to indicate it contains confidential information.

(c) The State Purchasing Director shall review the information and may or may not designate bidder's financial information or proprietary information confidential and may or may not reject all requests to disclose the information so designated. [74 O.S., Section 85.10].

580:15-2-7. State Purchasing Director authority

(a) **General.** The State Purchasing Director is an employee of the Department of Central Services. The Director and the Oklahoma Central Purchasing Act prescribe the duties, responsibilities and authority of the State Purchasing Director.

(b) **New Contracting Procedures.** Whenever ~~the~~ the State Purchasing Director develops and tests new contracting procedures and said procedures are used for acquisitions, the State Purchasing Director shall promptly notify state agencies.

(c) **Limited contact.** The State Purchasing Director may limit contact regarding a solicitation between suppliers and agency personnel during the solicitation process. The limitation of contact may be described in the solicitation. All communication between suppliers and agency personnel regarding a solicitation shall be documented and submitted ~~and submitted~~ to DCS for inclusion in the bid file.

(d) **Limited disclosure.** Agency staff shall not announce or reveal their decision regarding supplier evaluation or recommendation for award to Central Purchasing in any public manner or forum, including board meetings, until Central Purchasing has issued the award of contract.

(e) **Negotiation.** The State Purchasing Director or designee may negotiate ~~consolidation contracts, enterprise agreements, and high technology system~~ contracts ~~in lieu of or in conjunction with bidding procedures~~ by noting in the solicitation that negotiations ~~will~~ may be conducted and by following these rules for negotiation. Negotiations may be conducted with ~~a supplier or~~ one or more suppliers ~~whose technical and price proposals are acceptable~~. A state agency may conduct negotiations only with the prior written approval of the State Purchasing Director.

(1) **Negotiation team.** The State Purchasing Director shall designate a negotiator or negotiation team. The State Purchasing Director or designee shall serve as the lead negotiator for a team.

(2) **Negotiation process.**

(A) The lead negotiator shall notify vendors of the date and time for negotiations.

(B) The lead negotiator shall request the supplier provide a list of the individuals who will attend the negotiation and who have full authority to bind the supplier in the negotiation process.

(C) The lead negotiator shall determine the location and manner of negotiation.

(D) Negotiations shall be recorded.

(E) The negotiation team shall develop an agenda with the lead negotiator and submit the agenda to all participants of the negotiation process. The agenda shall set forth the key areas in the solicitation, which require negotiation.

(F) The lead negotiator may require suppliers to submit a best and final offer.

(G) The lead negotiator shall prepare a summary that shall document the following:

(i) an overview setting forth the solicitation number, names and titles of participants, description of the contract, date and location of the negotiation, and purpose of the negotiation; and

(ii) a summary of the results of the negotiation, specifically stating what is the basis of the final agreement.

(H) A summary created under these rules shall become a part of the contract file retained in Central Purchasing.

(f) **Contract management fee, levy or rebate.** Pursuant to 74 O.S., Section 85.33(B), the State Purchasing Director may enter into or award contracts that provide a contract management fee, levy or rebate to the Department. The State Purchasing Director may negotiate a contract management fee whenever it is in the best interest of the state and the Department. All monies received from fees, levies or rebates shall be deposited in the Contract Management Revolving Fund established by 74 O.S., Section 85.33(A).

SUBCHAPTER 4. SUPPLIER PROVISIONS

580:15-4-2. Supplier registration

(a) **General.** The Purchasing Division shall place a registered supplier on the suppliers list for each commodity class for which a supplier registers. The Division shall provide the supplier information for each commodity class for which the supplier desires to register. Except in an emergency or pursuant to a waiver, the Division shall notify registered suppliers of invitations to bid or requests for proposal for each commodity class for which a supplier registers.

(b) **Registration.** Suppliers shall submit supplier registration forms to the Purchasing Division. The State Purchasing Director shall not place a supplier on the supplier list if the supplier provides incomplete information or if the State Purchasing Director determines the supplier is not responsible.

(c) **Registration fee.** Suppliers shall pay an annual fee as set by 74 O.S., §85.33 to the Purchasing Division for each commodity class for which the supplier registers.

~~(d) **Registration expiration.** Supplier registration shall expire on December 31 of each calendar year.~~

(~~e~~d) **Voluntary removal from suppliers list.** Suppliers may request the Purchasing Division remove them from the suppliers list for a commodity.

(~~f~~ e) **Registration fee refunds.** The Purchasing Division shall not refund supplier registration fees.

580:15-4-4. Supplier provisions

(a) **Supplier relationship restrictions.** The Oklahoma Central Purchasing Act prohibits some suppliers from supplying acquisitions to a state agency pursuant to 74 O.S., Section 85.3.

(1) Supplier is an employee of the Purchasing Division. An employee of the Purchasing Division shall not sell to or otherwise provide an acquisition to a state agency ~~pursuant~~ subject to the Oklahoma Central Purchasing Act.

(2) Purchasing Division employee is an owner of the supplier. An employee of the Purchasing Division shall not be an employee, partner, associate, officer or stockholder ~~of~~ in or with a business entity that sells to or otherwise provides an acquisition to a state agency ~~pursuant~~ subject to the Oklahoma Central Purchasing Act.

(3) Purchasing Division employee's spouse or child owns stock in a supplier. The spouse or child of an employee of the Purchasing Division shall not be a stockholder of ~~a~~ any business entity ~~that~~ which sells to or otherwise provides an acquisition to a state agency ~~pursuant~~ subject to the Oklahoma Central Purchasing Act.

(4) Purchasing Division employee's relative is an employee of, or a stockholder of a supplier. A relative within the third degree, whether by consanguinity or affinity, of an employee of the Purchasing Division shall not sell to or otherwise provide an acquisition ~~or owns an interest in a business entity shall not sell acquisitions~~ to a state agency ~~pursuant~~ subject to the Oklahoma Central Purchasing Act or own an interest in any business entity which does so. This prohibition shall not apply if ~~the~~ such relative, excluding a spouse or child, owns stock ~~ownership~~ worth ~~does not exceed~~ Five Thousand Dollars ($5,000.00) or less, or One Percent (1%) or less, whichever amount is the lesser amount, of the ~~total~~ stock of ~~the~~ a corporation or any business entity which sells to or otherwise provides acquisitions to any state agency subject to the Oklahoma Purchasing Act~~, whichever is less~~.

(b) **One year limitation for contracts with state officials.** A state agency shall not enter into a sole source contract, a professional service contract or a contract for the services of a state official for one year after the termination date of the state official from the state agency. A state agency may enter into a sole source contract, contract for professional services or a contract for the services of a person at any time with a person that is a qualified interpreter for the deaf [74:85.42(D)].

(c) **Supplier gratuities.** A supplier shall not give or donate anything of value to an employee of the Department or a member of the immediate family of an employee of the Department ~~[74:85.13]~~ [74 O.S., §85.13].

(1) The Purchasing Director shall suspend or debar a supplier convicted of a violation pursuant to this provision.

(2) The Purchasing Director shall reject bids of a supplier convicted of a violation of this provision. The Purchasing Director may terminate a contract with the supplier convicted of a violation of this provision, if the termination shall be in the best interest of the state agency.

580:15-4-5. Bid solicitation

(a) **General.** The Purchasing Division shall comply with provisions of the Oklahoma Central Purchasing Act and rules the Department promulgates pursuant to the Oklahoma Central Purchasing Act to ensure fair competition for suppliers. When a state agency purchasing agent determines that electronic or online bidding is more advantageous than other procurement methods provided by the laws of this state, the purchasing agent may use online bidding to obtain bids as authorized by the Oklahoma Central Purchasing Act for the purchase of goods, services, construction, or information services.

(b) **Competitive solicitations.** The State Purchasing Director shall issue solicitations for acquisitions by invitation to bid, request for proposal or request for quotation.

(c) **Supplier notification.**

(1) **Registered suppliers.** The State Purchasing Director shall notify suppliers of solicitations for commodity classes for which the supplier registers.

(2) **Suppliers a state agency recommends.** The State Purchasing Director may notify suppliers a state agency recommends for a solicitation.

(3) **Emergency notification.** For an emergency acquisition pursuant to 74 O.S. §85.7(4), the State Purchasing Director or a state agency shall select a supplier or a group of suppliers to notify utilizing telephone, facsimile or electronic commerce.

(4) **Notification pursuant to a waiver.** When the State Purchasing Director issues a waiver pursuant to 580:15-2-11, the State Purchasing Director or a state agency may select a supplier or group of suppliers to notify using telephone, facsimile or electronic commerce.

(5) **Amendments to a solicitation.** If the State Purchasing Director amends a solicitation, the State Purchasing Director shall notify suppliers sent the original solicitation of the amendment. Suppliers submitting bids or quotations shall acknowledge receipt of an amendment in the supplier's bid or quotation. If the supplier has already submitted a bid, the supplier shall submit an acknowledgment of the amendment prior to the closing date.

(d) ~~**Bid award criteria**~~ **Evaluation method.** ~~The State Purchasing Director shall indicate in the solicitation whether the bid award criteria is lowest and best, or best value.~~ The State Purchasing Director shall ensure that an evaluation method is clearly identified in any solicitation. The method shall be one of the following:

(1) lowest and best; or,

(2) best value.

(e) **Specifications.** Solicitations shall include specifications or a statement of work. The State Purchasing Director may reference manufacturer names, product names, or other product references as specifications to describe the type or quality of the acquisition.

(f) **Terms and Conditions.** The State Purchasing Director shall include all the terms and conditions for the acquisition in the solicitation.

(1) **Copyrights, patents or intellectual property.** If an acquisition includes copyrights, patents or intellectual property rights pursuant to federal law, the solicitation shall request conditions of use for the acquisition.

(2) **Other terms and conditions.** The State Purchasing Director may not accept supplier terms and conditions in a supplier's bid. No alterations or variations of the terms of the contractor shall be valid or binding upon the state, unless made in writing and accepted by the State Purchasing Director.

(3) **Other rights and remedies.** Actions of the State Purchasing Director shall not limit the rights or remedies of a state agency.

(4) **Rejection of all bids.** If the State Purchasing Director finds it to be in the best interest of the State of Oklahoma, any ~~and~~ or all bids or proposals may be rejected and a solicitation may be reissued or canceled.

(g) **Affidavit.** The Purchasing Director shall include a noncollusion affidavit form in a solicitation. The noncollusion affidavit shall be submitted to the Division with any bid or proposal. The noncollusion affidavit shall have an original signature of an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photocopy of an original signature will not be accepted.

~~(h) **High technology systems.** The State Purchasing Director shall state in a solicitation if the acquisition is a high technology system.~~

(~~i~~h) **Pre-bid conference.** The State Purchasing Director shall state in a solicitation if the State Purchasing Director shall hold a supplier pre-bid conference and shall state whether supplier attendance is mandatory or ~~optional~~ non-mandatory

(~~j~~i) **Shipping.** Bidders shall deliver the acquisition F.O.B. destination to the receiving state agency unless otherwise specified in the solicitation.

(~~k~~j) **Closing date.** The State Purchasing Director shall provide notice to suppliers in the solicitation of the closing date, time and location of a bid opening. In the event it is determined that a significant error or event occurred that affected the electronic receipt of an online bid, the Director of Central Services may authorize the Division to accept an electronic bid after the specified official closing date and time. Failure of the bidder's computer or electronic equipment or service is not an acceptable event.

(~~l~~k) **Sample submission.** For acquisitions of items or products, the solicitation may specify submission of samples of the required items or products to the State Purchasing Director.

(1) **Sample receipt.** If a bidder submits a sample, the bidder shall submit the sample to the Purchasing Division prior to the closing date.

(2) **Sample identification.** The bidder shall identify the sample the bidder submits with the bidder's name, bidder's address, state bid identification number and closing date. The supplier shall place the information on the sample container and on the sample shipping container.

(3) **Sample costs.** The bidder shall pay costs for the sample and submission to the State Purchasing Director.

(4) **Sample requirements.** A sample a bidder submits to the Purchasing Division shall represent the quality of the whole.

(5) **Sample tests.** ~~The State Purchasing Director shall use standard testing procedures to determine the quality of a sample a bidder submits.~~ Whenever testing is determined necessary by the State Purchasing Director, appropriate standard testing procedures will be used.

(6) **Sample tests costs.** If the sample a bidder submits to the Purchasing Division fails to meet the specification or standards the solicitation requires, the bidder shall pay testing costs the Purchasing Division incurs.

(7) **Unsuccessful bidder samples.**

(A) **Bidder requests sample return.** Bidders may request that the State Purchasing Director return samples examination does not destroy.

(B) **State Purchasing Director retains sample.** The State Purchasing Director may retain samples that bidders submit that examination does not destroy.

(C) **State Purchasing Director returns sample.** The State Purchasing Director may return samples that bidders submit that examination does not destroy. Bidders shall pay costs the Division incurs for sample return.

(8) **Successful bidder samples.** The State Purchasing Director may retain samples the successful bidder submits to ensure that acquisitions the successful bidder delivers meet specifications in the solicitation.

(9) The State Purchasing Director, with input from the requisitioning agency, shall make the final determination whether a sample meets the solicitation specifications.

(~~m~~l) **Subcontractor notice.** If a solicitation specifies submission of information for subcontractors a bidder intends to use for an acquisition, the supplier shall provide the information in the supplier's bid.

580:15-4-6. Bid preparation

(a) **General.** A bid a supplier submits to the Purchasing Director shall agree to all terms and conditions the solicitation specifies.

(b) **Forms the Purchasing Director requires suppliers to submit.** The Purchasing Director shall include forms in the solicitation suppliers shall submit with the supplier's bid.

(c) **Additional form requirements.**

(1) **Data the supplier submits.**

(A) The solicitation shall indicate all information the supplier shall submit with the supplier's bid.

(B) All form information entries shall be in ink.

(C) Information the supplier submits shall be legibly hand written, typewritten or printed and shall meet all terms and conditions of the solicitation.

(D) Should the supplier alter form or bid information, the supplier shall initial each alteration.

(2) **Authorized signature.** A form a supplier submits with the supplier's bid to the Purchasing Division shall

bear an authorized signature. Any form requiring a supplier's signature submitted in a bid to the Purchasing Division shall have an authorized signature.

(3) **Notary seal.** If a form specifies notarization, the form shall bear the signature and seal of a licensed Notary Public in the manner state laws of the bidder's state specify.

(d) ~~**Entire contract**~~**Contract.** The ~~entire~~ contract the State Purchasing Director awards pursuant to a solicitation shall consist of the following contract documents: invitation to bid, or request for proposal or request for quotation~~,~~ ; Purchasing Division attachments including, but not limited to, amendments, change orders or modifications~~,~~; the supplier's bid or quotation with attachments, reviewed and approved by the State Purchasing Director; and, the purchase order the State Purchasing Director issues. A contract the State Purchasing Director awards ~~shall~~ may incorporate by reference all provisions of the Oklahoma Central Purchasing Act and rules of the Purchasing Division.

(e) **Firm bid for sixty (60) days.** The Purchasing Director shall consider a supplier's bid a firm bid for sixty (60) days following the bid closing date.

(f) **Bidder travel expenses.** The price a bidder submits in response to a solicitation shall include travel expenses for the bidder to perform the contract. The state shall not pay travel expenses the bid price does not include.

(g) **Tax exemptions.** State agency acquisitions are exempt from sales taxes ~~[68:1365]~~ [68 O.S., §1365] and federal excise taxes [Chapter #.32, Internal Revenue Code #73-73-016-3K]. Bidders shall not include these taxes in price quotes. The Purchasing Director shall supply tax exemption certificates to bidders if the bidder requests.

(h) **Payment terms.** State agencies shall pay suppliers pursuant to 62 O.S., Section 41.4a, et seq. Suppliers shall not consider a payment late until forty-five (45) days after state agency receipt of invoice.

(i) **Bonds.** The solicitation may require bidders to submit a bid bond, performance bond, or other type of surety bond with the bid.

(1) **Form of bond.** The bid bond, performance bond or other type of surety bond shall be ~~a certified check, cashiers check, bid bond or annual performance bond~~ subject to the approval of the State Purchasing Director. For bonds requiring a cash deposit, the amount specified by the State Purchasing Director shall be paid by certified check or cashiers check.

(2) **Irrevocable letter of credit.** In lieu of bonds specified in this subsection, the State Purchasing Director may approve submission of an irrevocable letter of credit.

(~~2~~3) **Bond return.** When the State Purchasing Director specifies ~~that~~ a bid contain a bid bond, performance bond, or other type of surety bond, the State Purchasing Director shall retain the bond until the successful completion of the purpose for which the bond was drawn.

(j) **Used or new products.** A bid shall offer new items of current design unless the solicitation specifies used, reconditioned or remanufactured products are acceptable.

(k) **Price.** Unless the solicitation specifies otherwise, a bidder shall submit a firm, fixed price for the term of the contract.

(l) **Alternate bids.** Unless the solicitation prohibits, a bidder may submit alternate bids. If a bidder submits an alternate bid, the alternate bid shall ~~not refer to information in the primary or any other alternate bid. The alternate bid shall~~ be a complete bid. The bidder shall ~~indicate~~ clearly identify an alternate bid. If the bidder submits more than one alternate bid, the bidder shall number each alternate bid as "Alternate Bid 1", "Alternate Bid 2", etc.

(m) **All or none bid.**

(1) **Award to more than one bidder.** If the solicitation specifies that the Purchasing Director may award a contract to more than one bidder, the bidder may indicate on the bid that terms and conditions of the bid are all or none.

(2) **Award by item.** If the solicitation indicates that the Purchasing Director may award the~~–~~bid to more than one bidder by item, the bidder may indicate that the terms and conditions of the bid are all or none.

(n) **High technology systems.**

(1) **New high technology system.** The Purchasing Director shall not evaluate a bid for a high technology system unless the bid ~~meets the requirements of this paragraph.~~ includes a statement of work and:

(A) ~~**Bidder system**~~ **System upgrade schedule.** ~~Bidders shall provide documentation~~ Documentation by the bidder of the projected schedule of recommended or required ~~system~~ upgrades or improvements to the high technology system ~~for the~~ over a projected ~~three (3) year~~ three-year period following the target purchase date~~.~~ ; or,

(B) ~~**Bidder plans no**~~ **No system upgrades.** Documentation that ~~If~~ the bidder does not plan any recommended or required ~~projected~~ system upgrades or improvements to the high technology system, ~~the bidder shall provide documentation in the bid that the bidder plans no system upgrades to the high technology system for the three (3) year~~ over a projected three-year period following the target purchase date.

(2) **High technology system upgrades.** The State Purchasing Director shall not evaluate a bid for an upgrade to a high technology system unless the bid ~~meets the specifications of this subparagraph.~~ includes a statement of work and:

~~(A) **Bidders statement regarding state agency duties.** If the intent of the high technology system upgrade is to enhance the state agency's performance, the bidder shall provide documentation that the upgrade shall enhance or is necessary for performance of the state agency's duties and responsibilities.~~

~~(B) **Bidder statement regarding bidder, assistance.** If the bidder does not intend to assist the state agency to maintain a high technology system, the bidder shall provide documentation that the bidder will no longer assist the state agency to maintain the high technology system.~~

~~(C) **State agency statement.** The state agency shall supply documentation to the Purchasing Director that the functions the high technology system performs are necessary for the performance of state agency duties and responsibilities.~~

~~(D) **Additional system upgrade requirements.** A supplier may agree to a provision of this subparagraph.~~

~~(i) The supplier agrees to provide the upgrade at no expense to the state.~~

~~(ii) The supplier agreed in a previous contract to provide the upgrade at no additional expense to the state.~~

(A) documentation that the vendor agrees to provide the upgrade or improvement at no charge to the state;

(B) documentation that the vendor previously agreed in a contract to provide the upgrade or improvement at no additional charge to the state;

(C) documentation the state agency obtained from the vendor that any required or recommended upgrade will enhance or is necessary for the performance of the state agency duties and responsibilities; or,

(D) documentation the vendor will no longer supply assistance to the state agency for the purpose of maintenance of the high technology system and the state agency documents that the functions performed by the high technology system are necessary for the performance of the state agency duties and responsibilities.

(o) **Bidder delivery.** A solicitation shall specify a delivery date or allow the bidder to specify a firm delivery date. If the solicitation does not specify a delivery date, the bidder shall specify the delivery date in the bid.

(p) **Sample submission.** For acquisitions of items or products, the solicitation may specify submission of samples of the required items or products to the Purchasing Director. [Reference OAC 580:15-4-5(k)]

~~(1) **Sample receipt.** If a bidder submits a sample, the bidder shall submit the sample to the Purchasing Division prior to the closing date.~~

~~(2) **Sample identification.** The bidder shall identify the sample the bidder submits with the bidder's name, bidder's address, state bid identification number and closing date. The supplier shall place the information on the sample container and on the sample shipping container.~~

~~(3) **Sample costs.** The bidder shall pay costs for the sample and submission to the Purchasing Director.~~

~~(4) **Sample requirements.** A sample a bidder submits to the Purchasing Division shall represent the quality of the whole.~~

~~(5) **Sample tests.** The Purchasing Director shall use standard testing procedures to determine the quality of a sample a bidder submits.~~

~~(6) **Sample tests costs.** If the sample a bidder submits to the Purchasing Division fails to meet the specification or standards the solicitation requires, the bidder shall pay testing costs the Purchasing Division incurs.~~

~~(7) **Unsuccessful bidder samples.**~~

~~(A) **Bidder requests sample return.** Bidders may request that the Purchasing Director return samples examination does not destroy.~~

~~(B) **Purchasing Director retains sample.** The Purchasing Director may retain samples that bidders submit that examination does not destroy.~~

~~(C) **Purchasing Director returns sample.** The Purchasing Director may return samples that bidders submit that examination does not destroy. Bidders shall pay costs the Division incurs for sample return.~~

~~(8) **Successful bidder samples.** The Purchasing Director may retain samples the successful bidder submits to ensure that acquisitions the successful bidder delivers meet specifications in the solicitation.~~

(q) **Subcontractor notice.** If a solicitation specifies submission of information for subcontractors a bidder intends to use for an acquisition, the supplier shall provide the information in the supplier's bid.

580:15-4-7. Bid submission

(a) **Submission location.** Bidders shall submit bids to the location the solicitation specifies.

(b) **Bid submission contents.** Bidders shall submit all forms, documents and contents required by a solicitation as instructed in the solicitation. The legal name and complete address of the bidder, bid number and closing date shall be prominently displayed as stated in the solicitation.

(c) **Submission of noncollusion affidavit.** When electronic submission of the bid is allowed, an original noncollusion affidavit must be submitted to the Central Purchasing Division as prescribed in the solicitation. An original signature shall be properly executed by an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photo copy of an original signature will not be accepted.

(d) **Purchasing Division bid receipt.** Upon receipt, the Purchasing Division shall clearly mark the outside of all envelopes or containers with the receipt date and time. Electronic submission of bids, when allowed, must be submitted in such a manner that the time and date of submission is electronically linked to the bid and cannot be changed.

(e) **Signatures on solicitation documents.** All signatures required on any bid document shall be original unless otherwise authorized by state law and approved by the State Purchasing Director. An original signature shall be properly executed by an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photocopy of an original signature will not be accepted.

(f) **Late bids.** The State Purchasing Director shall reject all bids or proposals received after the closing date and time. Electronic bids solicited by online bidding may be accepted after the closing date and time only if the Director of the Department of Central Services has authorized acceptance of bids due to a significant error or event that occurred which affected the

electronic receipt of an online bid. Unless opened for identification, bids received late will be returned unopened in a timely manner.

580:15-4-8. Bid withdrawal

(a) **Bid withdrawal before closing date.** ~~A bidder who desires to withdraw a bid prior to the closing date shall submit written notice to the Division which includes personal identification, the supplier's name, bid number and closing date.~~ A bidder who desires to withdraw a bid prior to the closing date shall submit to the State Purchasing Director a written withdrawal request created on the bidder's company letterhead and signed by the bidder's authorized representative. The withdrawal request must identify the method of return, the person authorized to receive the returned bid, the bidder's name, solicitation number and closing date.

(1) If the bid is to be returned via U.S. Postal Service or other small package carrier, the bidder must provide a method for return shipping charges.

(2) If the bid will be withdrawn in person, the person must provide personal identification to validate they are the person identified in the withdrawal request. After confirmation of identity, the person accepting the withdrawn bid shall sign a receipt for the bid.

(b) **Bid withdrawal after closing date.** Withdrawal of a bid after the closing date shall not be authorized by the State Purchasing Director unless the bidder can prove that significant error by the bidder exists in the bid.

580:15-4-10. Public bid opening

~~(a)~~ **Public bid opening.** ~~Bidders may request that a bid opening be public.~~ Bidders may request a bid be opened in public. No evaluation or award shall be made at the public opening.

~~(b)~~ ~~**Late bids.** The State Purchasing Director shall reject all bids or proposals received after the closing date and time. Electronic bids solicited by online bidding may be accepted after the closing date and time if the Director of Central Purchasing has authorized acceptance of bids due to a significant error or event that occurred which affected the electronic receipt of an online bid.~~

580:15-4-11. Bid evaluation

(a) **Evaluation document.** The State Purchasing Director shall establish an evaluation document that contains evaluation criteria the Purchasing Division shall use to evaluate bids. The evaluation document shall be open for public inspection following contract award.

(b) **Bid clarification.** The State Purchasing Director may solicit clarification from a bidder regarding the bidder's bid. The clarification shall not alter or supplement the bid.

(c) **Reasons for bid rejection.** The State Purchasing Director shall indicate in the solicitation file if a bid is nonresponsive. Unless the State Purchasing Director finds that a bid deficiency may be cured by a supplier pursuant to (j) of this Section, ~~The~~ the State Purchasing Director may reject a bid that is nonresponsive or a bid from a nonresponsible bidder for reasons that include, but are not limited to the following:

(1) **Terms and conditions.** A bid that does not meet the terms and conditions of the solicitation shall be considered nonresponsive.

(2) **Forms use.** A bid that does not contain forms or other information the solicitation specifies may be considered nonresponsive.

(3) **Incomplete forms.** If forms required by the solicitation do not contain complete information, the bid may be considered nonresponsive.

(4) **Form entries improper.** If information provided in the solicitation documents is not in ink, legible, typewritten or printed, or submitted in the electronic format specified in the solicitation, the bid may be considered nonresponsive.

(5) **Improper alterations.** If alterations do not bear the initials of the person making the alteration, the bid may be considered nonresponsive.

(6) **Use of unauthorized signature.** If a signature on a form is not an authorized signature pursuant to state laws and the rules of this chapter, the bid shall be considered nonresponsive.

(7) **Absence of notary seal.** If forms do not contain a notary seal where forms indicate or otherwise comply with the manner of notarization prescribed for the bidding suppliers' state of residence, the bid shall be considered nonresponsive.

(8) **Bid does not contain bid bond.** If a bidder fails to include a bid bond specified as a requirement by a solicitation, the bid shall be considered nonresponsive.

(9) **Bid does not contain samples.** If a solicitation specifies that the bid shall contain samples and the bid does not contain samples, the bid shall be considered nonresponsive.

(10) **Bid nonresponsive.** If a bid does not offer items suitable for the intended use of the items, the bid shall be considered nonresponsive.

(11) **Pricing.** If bid pricing does not meet requirements of a solicitation, the bid shall be considered nonresponsive.

(12) **Bid fails to acknowledge solicitation amendment.** If a bid fails to acknowledge an amendment the Purchasing Director issues to a solicitation, the bid may be considered nonresponsive.

(13) **Bidder not responsible.** If the solicitation specifies that suppliers submit information relating to responsibility and a bidder does not submit said information, or the State Purchasing Director determines the bidder is not responsible, the bid may be rejected.

(14) **One bid from multiple suppliers.** One bid from multiple suppliers that does not designate a prime contractor shall be considered nonresponsive.

(15) **Additional supplier terms and conditions.** If a supplier adds terms and conditions to an acquisition that are contrary to the laws of Oklahoma the bid shall be considered nonresponsive.

(16) **Past performance.** If the Purchasing Director has received complaints on a supplier, the supplier may be found not responsible.

(17) **Signatures on solicitation documents.** If a facsimile or photocopy signature appears in any solicitation document that requires an original signature [Reference 580:15-4-7.(e)], the bid shall be considered nonresponsive. An original signature shall be properly executed by an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photocopy of an original signature will not be accepted.

(18) **Proof of insurance.** Whenever applicable to a solicitation, if a supplier is unable to provide proof of workers' compensation insurance or an alternative or exemption as authorized by state law, the supplier may be found not responsible.

(e) **Samples.** When a solicitation specifies a bidder submit samples, the State Purchasing Director shall examine the sample to determine the expected performance and service capabilities. The State Purchasing Director ~~shall indicate~~ may specify the method of testing and rate the sample's performance in the evaluation document. [Reference OAC 580:15-4-5(k)]

(f) **Supplier past performance.** The State Purchasing Director shall consider bidder performance on previous contract awards and indicate past performance in the evaluation document.

(g) **Lowest and best bid.** If the State Purchasing Director specifies in the solicitation that the bid evaluation criteria is lowest and best, the State Purchasing Director shall consider criteria the Oklahoma Central Purchasing Act specifies to determine the lowest and best bid.

(h) **Best value bid.** If the State Purchasing Director specifies in the solicitation that the bid evaluation criteria is best value, the State Purchasing Director shall consider criteria specified to determine the best value bid.

(i) **Life cycle costing.** If the State Purchasing Director specifies in the solicitation the evaluation criteria is life cycle costing, the State Purchasing Director shall consider the specified criteria to determine the factors and methodology to be used in the life cycle costing adjustments.

(j) **Other factors in determination of award.**

(1) **Minor deficiencies.** The State Purchasing Director may waive minor deficiencies or informalities in a bid if the State Purchasing Director ~~reasonably~~ determines the deficiencies or informalities do not prejudice the rights of other bidders, or are not a cause for bid rejection.

(2) **Other types of deficiencies.** If the State Purchasing Director determines there is sufficient time prior to the award of a contract and it is in the best interest of the State, the State Purchasing Director may authorize a bidder to cure the following types of deficiencies prior to the award of a contract:

(A) failure to sign a bid;

(B) failure to obtain a notary signature, stamp or seal;

(C) failure to sign or initial amendments to bid.

(k) **Proof of insurance.** A vendor who contracts to do business with the state shall provide proof of workers' compensation insurance or proof of an alternative or exemption authorized by state law.

580:15-4-12. Contract award

(a) **Time of award.** The State Purchasing Director shall not make a contract award at a bid opening. The contract award shall be made upon completion of the following:

(1) ~~completion of~~ bid evaluation;

(2) ~~completion of the evaluation document~~ documentation of evaluation on each bid;

(3) determination of the lowest and best or best value bidder;

(4) verification of Oklahoma and Federal debarment status;

(~~4~~ 5) verification, pursuant to applicable provisions of law, that the supplier is registered with the Secretary of State and franchise tax payment status pursuant to Title 68, Sections 1203 and 1204, whenever the contract amount is Twenty-five Thousand Dollars ($25,000.00) or greater;

(~~5~~ 6) verification with the Oklahoma Tax Commission that the business entity to which the state contract is to be awarded, has obtained a sales tax permit pursuant to Title 68, Section 1364 if such entity is required to do so;

(~~6~~ 7) coordination of award with the requisitioning state agency, if necessary; and

(~~7~~ 8) completion of any administrative tasks.

(b) **Award by item.** If a solicitation does not specify an all or none bid, the Purchasing Director may award to more than one bidder by awarding contract by item or groups of items.

(c) **No contract award.** A contract may not be awarded when:

(1) The Purchasing Director determines no bid meets the requirements of the solicitation.

(2) The Purchasing Director determines that all bids exceed fair market value for the acquisition.

(3) The state agency determines that bid price exceeds available state agency funds.

(4) The state agency determines that it no longer requires the acquisition in the form or manner the solicitation specifies.

(d) **Evaluation tie.** Whenever it is determined that two or more bids are equal, the State Purchasing Director shall determine the successful bidder by a coin toss.

(e) **Notification of successful bidder.** The Purchasing Director shall notify the successful bidder within five (5) days of the contract award.

580:15-4-13. Supplier's protests

~~A supplier may protest a contract award by a state agency or the Purchasing Division to the State Purchasing Director. All remedies available to suppliers through the sealed bid process pursuant to the Oklahoma Central Purchasing Act or the Public Building Construction and Planning Act are also available to online bidders in an online bidding process.~~

~~(1) **Supplier notification.** A supplier shall submit written notice to the State Purchasing Director of a protest of an award of contract by a state agency or the Purchasing Division within ten (10) business days of contract award. The protest notice shall state supplier facts and reasons for protest.~~

~~(2) **State Purchasing. Director review and determination.** The State Purchasing Director shall review the supplier's protest and contract award documents. Written notice of the decision by the State Purchasing Director to sustain or deny the protest will be sent to the supplier within ten (10) business days of receipt of the protest.~~

~~(3) **Supplier appeal of State Purchasing Director denial.** The supplier may appeal a denial of protest by the State Purchasing Director to the Director of Central Services. The supplier shall file a written appeal within ten (10) business days of the date of the State Purchasing Director's notice of denial pursuant to 75 O.S., Section 309 et seq.~~

~~(4) **Director actions and determination.** The Director may hear the protest, assign the protest to an attorney employed by the Department, or assign the supplier's appeal to an administrative law judge the Department retains. If the protest is assigned to an attorney employed by the Department or to an administrative law judge, the delegated party shall review the protest for legal authority and jurisdiction. If legal authority and jurisdictional requirements are met, the delegated party shall conduct an administrative hearing and provide findings of fact and conclusions of law to the Director. The Director shall send written notice of the decision to sustain or deny the supplier's appeal to the supplier.~~

~~(5) **Supplier appeal of Director denial.** If the Director denies a supplier's appeal, the supplier may appeal pursuant to provisions of 75 O.S., Section 309 et seq.~~ A supplier may protest a contract award by a state agency or the Purchasing Division to the State Purchasing Director. All remedies available to suppliers through the sealed bid process pursuant to the Oklahoma Central Purchasing Act or the Public Building Construction and Planning Act are also available to online bidders in an online bidding process.

(1) **Supplier notification.** A supplier shall submit written notice to the State Purchasing Director of a protest of an award of contract by a state agency or the Purchasing Division within ten (10) business days of contract award. The protest notice shall state supplier facts and reasons for protest.

(2) **State Purchasing Director review and determination.** The State Purchasing Director shall review the supplier's protest and contract award documents. Written notice of the decision by the State Purchasing Director to sustain or deny the protest will be sent to the supplier within ten (10) business days of receipt of the protest.

(3) **Supplier appeal of State Purchasing Director denial.** The supplier may appeal a denial of protest by the State Purchasing Director to the Director of Central Services. The supplier shall file a written appeal within ten (10) business days of the date of the State Purchasing Director's notice of denial pursuant to 75 O.S., Section 309 et seq.

(4) **Director actions and determination.** The Director may hear the protest or assign the supplier's appeal to an administrative law judge the Department retains.

(A) If the protest is assigned to an administrative law judge, the administrative law judge shall review the protest for legal authority and jurisdiction. If legal authority and jurisdictional requirements are met, the administrative law judge shall conduct an administrative hearing and provide proposed findings of fact and conclusions of law to the Director.

(B) If the protest is heard by the Director, the Director shall have all powers granted by law including all powers delegated to the administrative law judge by this section.

(C) The Director shall send written notice of the final order sustaining or denying the supplier's appeal to the parties.

(5) **Conduct of administrative hearing.** Administrative hearings shall be conducted in accordance with the Administrative Procedures Act [75 O.S. §250 et seq.] and the following procedures:

(A) **Prehearing conference.** A prehearing conference shall be scheduled to determine the legal or factual issues which shall be limited to those brought by the supplier in its initial protest to the State Purchasing Director.

(B) **Burden of proof.** The burden of proof shall be upon the supplier, which must prove its case by a preponderance of the evidence. A preponderance of the evidence is that evidence which, in light of the record as a whole, leads the Administrative Law Judge to believe a fact is more probably true than not true.

(C) **Representation.** Corporations must be represented by legal counsel in accordance with Oklahoma law. Legal counsel must be licensed or registered pursuant to the Rules Creating and Controlling the Oklahoma Bar Association.

(D) **Proper parties.** In addition to the supplier protesting the contract award and the Department of Central Services, the supplier awarded the contract and the state agency for which the bid was let may participate in the bid protest proceedings as a proper party.

(E) **Discovery.** The conduct of discovery is governed by the Administrative Procedures Act, 75 O.S., Section 309 et seq. and other applicable law.

(F) **Authority of the Administrative Law Judge.** The Administrative Law Judge may:

(i) Establish a scheduling order;

(ii) Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;

(iii) Rule on all interlocutory motions, including requests for a temporary stay of the contract award pending a final order from the Director;

(iv) Require briefing of any or all issues;
(v) Conduct hearings;
(vi) Rule on the admissibility of all evidence;
(vii) Question witnesses; and
(viii) Make proposed findings of facts and conclusions of law to the Director.

(G) **Remedies.** The Administrative Law Judge may recommend that the Director deny the supplier's appeal or that the contract award be cancelled and rebid.

(6) **Supplier appeal of Director denial.** If the Director denies a supplier's appeal, the supplier may appeal pursuant to provisions of 75 O.S., Section 309 et seq.

580:15-4-14. Supplier Contract performance

(a) **Delivery.** A supplier shall deliver acquisitions to a state agency within time periods the contract specifies.

(b) ~~**Item inspection**~~ **Inspection.** ~~The state agency shall inspect acquisitions from the supplier within a reasonable time after supplier delivery.~~ Unless otherwise provided in the contract documents, the state agency shall inspect acquisitions from the supplier within a reasonable time after supplier delivery.

(c) ~~**Item rejection**~~ **Rejection.** The state agency shall reject acquisitions from the supplier that do not meet specifications or other terms and conditions of the contract. The supplier shall pay costs to retrieve and replace acquisitions that do not meet specifications with a conforming item or service.

(d) **Acquisition title.** Title to acquisitions shall not pass from the supplier to the state agency until the state agency receives, inspects and accepts the items.

~~(e) **Supplier nondiscrimination.** The State of Oklahoma seeks equality of opportunity for all persons. If the Oklahoma Human Rights Commission certifies that a supplier engages in practices that deny or seek to deny equality of opportunity for all persons, the State Purchasing Director may terminate contracts the supplier has with state agencies and may suspend the supplier.~~

(~~f~~e) **Subcontractor performance.** A supplier shall be responsible for the performance of subcontractors. The supplier shall provide a single point of contact for the state agency when the supplier uses subcontractors. The supplier shall notify the state agency and the Purchasing Division if the supplier uses a subcontractor the supplier did not disclose in the supplier's bid.

(~~g~~f) ~~**Change orders**~~ **Contract changes.** If a supplier determines a requested change ~~order~~ to the contract or performance exceeds the original scope of the solicitation, the supplier shall notify the State Purchasing Director or the state agency ~~before initiating changes~~. No changes shall be made prior to the approval of a change order in accordance with Section 15-6-6(e)(2).

(h) **Contract assignment.** A supplier shall not assign or subcontract a contract to another supplier, individual, business entity or organization without written approval of the State Purchasing Director.

580:15-4-16. State agency and supplier disputes

The Purchasing Director shall seek resolution of disputes between state agencies and suppliers.

(1) **Supplier does not retrieve and replace defective acquisition.** If a supplier fails timely to retrieve and replace an acquisition that does not meet or exceed contract specifications, the state agency shall submit a supplier complaint form to the Purchasing Director.

(2) **Supplier does not make refund for defective acquisition.** If a supplier does not refund payment for an acquisition that does not meet or exceed contract specifications, the state agency shall submit a supplier complaint form to the Purchasing Director.

(3) **Other supplier problems.** State agencies or the Purchasing Division shall submit a supplier complaint form for a problem that a supplier does not resolve in a timely manner.

(4) **Purchasing Director dispute resolution.** When a state agency notifies the Purchasing Director of a dispute with a supplier, the Purchasing Director shall seek to resolve the dispute.

(A) **Purchasing Director resolves dispute.** If the Purchasing Director resolves the dispute between the state agency and the supplier, the Purchasing Director shall notify the supplier and the state agency of resolution terms or conditions.

(i) **Supplier fails to meet terms or conditions.** If the supplier fails to meet terms or conditions of the dispute resolution, the Purchasing Director shall terminate the contract between the supplier and the state agency, and may suspend the supplier.

(ii) **State agency fails to meet conditions.** If the state agency fails to meet conditions of the dispute resolution, the Purchasing Director may order an audit of the state agency's acquisitions pursuant to ~~580:15-6-16~~ 580:15-6-15.

(B) **Purchasing Director fails to resolve the dispute.** If the Purchasing Director fails to resolve the dispute between the state agency and the supplier, the Purchasing Director shall take an action in this subparagraph.

(i) **Supplier fails to meet terms and conditions.** If the Purchasing Director determines that the supplier fails to meet terms and conditions of the contract, the Purchasing Director shall terminate the contract between the supplier and the state agency, and may suspend the supplier.

(ii) **State agency fails to meet contract terms and conditions.** If the Purchasing Director determines that actions of the state agency fail to meet terms of the contract, the Purchasing Director may order an audit of the state agency's acquisitions pursuant to ~~580:15-6-16~~ 580:15-6-15.

580:15-4-17. Contract termination

(a) The State Purchasing Director may terminate a contract in its entirety or any portion thereof, between a supplier and a state agency~~.~~ if:

(1) ~~If~~ a supplier fails to post, or allows to expire, a bid bond, performance bond, or other type of surety bond the solicitation specifies~~, the State Purchasing Director may terminate a contract.~~ ;

(2) ~~If~~ a supplier fails to deliver an acquisition pursuant to the contract~~, the State Purchasing Director may terminate a contract.~~ ;

(3) ~~If~~ a supplier fails timely to replace at the supplier's expense, acquisitions that fail to meet the requirements of the contract or have latent defects;~~, the State Purchasing Director may terminate a contract.~~

(4) ~~If~~ a supplier misrepresents the supplier's ability to provide an acquisition~~, the State Purchasing Director may terminate a contract.~~ ;

(5) ~~If~~ a supplier's financial or other condition, including but not limited to, bankruptcy or other evidence of insolvency which may affect the supplier's ability to perform~~, the State Purchasing Director may terminate a contract.~~ ;

(6) ~~If~~ a supplier commits an unlawful act or an act that impairs the supplier's ability to perform~~, the State Purchasing Director may terminate a contract~~.;

(7) ~~If~~ a supplier commits an act that could result in the supplier's suspension or debarment from the suppliers list~~, the State Purchasing Director may terminate a contract.~~ ; or,

(8) ~~If~~ the State Purchasing Director determines that an administrative error occurred prior to contract performance~~, the State Purchasing Director may terminate a contract~~.

~~(9) The State Purchasing Director may terminate the contract in its entirety or any portion thereof.~~

(b) **Supplier responsible for damages.** If the State Purchasing Director terminates a contract between a supplier and a state agency, the Attorney General of the State of Oklahoma, the State Purchasing Director, or the requisitioning agency, may seek damages from the supplier. Damages may include additional cost to obtain the acquisition from another supplier, the cost of re-bidding the acquisition and the cost of acquisition receipt delay.

580:15-4-18. Supplier suspension from suppliers list

(a) **Cause for suspension.** The State Purchasing Director may suspend a supplier from the suppliers list and from submitting bids to the Purchasing Division or any other state agency subject to the Central Purchasing Act for a period of time not to exceed one (1) year for any of the following:~~.~~

(1) ~~If~~ a supplier fails to post or allows to expire a bid bond, performance bond, or surety bond, required by a solicitation~~, the State Purchasing Director may suspend the supplier.~~ ;

(2) ~~If~~ a supplier fails to perform pursuant to the contract~~, the State Purchasing Director may suspend the supplier.~~ ;

(3) ~~If~~ a supplier provides acquisitions that fail to meet the requirements of the contract~~, the State Purchasing Director may suspend the supplier.~~ ;

(4) ~~If~~ a supplier fails to deliver an acquisition pursuant to the contract~~, the State Purchasing Director may suspend the supplier.~~ ;

(5) ~~If~~ a supplier fails timely to replace at the supplier's expense acquisitions that fail to meet the requirements of the contract or that have latent defects~~, the State Purchasing Director may suspend the supplier.~~ ;

(6) ~~If~~ a supplier provides the State Purchasing Director with false, misleading, inaccurate, materially deficient or incomplete information on a bidder registration form~~, the State Purchasing Director may suspend the supplier.~~ ;

(7) ~~If~~ a supplier fails to keep bids firm for sixty (60) days from the solicitation closing date~~, the State Purchasing Director may suspend the supplier.~~ ;

(8) ~~If~~ a supplier fails to resolve a dispute with a state agency~~, the State Purchasing Director may suspend the supplier.~~ ;

(9) ~~If the Oklahoma Human Rights Commission certifies that a supplier engaged in discriminatory practices, the State Purchasing Director may suspend the supplier.~~ upon a determination by the appropriate regulatory authority or court that a supplier engaged in discriminatory practices;

(10) ~~If~~ a supplier misrepresents, fails to provide, or allows to expire a professional certification required by the solicitation~~, the State Purchasing Director may suspend the supplier.~~ ;

(11) ~~If~~ a supplier colludes with other suppliers to restrain competitive bidding~~, the State Purchasing Director may suspend the supplier.~~ ;

(12) ~~If~~ a supplier provides a state employee with a kickback~~, the State Purchasing Director may suspend the supplier.~~ ;

(13) ~~If~~ the State Purchasing Director determines that a supplier is no longer responsible or qualified to do business with the State of Oklahoma~~, the State Purchasing Director may suspend the supplier.~~ ;

(14) ~~If~~ a supplier violates any provision of the Oklahoma Central Purchasing Act~~, the State Purchasing Director may suspend the supplier.~~;

(15) ~~The State Purchasing Director may suspend a supplier for~~ any other reason the State Purchasing Director determines appropriate.

(b) **Suspension notice.** The State Purchasing Director shall notify a supplier of the supplier's suspension within five (5) business days of the State Purchasing Director's determination.

(c) ~~**Suspension**~~ **Supplier's suspension appeal.** A supplier may appeal a suspension ~~of the supplier by the State Purchasing Director~~ in writing to the State Purchasing Director~~. The supplier shall appeal the supplier's suspension by the State Purchasing Director~~ within five (5) business days of receipt of the suspension notice.

(d) **Supplier suspension appeal.** If a supplier appeals suspension by the State Purchasing Director, the State Purchasing Director shall affirm or deny the appeal in writing to the supplier.

(1) If the State Purchasing Director affirms the supplier's appeal, the State Purchasing Director shall reinstate the supplier to the suppliers list.

(2) If the State Purchasing Director denies the supplier's appeal, the supplier may appeal the denial to the Director of Central Services pursuant to 75 O.S., Section 309 et seq. and the provisions of 580:15-4-13.

(e) **Suspension.** The suspension period shall begin on the date appearing on the notice of final order of suspension and shall expire no later than the end of the term specified in the order.

(~~e~~f) **Supplier request for reinstatement.** A supplier the State Purchasing Director suspends may request the State Purchasing Director to allow the supplier to register for the suppliers list before the end of the supplier's suspension period. The State Purchasing Director ~~shall require~~ may consider reinstating the supplier ~~to submit~~ upon submission by the supplier of documents that indicate a change of conditions ~~that would alleviate the reason for the supplier's suspension~~.

(~~f~~g) **Supplier reinstatement.** If the State Purchasing Director reasonably believes that the supplier demonstrates the ability to satisfy requirements for performance of state contracts, the State Purchasing Director shall authorize the supplier to register for the suppliers list pursuant to 580:15-4-2.

580:15-4-19. Supplier debarment

The State Purchasing Director may debar a supplier from the suppliers list ~~or~~ and from submitting bids to the Purchasing Division or other state agencies subject to the Central Purchasing Act for a period of no more than three years.

(1) **Cause for debarment.**

(A) **Fraud, bribery or corruption.** The State Purchasing Director may debar a supplier upon conviction of an individual or business entity guilty of a felony involving fraud, bribery or corruption.

(B) **Gift, donation or gratuity.** The State Purchasing Director may debar a supplier upon conviction of an individual or business entity of a misdemeanor involving a gift, donation or gratuity an individual or business entity gives to an official of the Department of Central Services or an immediate family member of an official of the Department of Central Services.

(C) **Anti-Kickback Act of 1974.** The State Purchasing Director may debar a supplier upon conviction of an individual or business entity of a felony involving the Anti-Kickback Act of 1974.

(2) **Debarment notice.** If the State Purchasing Director ~~considers debarment of~~ debars an individual or business entity, the State Purchasing Director shall notify the individual or business entity in writing ~~of rights to a hearing granted pursuant to the Oklahoma Administrative Procedures Act [75 O.S., Section 309 et seq.]~~.

(3) **Debarment considerations.** The State Purchasing Director shall consider factors of this subsection when considering debarment of an individual or business entity.

(A) **Disassociation.** The State Purchasing Director may consider the efforts, if any, of the individual or business entity, to disassociate itself from individuals and business entities responsible for convictions.

(B) **Imputed business entity.** Conviction of an individual, affiliate or associate a business entity employs may impute the business entity.

(C) **Imputed individual.** Conviction of a business entity may impute an individual, affiliate or associate of the business entity.

(D) **Time period.** The State Purchasing Director may consider the period of time during which the acts leading to conviction of the individual or business entity occur.

(E) **Failure to respond to debarment notice.** The State Purchasing Director shall consider failure to respond to the debarment notice by the individual or business entity.

(F) **Other factors.** The State Purchasing Director may consider other factors regarding the individual or business entity.

(4) **State Purchasing Director options.** Upon completion of review of debarment records, the State Purchasing Director shall take an action affecting the individual or business entity.

(A) **Decline to debar.** The State Purchasing Director may decline to debar an individual or business entity.

(B) **Suspension.** The State Purchasing Director may suspend an individual or business entity for a period of time up to one year, as the State Purchasing Director determines appropriate.

(C) **Debarment.** The State Purchasing Director may debar an individual, a business entity, or both. The debarment period shall begin on the day the supplier receives notice of final order of debarment and shall expire no later than the end of the term specified in the order.

(5) **Reinstatement after debarment.** A debarred individual or business entity may submit a written request for reinstatement to the State Purchasing Director.

~~(A) **State Purchasing Director consideration.**~~ The State Purchasing Director shall consider information the individual or business entity provides ~~and~~ to determine if the ~~information~~ the individual or business entity ~~provides,~~ merits ~~consideration for~~ reinstatement ~~of the individual or business entity~~ to the suppliers list. The State Purchasing Director may ~~reinstate~~ approve or deny reinstatement of the individual or business entity to the supplier's list and shall provide written notice of the reinstatement approval or denial.

~~(B) **Supplier appeal of State Purchasing Director actions.** A supplier may appeal a denial of reinstatement by the State Purchasing Director to the Director within ten (10) business days of the date of the State Purchasing Director's letter of denial. The Director shall review the denial and all pertinent information. Following the review of the request for~~

~~reinstatement of an individual or business entity, the Director shall take an action.~~

~~(i) Director reinstates individual or business entity. If the Director determines that the State Purchasing Director should reinstate the individual or business entity, the Director shall notify the State Purchasing Director and the individual or business entity of the decision. The individual or business entity may apply for inclusion on the suppliers list pursuant to 580:15-4-2.~~

~~(ii) Debarment continues. If the Director determines that the individual or business entity does not qualify for reinstatement, the Director shall notify the individual or business entity.~~

(6) **Supplier appeal of State Purchasing Director actions.** A supplier may appeal a debarment or a denial of reinstatement by the State Purchasing Director to the Director within ten (10) business days of the date of the State Purchasing Director's ~~letter of denial~~ notice of debarment or denial of reinstatement pursuant to 75 O.S., Section 309 et seq and the provisions of 580:15-4-13. ~~The Director shall review the denial and all pertinent information. Following the review of the request for reinstatement of an individual or business entity, the Director shall take an action.~~

~~(i) **Director reinstates individual or business entity.** If the Director determines that the State Purchasing Director should reinstate the individual or business entity, the Director shall notify the State Purchasing Director and the individual or business entity of the decision. The individual or business entity may apply for inclusion on the suppliers list pursuant to 580:15-4-2.~~

~~(ii) **Debarment continues.** If the Director determines that the individual or business entity does not qualify for reinstatement, the Director shall notify the individual or business entity.~~

580:15-4-20. Other provisions [REVOKED]

~~(a) **Document reproduction.** The Purchasing Division shall provide reproductions of documents to an individual or business entity.~~

~~(b) **Document reproduction fees.** The Purchasing Division shall collect a fee for each reproduction. The fee shall not exceed the amount per reproduction pursuant to 51 O.S., Section 24A.5.~~

~~(c) **Search fees.** The Purchasing Division may collect a fee for records search. The State Purchasing Director shall base the fee per hour on the hourly rate of pay of the lowest level employee capable to conduct the search.~~

SUBCHAPTER 6. STATE AGENCY PROVISIONS

580:15-6-2. Certified procurement officers (CPO)

(a) **Training.** The State Purchasing Director shall provide training for state agency purchasing officials and other purchasing staff pursuant to 74 O.S., Section 85.5(D).

(b) **Certification.** The State Purchasing Director shall certify state agency purchasing officials and other purchasing staff who demonstrate proficiency in principles of state procurement practices, basic contracting, provisions of the Oklahoma Central Purchasing Act, provisions of State Use Committee and other matters which relate to procurement practices.

(c) **Authority.** A CPO shall be authorized to make acquisitions for state agencies.

(d) **Duties.** A CPO shall provide assistance and oversight to a state agency ~~so state agency~~ to ensure acquisition processes meet the requirements of the Oklahoma Central Purchasing Act, rules of the Purchasing Division, other statutory provisions and the state agency's internal purchasing procedures.

(e) **Decertification.** The State Purchasing Director may revoke certification of a CPO if the State Purchasing Director reasonably believes the CPO did not make state agency acquisitions pursuant to the Oklahoma Central Purchasing Act, rules of the Purchasing Division, other statutory provisions, or the state agency's internal purchasing procedures.

(f) **Continuing education.** To maintain certification, ~~A~~ a CPO shall attend eighteen (18) hours of ~~qualifying~~ continuing education ~~per~~ for each calendar year following the year of certification. Continuing education courses must be related to procurement practices and approved in advance for CPO education credit by the State Purchasing Director. The State Purchasing Director shall determine how often courses may be repeated to qualify for continuing education credit. ~~Prior to December 31 of each calendar year, a CPO shall submit to the State Purchasing Director documentation verifying course attendance. Failure to obtain the required continuing education hours shall result in suspension of certification by the State Purchasing Director.~~

~~(1) **Burden of proof.** The burden of proof rests solely upon the CPO to demonstrate to the satisfaction of the State Purchasing Director, in accordance with the rules of this chapter, that all continuing education courses reported meet all of the requirements as to content and subject matter related to the procurement practices.~~

~~(2) **Reporting and documentation by CPOs.** Continuing education credit may be claimed by a CPO only for the compliance period in which the course was completed and credit granted.~~

(1) Prior to December 31 of each calendar year, a CPO shall submit to the State Purchasing Director, documentation verifying continuing education course attendance. The burden of proof rests solely upon the CPO to demonstrate, in advance of taking a course and to the satisfaction of the State Purchasing Director, that all continuing education courses reported meet all of the requirements as to content and subject matter related to procurement practices.

(2) A CPO may claim continuing education credit only for the compliance period in which the course was completed and credit granted.

(3) Failure by a CPO to complete the required 18 hours of qualifying education within the allowed period will result in suspension of the CPO's purchasing authority.

(4) A suspended CPO must attend the next available CPO certification course approved by the State Purchasing Director.

(5) A suspended CPO that has remained suspended for a period of more than one year must repeat the CPO certification course and demonstrate proficiency in procurement practices by passing the CPO prescribed certification examination.

(6) In the event of extenuating circumstances, a CPO may submit a written request to the State Purchasing Director for reinstatement and an extension of time to allow the CPO to fulfill the previous year's required continuing education credits. The State Purchasing Director may approve or deny the request. A reinstatement approved to allow an extension of time to fulfill education credits shall not exceed three (3) months.

(g) **Change in status.** A CPO shall notify the State Purchasing Director when they are no longer performing as a CPO, when they transfer to another state agency, or when they terminate their employment with the state.

580:15-6-4. State agency acquisition records retention

(a) **Retention time period.** A state agency shall retain all records relative to acquisitions and contracts for the duration of the contract term and for a period of three (3) years following completion and/or termination of the acquisition. If an audit, litigation, or other action involving such records is started before the end of the three (3) year period, the records shall be maintained for two (2) years from the date all issues arising from the action are resolved or until the end of the three (3) year retention period, whichever is later.

(b) **Records retention location.** A state agency shall retain records and documents in a central location unless a written waiver is provided by the State Purchasing Director.

(c) **Records availability.** A state agency shall make ~~records for state agency acquisitions~~ acquisition records available to the State Purchasing Director for review and the Department of Central Services Audit staff ~~when the State Purchasing Director performs an audit of state agency acquisitions~~ for audit purposes.

(d) **Records to be retained.** A state agency shall retain acquisition records to include but not limited to justification for the acquisition, supporting documents, related information, acquisition contract, evaluations, other evidence of contractor performance and written reports.

580:15-6-5. Methods State Agencies Use to Make Acquisitions

State agencies shall make acquisitions using a method of acquisition in this section.

(1) **Statewide Contracts.** The State Purchasing Director shall designate statewide contracts as mandatory or nonmandatory.

(A) **Mandatory statewide contract.** The State Purchasing Director may designate a statewide contract for mandatory use. State agencies shall make acquisitions from mandatory statewide contracts regardless of the acquisition purchase price. A state agency may submit a written request to the State Purchasing Director to waive requirements for a state agency's use of a mandatory statewide contract for acquisitions. The State Purchasing Director shall grant exceptions prior to a state agency making the acquisition from another supplier.

(B) **Nonmandatory statewide contracts.** State agencies may use nonmandatory statewide contracts when an agency determines it is in the best interest of the state.

(2) **State Use Committee.** State agencies shall make acquisitions from suppliers on the State Use Committee procurement schedule regardless of the acquisition purchase price if the supplier's delivery date meets state agency requirements. State Use Committee ~~statewide~~ contracts are mandatory ~~statewide~~ contracts. State agencies shall ~~reference~~ utilize the State Use Committee procurement schedule to ensure all acquisitions are made pursuant to 74 O.S., Section ~~3007~~ 3001, et seq. ~~An agency may make an open market acquisition of a specified commodity or class of commodities on the State Use Committee procurement schedule upon receipt of a written waiver from the State Use Committee contracting officer.~~ If an acquisition is available from both the State Use Committee procurement schedule and the Oklahoma Correctional Industries, the state agency shall make the acquisition from the State Use Committee procurement schedule.

(3) **Oklahoma Correctional Industries.** If an acquisition is not available from the State Use Committee within the time period required by the purchasing state agency, ~~State~~ state agencies shall make acquisitions from the Oklahoma Correctional Industries pursuant to 57 O.S., Section 549.1 ~~if such article or service is the lowest and best bid~~. ~~State agencies shall submit requisitions for acquisitions from Oklahoma Correctional Industries to the Purchasing Division or to Oklahoma Correctional Industries. If an acquisition is available from the State Use Committee procurement schedule and from Oklahoma Correctional Industries, the state agency shall make the acquisition from the State Use Committee procurement schedule. If Oklahoma Correctional Industries is unable to meet state agency requirements for an acquisition, Oklahoma Correctional Industries shall certify to the State Purchasing Director that it is not able to provide products. If the State Purchasing Director determines that an acquisition Oklahoma Correctional Industries produces does not meet minimum state agency requirements, the State Purchasing Director shall notify Oklahoma Correctional Industries. If Oklahoma Correctional Industries disagrees with the State Purchasing Director, the Director shall resolve the dispute. An agency may make an open market acquisition of a specified commodity~~

~~or class of commodities produced by the Oklahoma Correctional Industries upon receipt of a written waiver from the Oklahoma Correctional Industries or whenever the Oklahoma Correctional Industries cannot provide the lowest and best bid for such acquisition.~~

(A) An agency, using its procurement authority may place a direct order with OCI without competitive bidding, or issue a solicitation, which shall include OCI as a vendor. If a solicitation is issued, the award shall be made to OCI if such product or service is the lowest and best bid.

(B) For an acquisition exceeding an agency's procurement authority, the agency may place a direct order with OCI or submit a requisition to the Purchasing Division for issuance of a solicitation to include OCI as a vendor. The award shall be made to OCI if such product or service is the lowest and best bid.

(C) If Oklahoma Correctional Industries is unable to meet state agency requirements for an acquisition, Oklahoma Correctional Industries shall certify to the State Purchasing Director that it is not able to provide products.

(D) If the State Purchasing Director determines that a product or service the Oklahoma Correctional Industries produces does not meet the reasonable state agency requirements, the State Purchasing Director shall notify Oklahoma Correctional Industries.

(E) If Oklahoma Correctional Industries disagrees with the State Purchasing Director, the Director of the Central Services shall resolve the issue.

(4) ~~**Scheduled acquisitions.**~~ **Standard contracts.** ~~If the State Purchasing Director makes scheduled acquisitions from suppliers for a state agency, the state agency shall not make open market purchases for the same commodity or group of commodities.~~

(A) **Contract for definite quantity.** If a state agency is able to establish a definite quantity of items or services for an acquisition, the State Purchasing Director or the state agency may establish a contract for acquisition by the state agency.

(B) **Contract for indefinite quantities.** If an agency is unable to establish a definite quantity of items or services for an acquisition, the State Purchasing Director or the state agency may establish a contract for an indefinite quantity of items or services.

(C) **Contract for scheduled acquisitions.** When a state agency's needs for certain items are compiled (aggregated) and purchased in bulk at predetermined intervals, the State Purchasing Director or the state agency may establish a contract for scheduled acquisitions. The intervals shall be established in accordance with market characteristics or using agency consumption patterns, with consideration of seasonal factors and warehousing facilities. A schedule shall be developed for particular commodities monthly, quarterly, or annually. If a contract for scheduled acquisitions is established for a state agency, the state agency shall not make open market purchases for the same commodity or group of commodities.

(D) **Open market contracts.** State agencies may make open market acquisitions within their approved purchasing authority limit, pursuant to provisions of the Oklahoma Central Purchasing Act, rules of the Purchasing Division and the agency's approved internal purchasing procedures.

~~(5) **Nonencumbered Contracts.**~~

~~(A) **For a state agency.** If a state agency is unable to establish a quantity of items or services, or delivery dates for an acquisition, the State Purchasing Director or the state agency may establish a nonencumbered contract for the acquisition by the state agency.~~

~~(B) **For state agencies.** If the State Purchasing Director is unable to establish a quantity of items or services, or delivery dates for an acquisition, the State Purchasing Director may establish a nonencumbered contract for acquisitions by state agencies.~~

~~(6) **Open market acquisitions.** State agencies may make open market acquisitions not exceeding Twenty Five Thousand Dollars ($25,000.00) pursuant to provisions of the Oklahoma Central Purchasing Act and rules of the Purchasing Division.~~

(5) **Sole source and sole brand contracts.**

(A) State agencies with a CPO and approved internal purchasing procedures meeting the requirements of 580:15-6-2 and 580:15-6-3, may requisition a sole source or sole brand acquisition within the agency's purchasing authority limit pursuant to the provisions of the Oklahoma Central Purchasing Act.

(B) The chief administrative officer of each state agency shall submit to the State Purchasing Director a monthly listing of all sole source and sole brand acquisitions exceeding Two Thousand Five Hundred Dollars ($2,500.00) executed by the state agency in the preceding month pursuant to the Oklahoma Central Purchasing Act. The monthly list shall be submitted on a form prescribed and approved by the State Purchasing Director.

(C) If the sole source or sole brand acquisition amount exceeds the agency's purchasing authority, the agency shall submit the requisition to the State Purchasing Director.

580:15-6-6. ~~**State agency open market acquisitions not exceeding two thousand five hundred dollars ($2,500.00)**~~ **State agency acquisitions**

~~State agencies shall make open market acquisitions not exceeding Two Thousand Five Hundred Dollars ($2,500.00) that are fair and reasonable. State agencies shall make acquisitions pursuant to 580:15-6-8.~~

(a) **Acquisition authority.** All acquisitions made by state agencies shall be in accordance with the Oklahoma Central Purchasing Act, 74 O.S., §85.1 et. seq., other applicable statutory provisions, this Chapter and the agency's approved internal purchasing procedures.

(b) **Acquisitions under $2,500.00.** State agencies shall make open market acquisitions not exceeding Two Thousand Five Hundred Dollars ($2500.00) that are fair and reasonable.

(c) **Acquisitions over $2,500.00 and under $10,000.00.** State agencies that have an internal CPO or a designated CPO through an interagency agreement and approved internal purchasing procedures pursuant to the requirements of 580:15-6-2 and 580:15-6-3 shall make acquisitions not exceeding Ten Thousand Dollars ($10,000.00) pursuant to this subsection. All awards shall be based on lowest and best or best value criteria. An acquisition for professional or nonprofessional services must include statutory language required by the Oklahoma Central Purchasing Act as a term of the requisition or contract and must be signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act.

(1) **Solicitations.** The state agency shall prepare and document the state agency's specifications for an acquisition. The state agency shall provide the complete specifications, terms and conditions for the acquisition to all notified suppliers.

(2) **Supplier selection.** The state agency shall solicit a price quote from a minimum of three suppliers, which may be from the registered supplier list in the appropriate commodity classification compiled by the Purchasing Division and made available to state agencies. Selection of suppliers shall be rotated. Suppliers that have been suspended or debarred by the State Purchasing Director, the Oklahoma Tax Commission or the Federal government shall not be solicited.

(3) **Pricing.** State agencies shall solicit prices and delivery dates by mail, telephone, facsimile or by means of electronic commerce. The state agency shall secure the suppliers' pricing and delivery dates in writing or document price quotation and delivery dates.

(4) **Evaluation.** The state agency shall make a written evaluation of criteria considered in selection of the supplier for the acquisition. The written evaluation shall be placed in the acquisition file.

(5) **Contracts.** If the state agency and the supplier execute a contract for the acquisition, the supplier shall provide an affidavit pursuant to 74 O.S., Section 85.23 (DCS/Purchasing Form 003). The affidavit shall have the original signature of an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photocopy of an original signature is not acceptable.

(A) **Sales Tax Permit Verification.** Prior to the award of a contract, the state agency must verify that the supplier has obtained a sales tax permit in accordance with the laws of Oklahoma.

(B) **Verification and documentation.** Sales tax verification may be confirmed through the link provided on the Department of Central Services' website or by calling the Oklahoma Tax Commission for assistance. Verification of the sales tax permit must be documented in the acquisition file.

(C) **Exceptions.** Sales tax permit verification does not apply to acquisitions for services only.

(6) **Delivery documentation.** The state agency shall receive a delivery document from the supplier stating, at a minimum, the date of the delivery, the name and address of the supplier, and a description of the acquisition. The state agency shall note the delivery date and person receiving the acquisition on the delivery document.

(7) **Supplier payment.** The state agency shall pay the supplier following receipt, inspection, and acceptance of the acquisition by the state agency and upon receipt of a proper invoice from the supplier.

(d) **Acquisitions over $10,000.00 and under $25,000.00.** State agencies that have an internal CPO or a designated CPO through an interagency agreement and approved internal purchasing procedures pursuant to the requirements of 580:15-6-2 and 580:15-6 shall make acquisitions exceeding $10,000.00 but not exceeding $25,000.00 in accordance with this subsection. All awards shall be based on lowest and best or best value criteria. An acquisition for professional or nonprofessional services must include statutory language required by the Oklahoma Central Purchasing Act as a term of the requisition or contract and must be signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the statute.

(1) **Solicitations.** The state agency shall prepare and document the state agency's specifications for an acquisition. The state agency shall provide the complete specifications, terms and conditions for the acquisition to all notified suppliers. Whenever the state agency issues a solicitation for acquisition by invitation to bid or request for proposal, the solicitation shall also include:

(A) evaluation criteria for the acquisition; and,

(B) a non-collusion affidavit form pursuant to 74 O.S., Section 85.22 and the provisions of (d)(4) of this Section.

(2) **Supplier selection.** The state agency shall solicit a minimum of ten (10) suppliers in the appropriate commodity classification from the registered suppliers list compiled by the Purchasing Division and available to state agencies along with any other suppliers identified by the state agency. Selection of suppliers shall be rotated. Suppliers that have been suspended or debarred by the State Purchasing Director, the Oklahoma Tax Commission or the Federal government shall not be solicited.

(3) **Pricing.** State agencies shall solicit prices and delivery dates by mail, telephone, facsimile or by means of electronic commerce. The suppliers shall provide pricing and delivery dates in writing.

(4) **Non-Collusion Affidavit.** The state agency shall provide suppliers a non-collusion affidavit form pursuant to 74 O.S., Section 85.22 (DCS/Purchasing Form 004) with any solicitation that is competitively bid. A supplier shall submit the non-collusion affidavit with their response to the solicitation. The non-collusion affidavit shall have the original signature of an authorized person, signed in ink, and notarized with full knowledge and acceptance of

all its provisions. A facsimile or photocopy of an original signature is not acceptable. If a supplier submits a bid by facsimile or by means of electronic commerce, the supplier shall submit the non-collusion affidavit with the original signature prior to the closing date the state agency specifies.

(5) **Evaluation.** The state agency shall make a written evaluation of criteria considered in selection of the supplier for the acquisition. The written evaluation shall be placed in the acquisition file. When a selection has been made, the state agency shall notify the supplier of the award.

(6) **Contracts.** If the state agency and the supplier execute a contract for the acquisition, the supplier shall provide an affidavit pursuant to 74 O.S., Section 85.23 (DCS/Purchasing Form 003). The affidavit shall have the original signature of an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photocopy of an original signature is not acceptable.

(A) **Sales Tax Permit Verification.** Prior to the award of a contract, the state agency must verify that the supplier has obtained a sales tax permit in accordance with the laws of Oklahoma.

(B) **Verification and documentation.** Sales tax verification may be confirmed through the link provided on the Department of Central Services' website or by calling the Oklahoma Tax Commission for assistance. Verification of the sales tax permit must be documented in the acquisition file.

(C) **Exceptions.** Sales tax permit verification does not apply to acquisitions for services only.

(7) **Delivery documentation.** The state agency shall receive a delivery document from the supplier stating, at a minimum, the date of the delivery, the name and address of the supplier, and a description of the acquisition. The state agency shall note the delivery date and person receiving the acquisition on the delivery document.

(8) **Supplier payment.** The state agency shall pay the supplier following receipt, inspection, and acceptance of the acquisition by the state agency and upon receipt of a proper invoice from the supplier.

(e) **Additional information:**

(1) **Split purchases.** State agencies shall not make split purchases for the purpose of evading their approved dollar threshold for competitive bids. Conviction for making an acquisition by split purchase is a felony pursuant to the Oklahoma Central Purchasing Act.

(2) **Change orders.** Contracts including component or phased deliveries may be increased by an amount that does not exceed ten percent (10%) of the total acquisition purchase price. In determining the ten percent (10%) dollar amount, the cumulative value of all change orders shall be compared to the original total acquisition price. All other contracts may be increased only if the change order does not exceed the scope of the original solicitation.

(A) **Acquisitions by a state agency.** If a change order would increase the total contract dollar amount above the dollar amount requiring the state agency to submit a requisition to the State Purchasing Director, the state agency shall seek approval of the State Purchasing Director prior to issuing the change order.

(B) **Acquisitions by the Purchasing Division.** If a requested change order exceeds ten percent (10%) in a contract that includes component or phased deliveries or exceeds the scope of the original solicitation, the State Purchasing Director may deny the requested change order and notify the state agency. The State Purchasing Director may deny a requested change order which exceeds the scope of the original solicitation.

(3) **Fixed rates.** The Department may approve service acquisitions as qualifying for a fixed rate pursuant to the provisions of Oklahoma Central Purchasing Act.

(4) **Acquisitions from another governmental agency.** A state agency may contract with a political division or subdivision, agency of the United States or another state agency pursuant to 74 O.S., Section 581 or Sections 1001 through 1008. Acquisitions shall not be made for the purpose of evading competitive bidding requirements, provisions of the Oklahoma Central Purchasing Act, rules of the Purchasing Division or provisions related to the State Use Committee.

(5) **Recycled materials.** State agencies shall procure products or materials with recycled content as stated in the Oklahoma State Recycling and Recycled Material Procurement Act, when such products or materials are available and practical. Upon request, the State Purchasing Director shall supply information regarding acquisitions that contain recycled materials to a state agency.

(6) **Trade-ins.** State agencies may trade in items when they make an acquisition of a like item with prior written approval of the State Purchasing Director. The state agency shall determine fair market value for the trade-in item and receive that amount or more as credit on the purchase price of the acquisition. The state agency may seek advice from the State Purchasing Director to determine fair market value of the trade-in.

(7) **OneNet acquisitions.** State agencies may make acquisitions through OneNet pursuant to provisions of the Oklahoma Central Purchasing Act.

(8) **Authorized signature.** State agencies shall provide the State Purchasing Director with a current original Authorized Signature Form, (DCS/Purchasing Form 001). The form shall be dated and identify the name, title, and signature of those individuals designated by the appointing authority to sign and approve requisitions, purchase orders, sole source affidavits, change order requests, and surplus property transactions. The State Agency shall submit an updated form to the State Purchasing Director within 30 days of any change in the authorized signatures.

580:15-6-7. State agency open market acquisitions exceeding two thousand five hundred dollars ($2,500) and not exceeding ten thousand dollars ($10,000.00) [REVOKED]

~~State agencies that meet requirements of Sections 580:15-6-2 and 580:15-6-3 shall make open market acquisitions exceeding Two Thousand Five Hundred Dollars ($2,500.00) but not exceeding Ten Thousand Dollars ($10,000.00). State agencies shall make open market acquisitions pursuant to 580:15-6-8.~~

580:15-6-8. State agency open market acquisitions not exceeding ten thousand dollars ($10,000.00) [REVOKED]

~~State agencies that do not have a CPO and approved internal purchasing procedures pursuant to the requirements of 580:15-6-2 and 580:15-6-3 shall make open market acquisitions not exceeding Two Thousand Five Hundred Dollars ($2,500.00) pursuant to this section. State agencies that do have a CPO and approved internal purchasing procedures shall make open market acquisitions not exceeding Ten Thousand Dollars ($10,000.00) pursuant to this section.~~

~~(1) **Supplier selection.** The State Purchasing Director shall make the Division registered supplier list available to state agencies. A state agency may select suppliers from the registered supplier list. State agencies shall not select a supplier that is suspended or debarred by the State Purchasing Director or the Oklahoma Tax Commission or a supplier that is suspended or debarred by the federal government if federal funds are being used in the acquisition.~~

~~(2) **State agency terms and conditions.** The state agency shall document the state agency's specifications. The state agency shall notify suppliers of the state agency's specifications for the acquisition. The state agency shall give suppliers written specifications upon the suppliers' request.~~

~~(3) **Price quotation.** The state agency shall solicit price quotations and delivery dates by mail, telephone, facsimile or by means of electronic commerce from a minimum of two suppliers. The state agency shall secure the suppliers' price quotation in writing or document the suppliers' price quotation and delivery dates.~~

~~(4) **Services requisition requirements.** If the state agency requisitions professional or nonprofessional services, the state agency shall submit a requisition or contract signed by the state agency's chief administrative officer or the chief administrative officer of the requisitioning unit certifying to each requirement of 74 O.S., Section 85.4(E)(1).~~

~~(5) **Contracts.** If the state agency and the supplier execute a contract for the acquisition, the supplier shall provide a noncollusion affidavit pursuant to 74 O.S., Section 85.23. The noncollusion affidavit shall have the original signature of an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photocopy of an original signature will not be accepted.~~

~~(A) Prior to awarding a contract exceeding Two Thousand Five Hundred Dollars ($2,500.00), the awarding agency must verify that the vendor has obtained a sales tax permit in accordance with the laws of Oklahoma.~~

~~(B) **Verification.** Sales tax permit verification may be confirmed through the link provided on the Department of Central Services' website. If a vendor cannot be identified by searching this database, agencies should call the Oklahoma Tax Commission for assistance.~~

~~(C) **Documentation.** Verification of the sales tax permit must be documented in the acquisition file.~~

~~(D) **Exceptions.** This verification requirement does not apply to acquisitions for services only or to acquisitions made with the state purchase card.~~

~~(6) **Delivery document from supplier.** When the state agency takes possession of the acquisition, the state agency shall obtain a delivery document from the supplier stating, at a minimum, the date of the acquisition, the name and address of the supplier, and a description of the acquisition. The state agency shall note the delivery date and person receiving the acquisition on the delivery document.~~

~~(7) **Supplier payment.** The state agency shall pay the supplier following receipt, inspection and acceptance of the acquisition by the state agency.~~

580:15-6-9. State agency acquisitions exceeding ten thousand dollars ($10,000.00) and not exceeding twenty-five thousand dollars ($25,000.00) [REVOKED]

~~State agencies with a CPO and approved internal purchasing procedures pursuant to the requirements of Sections 580:15-6-2 and 580:15-6-3 shall make acquisitions exceeding Ten Thousand Dollars ($10,000.00) but not exceeding Twenty Five Thousand Dollars ($25,000.00) pursuant to this section.~~

~~(1) **Supplier selection.** The State Purchasing Director shall make the Division registered supplier list available to state agencies. The state agency shall select a minimum of three (3) suppliers from the commodity classification for bid solicitation. The state agency may select suppliers from the registered supplier list. State agencies shall rotate use of suppliers. State agencies shall not select a supplier that is suspended or debarred by the State Purchasing Director or the Oklahoma Tax Commission or a supplier that is suspended or debarred by the federal government if federal funds are being used in the acquisition.~~

~~(2) **Solicitations.** The state agency shall prepare specifications for a solicitation. The state agency shall solicit bids from a minimum of three (3) suppliers using mail, telephone, facsimile or by means of electronic commerce. The state agency shall notify the suppliers of the state agency's specifications for the acquisition.~~

~~(3) **Noncollusion affidavit.** The state agency shall provide suppliers a noncollusion affidavit form pursuant to 74 O.S., Section 85.22. Suppliers shall submit the forms as~~

~~stated in the solicitation. The noncollusion affidavit shall have an original signature of an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photocopy of an original signature will not be accepted.~~

~~(4) **Supplier bid submission.** Suppliers shall submit bids to the state agency in person, by mail, by facsimile or by means of electronic commerce. If a supplier submits a bid, the supplier shall submit an original notarized noncollusion affidavit pursuant to 74 O.S., Section 85.22. If a supplier submits a bid by facsimile or by means of electronic commerce, the supplier shall submit the noncollusion affidavit with the original signature prior to the closing date the state agency specifies. The noncollusion affidavit shall have an original signature of an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photocopy of an original signature will not be accepted.~~

~~(5) **Bid evaluation.** The state agency shall make a written bid evaluation. The state agency shall select the lowest and best bid or bid providing the best value to the state agency.~~

~~(6) **Services requisition requirements.** If the state agency requisitions professional or nonprofessional services, the state agency shall submit a requisition or contract signed by the state agency's chief administrative officer or the chief administrative officer of the requisitioning unit certifying to each requirement of 74 O.S., Section 85.4(E)(1).~~

~~(7) **Award to a supplier.** When the state agency selects a bid, the state agency shall notify the supplier of the award.~~

~~(A) Prior to awarding a contract exceeding Two Thousand Five Hundred Dollars ($2,500.00), the awarding agency must verify that the vendor has obtained a sales tax permit in accordance with the laws of Oklahoma.~~

~~(B) **Verification.** Sales tax permit verification may be confirmed through the link provided on the Department of Central Services' website. If a vendor cannot be identified by searching this database, agencies should call the Oklahoma Tax Commission for assistance.~~

~~(C) **Documentation.** Verification of the sales tax permit must be documented in the acquisition file.~~

~~(D) **Exceptions.** This verification requirement does not apply to acquisitions for services only or to acquisitions made with the state purchase card.~~

~~(8) **Contract noncollusion affidavit.** If the state agency and the supplier execute a contract for the acquisition, the supplier shall submit a noncollusion affidavit pursuant to 74 O.S., Section 85.23. The noncollusion affidavit shall have an original signature of an authorized person, signed in ink, and notarized with full knowledge and acceptance of all its provisions. A facsimile or photocopy of an original signature will not be accepted.~~

~~(9) **Delivery document from supplier.** The state agency shall receive a delivery document from the supplier stating, at a minimum, the date of the acquisition, the name and address of the supplier, and a description of the acquisition. The state agency shall note the delivery date and person receiving the acquisition on the delivery document.~~

~~(10) **Supplier payment.** The state agency shall pay the supplier following receipt, inspection and acceptance by the state agency of the acquisition.~~

580:15-6-10. State agency acquisitions the Purchasing Division processes

State agencies that do not have a CPO ~~and~~ and/or approved internal purchasing procedures pursuant to the requirements of 580:15-6-2 and 580:15-6-3 shall submit requisitions for acquisitions exceeding Two Thousand Five Hundred Dollars ($2,500.00) ~~the state agency's acquisition authority dollar amount~~ to the State Purchasing Director. State agencies whose acquisition authority has been reduced by the Director shall submit all acquisitions exceeding the established authority dollar amount to the State Purchasing Director. All acquisitions exceeding twenty-five thousand dollars ($25,000.00) shall be submitted to the State Purchasing Director.

(1) **Forms.** State agencies shall use forms for requisitions provided or approved by the State Purchasing Director.

(2) **Services requisition requirements.** If the state agency requisitions professional or nonprofessional services, the state agency shall submit a requisition or contract signed by the state agency's chief administrative officer or the chief administrative officer of the requisitioning unit certifying to each requirement of ~~74 O.S., Section 85.4(E)(1)~~ of the Central Purchasing Act.

(3) **Additional requisition information.** The State Purchasing Director may require a state agency to submit additional information with a requisition.

(4) **Requisition acceptance or rejection.** The State Purchasing Director shall accept or reject a state agency's requisition. The State Purchasing Director shall notify the state agency if the State Purchasing Director rejects a requisition.

(5) **Competitive bid evaluation.** The State Purchasing Director ~~and the state agency~~ shall evaluate bids ~~for acquisition of professional services~~ and may request assistance of the state agency.

(6) **Competitive bid award.** The State Purchasing Director shall award a contract, as the solicitation specifies, to the responsible bidder that provides the lowest and best, or best value bid.

(7) **State agency notification.** The State Purchasing Director shall notify the state agency of the successful bidder by purchase order following the award of contract.

580:15-6-11. Additional purchasing information [REVOKED]

~~(a) **Split purchases.** A state agency shall not make split purchases for the purpose of evading the state agency's dollar amount threshold for competitive bids. Conviction for making an acquisition by split purchase is a felony pursuant to 74 O.S., Section 85.7.~~

~~(b) **Acquisitions by component.** If a state agency makes an acquisition that the state agency receives in components, the acquisition purchase price is the total acquisition purchase price for all components.~~

~~(c) **Change orders.** Contracts including component or phased deliveries may be increased by an amount that does not exceed ten percent (10%) of the total acquisition purchase price. In determining the ten percent (10%) dollar amount, the cumulative value of all change orders shall be compared to the original total acquisition price. All other contracts may be increased only if the change order does not exceed the scope of the original solicitation.~~

~~(1) **Acquisitions by a state agency.** If a change order would increase the total contract dollar amount above the dollar amount requiring the state agency to submit a requisition to the State Purchasing Director, the state agency shall seek approval of the State Purchasing Director prior to issuing the change order.~~

~~(2) **Acquisitions by the Purchasing Division.** If a requested change order exceeds ten percent (10%) in a contract that includes component or phased deliveries or exceeds the scope of the original solicitation, the State Purchasing Director may deny the requested change order and notify the state agency. The State Purchasing Director may deny a requested change order which exceeds the scope of the original solicitation.~~

~~(d) **Fixed rates.** The Department may approve service acquisitions as qualifying for a fixed rate pursuant to the provisions of 74 O.S., Section 85.7(11).~~

~~(e) **State agency acquisitions from another state agency.** A state agency may contract with another state agency pursuant to 74 O.S., Section 581. A state agency shall not make an acquisition with or through another state agency for the purpose of evading competitive bidding provisions of the Oklahoma Central Purchasing Act, rules of the Purchasing Division or State Use Committee.~~

~~(f) **State agency acquisitions from another governmental agency.** A state agency may contract with a political subdivision, agency of the United States or a political division pursuant to 74 O.S., Sections 1001 through 1008. A state agency shall not make an acquisition with or through a political division, political subdivision, or agency of the United States for the purpose of evading competitive bidding requirements, provisions of the Oklahoma Central Purchasing Act, rules of the Purchasing Division or State Use Committee.~~

~~(g) **Recycled materials.** State agencies shall procure acquisitions with recycled or recyclable materials whenever feasible. Upon request, the State Purchasing Director shall supply information regarding acquisitions that contain recycled materials to a state agency.~~

~~(h) **Trade-ins.** State agencies may use state agency items as trade-in items when the state agency makes an acquisition with written approval of the State Purchasing Director. The state agency shall determine fair market value for the trade-in item and receive that amount or more as credit on the purchase price of the acquisition. The state agency may seek advice from the State Purchasing Director to determine fair market value of the trade-in.~~

~~(i) **State agency acquisitions through OneNet.** State agencies may make acquisitions through OneNet pursuant to provisions of the Oklahoma Central Purchasing Act.~~

~~(j) **Signature authorization.** State agencies shall provide the State Purchasing Director with a current original Authorized Signature Form. The form shall be dated and identify the name, title, and signature of those individuals designated by the appointing authority to sign and approve requisitions, sole source affidavits, change order requests, and surplus property transactions. The State Agency shall submit revisions of the form to the State Purchasing Director within 30 days of any change in the authorized signatures.~~

580:15-6-13. Sole source and sole brand acquisitions [REVOKED]

~~State agencies with a CPO and approved internal purchasing procedures that meet the requirements of Sections 580:15-6-2 and 580:15-6-3 may requisition a sole source or sole brand acquisition within the agency's purchasing authority limit pursuant to the provisions of the Oklahoma Central Purchasing Act.~~

580:15-6-14. State travel

The ~~state~~ State Travel Office is within the Purchasing Division. The Travel Office awards ~~nonencumbered~~ contracts to ~~travel agencies~~ for travel and travel services. State agencies shall make travel arrangements through contract travel agencies for commercial air travel for state ~~officials~~ employees in the course of official duties or for persons traveling at state expense.

(1) **State agency travel coordinator.** The State Purchasing Director encourages state agencies to appoint one or more travel coordinators. The coordinators shall book air travel for the state agency except in case of an emergency. If the state agency appoints a travel coordinator, the state agency shall notify the Travel Office and provide the coordinator's name, mailing address, telephone number, and facsimile number.

(2) **State travel zones.** The Travel Office shall divide the state into geographic zones. ~~Travel Office contracts with travel agencies shall indicate the zone the travel agency services.~~ The zone served by the travel agency shall be indicated in the statewide contract.

(3) **Airline ticket purchases.** State agencies shall purchase airline tickets from contract travel agencies within the zone of the state agency location.

(4) **Airline ticket purchases exceptions.** The state agency shall determine when an exception to airline ticket

purchase shall apply. The state agency shall retain documents the state agency uses in exception determination pursuant to 580:15-6-4.

(A) If the state agency can acquire air travel at less cost than the contract travel agency ~~for the travel zone of the state agency location~~, the state agency may use this exception.

(B) If air travel ~~by the contract travel agency for the travel zone of the state agency location~~ originates outside the state and it is impractical for the state agency, the state agency may use this exception.

(C) If air travel is due to an emergency and time does not permit use of the contract travel agency ~~for the travel zone of the state agency location~~, the state agency may use this exception.

(D) If air travel is part of a package arrangement by an organization that schedules a meeting or conference, the state agency may use this exception.

(5) **State agency credit card for airline travel.** The State Purchasing Director encourages state agencies to acquire from the Travel Office and use a state travel credit card issued in the name of the state agency to book and pay for airline travel. The Travel Office shall provide a state agency that acquires a state travel credit card provisions for credit card use.

580:15-6-15. ~~State Purchasing Director audits~~ Audits of state agencies

The State Purchasing Director shall review state agency acquisitions to ensure state agency compliance with provisions of the Oklahoma Central Purchasing Act, promulgated rules of the ~~Purchasing Division promulgates~~ Department, provisions of 74 O.S., Sections 3001 through 3010, ~~State Use Committee,~~ other laws of the State of Oklahoma, and the state agency's approved internal purchasing procedures. If the State Purchasing Director finds state agency procurement practice deficiencies, the State Purchasing Director shall report the findings to the Director. ~~The Director shall determine corrective actions for the state agency.~~

(1) **~~State Purchasing Director~~ Audit notification.** The ~~State Purchasing Director~~ Department shall notify the state agency ~~that the Division audit team shall audit state agency acquisitions~~ of all scheduled audits. ~~The notice shall advise the state agency of the audit team arrival date, the number of audit team members, the expected time period the audit team may be at the state agency and the time period for acquisitions the audit team shall review.~~

(2) **State agency responsibilities.**

(A) The state agency shall provide work space for the audit team.

(B) The state agency shall provide records for acquisitions ~~during the time period the State Purchasing Director specifies~~ for the audit period.

(C) The state agency shall make the state agency's CPO available to assist the audit team.

(3) **~~Purchasing Division audit~~ Audit following ~~Director~~ reduction of state agency purchasing authority.** If the Director reduces the purchasing authority of a state agency, ~~the State Purchasing Director shall periodically audit the state agency's acquisitions~~ the Audit Team shall periodically audit the state agency's acquisitions in order to review the agency's efforts to correct audit findings of noncompliance.

580:15-6-21. ~~Procurement of information technology~~ Information Technology (IT)

(a) **Procurement.**

(1) To ensure accessibility of information technology for individuals with disabilities and compliance with Title 62, Section 41.5t, procurement of information technology shall be subject to the Oklahoma Information Technology Accessibility Standards prescribed by the Office of State Finance and maintained by the OSF Information Services Division. These standards apply to all information technology purchased after the effective date of these rules and standards, providing the solicitation process was not initiated prior to the effective date.

(2 ~~b~~) When developing and procuring information technology products (either directly or through administration of contracts or grants) a product, each state agency, as defined in Title 62, Section 41.5t.1., shall ensure that the products comply with ~~these~~ all applicable standards, unless an undue burden would be imposed on the agency.

(3 ~~c~~) When procuring a ~~commercial, off-the-shelf~~ product, the accessibility determination will be conducted as part of the ~~objective~~ evaluation ~~and will be subservient to the general, technical and functional requirements of the procurement specifications~~. Accessibility will be considered among the general, technical and functional requirements of the procurement specifications. At a minimum, it will be done ~~though~~ through review of vendor provided information submitted in the form of ~~the~~ a Voluntary Product Accessibility Template (VPAT) or comparable document with judgments made regarding degree of conformance to the access standards. The relative accessibility weighing may be adjusted for due cause based on the specific procurement. Agencies cannot claim a product, as a whole is not commercially available because no product in the marketplace meets all the standards.

(b) **Contract clauses.**

(1) All solicitations and contracts for information technology shall include a clause, prescribed by the Director pursuant to Title 74, Section 85.7d, ensuring compliance with applicable IT Accessibility Standards, which are in effect on the date of issuance of said solicitation or contract.

(2) The information technology clause(s) and IT Accessibility Standards shall be made available at the principle office of the DCS Central Purchasing Division and published on the DCS website.

(3) A supplier shall provide a written certification, signed by an authorized officer of the supplier, that the product or service complies with applicable IT standards required by such contracts or solicitations prior to the expenditure of state funds. An agency may also utilize a VPAT published on a supplier's primary website. A

VPAT obtained from a supplier website shall be good for a one-year period.

(c) **Exceptions.**

(1) If a state agency determines that compliance with any provisions of the IT Accessibility Standards imposes an undue burden or qualifies as an exception pursuant to this section, the agency shall submit a written explanation of why, and to what extent, such undue burden or exception exists, with its requisition.

(A) The explanation shall be submitted on a form prescribed by the Director and signed by the chief administrative officer of the agency or an employee of the agency to which responsibility for Section 508 compliance has been delegated..

(B) The explanation shall be retained with the requisition file.

(2) Unless an exception applies, acquisitions of IT supplies and services must meet the applicable accessibility standards. Exceptions to the Standards include:

(A) IT operated by state departments or agencies, the function, operation or use of which involves intelligence activities, crypto logic activities related to public safety, command and control of law enforcement, equipment that is an integral part of a weapon or weapons system or systems which are critical to the direct fulfillment of public safety or intelligence missions. Systems which are critical to the direct fulfillment of public safety or intelligence missions do not include a system that is to be used for routine administrative and business applications (including payroll, finance, logistics and personnel management applications);

(B) IT acquired by a contractor or grantee incidental to a contract or grant, provided the technology does not become State property upon the completion of the contract;

(C) IT located in spaces frequented only by service personnel for maintenance, repair or occasional monitoring of equipment;

(D) IT requiring a fundamental alteration in the nature of a product or its components;

(E) Except as required to comply with the Standards, state departments and agencies are not required to install specific accessibility-related software or attach an assistive technology device to information technology products unless required by other applicable State or Federal laws;

(F) When state agencies provide public access to information or data through information technology, agencies are not required to make products owned by the agency available for access and use by individuals with disabilities at a location other than where the information technology is provided to the public, or to purchase products for access and use by individuals with disabilities at a location other than ~~that~~ where the information technology is provided to the public;

(G) IT that would impose an undue burden on the agency.

(d) **Documentation of exceptions.** If an agency determines that compliance with any provision of the IT Accessibility Standards meets the criteria of a general exception, the agency shall maintain documentation in the agency acquisition file to support the procurement, which explains why, and to what extent, compliance with each such provision meets an exception or creates an undue burden on the agency. Agencies are encouraged but not required to maintain documentation for commercial off the shelf acquisitions of $2,500.00 or less unless the purchase is part of an existing contract or affects a larger EIT system where accessibility is critical.

(e) **Alternative means of access.** When compliance with these standards imposes an undue burden, agencies shall provide individuals with disabilities the information and data involved by an alternative means of access that allows the an individual to use the information and data in accordance with other applicable State and Federal laws such as Title I and Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

580:15-6-22. Information technology contract clauses [REVOKED]

~~(a) All solicitations and contracts for information technology shall include a clause, prescribed by the Director pursuant to Title 74, Section 85.7d, ensuring compliance with IT Accessibility Standards, which are in effect on the date of issuance of said solicitation or contract.~~

~~(b) The information technology clause(s) and IT Accessbility Standards shall be made available at the principle office of the DCS Central Purchasing Division and published on the DCS website.~~

~~(c) A supplier shall provide a written certification, signed by an authorized officer of the supplier, that the product or service complies with applicable procurement clauses contained in such contracts or solicitations prior to the expenditure of state funds.~~

580:15-6-23. Exception to compliance with IT Accessibility Standards [REVOKED]

~~(a) If a state agency determines that compliance with any provisions of the IT Accessibility Standards imposes an undue burden or is an exception pursuant to OAC 580:15-6-24, the agency shall submit a written explanation of why, and to what extent, such undue burden or exception exists, with its requisition.~~

~~(1) The explanation shall be submitted on a form prescribed by the Director and signed by the chief administrative officer of the agency.~~

~~(2) The explanation shall be retained with the requisition file.~~

~~(b) The Appointing Authority shall maintain summary and statistical information of procurement exceptions and undue burden. A report of such information shall be submitted on October 1st each year to DCS and to the OSF Information Services Division with the annual State Agency Long-Range Electronic Data Processing Plan.~~

580:15-6-24. General exceptions [REVOKED]

~~(a) Unless an exception applies, acquisitions of IT supplies and services must meet the applicable accessibility standards. Exceptions to the Standards include:~~

~~(1) IT operated by state departments or agencies, the function, operation or use of which involves intelligence activities, crypto-logic activities related to public safety, command and control of law enforcement, equipment that is an integral part of a weapon or weapons system or systems which are critical to the direct fulfillment of public safety or intelligence missions. Systems which are critical to the direct fulfillment of public safety or intelligence missions do not include a system that is to be used for routine administrative and business applications (including payroll, finance, logistics and personnel management applications);~~

~~(2) IT acquired by a contractor or grantee incidental to a contract or grant, provided the technology does not become State property upon the completion of the contract;~~

~~(3) IT located in spaces frequented only by service personnel for maintenance, repair or occasional monitoring of equipment;~~

~~(4) IT requiring a fundamental alteration in the nature of a product or its components;~~

~~(5) Except as required to comply with the Standards, state departments and agencies are not required to install specific accessibility related software or attach an assistive technology device to information technology products unless required by other applicable State or Federal laws;~~

~~(6) When state agencies provide public access to information or data through information technology, agencies are not required to make products owned by the agency available for access and use by individuals with disabilities at a location other than where the information technology is provided to the public, or to purchase products for access and use by individuals with disabilities at a location other than that where the information technology is provided to the public;~~

~~(7) IT that would impose an undue burden on the agency.~~

~~(b) If an agency determines that compliance with any provision of the IT Accessibility Standards meets the criteria of a general exception, the agency shall maintain documentation in the agency acquisition file to support the procurement, which explains why, and to what extent, compliance with each such provision meets an exception or creates an undue burden on the agency.~~

~~(c) When compliance with these standards imposes an undue burden, agencies shall provide individuals with disabilities the information and data involved by an alternative means of access that allows the an individual to use the information and data in accordance with other applicable State and Federal laws such as Title I and Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.~~

[OAR Docket #07-1225; filed 5-25-07]

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

[OAR Docket #07-1226]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Construction Contracting
580:20-1-1 [AMENDED]
580:20-1-2 [AMENDED]
580:20-1-3 [AMENDED]
580:20-1-6 [AMENDED]
580:20-1-8.1 [AMENDED]
580:20-1-8.2 [AMENDED]
580:20-1-10 [AMENDED]
580:20-1-10.1 [NEW]
580:20-1-13 [AMENDED]
580:20-1-14 [AMENDED]
580:20-1-19 [AMENDED]
580:20-1-21 [REVOKED]
580:20-1-22 [AMENDED]
580:20-1-23 [AMENDED]
580:20-1-24 [NEW]
Subchapter 3. Selection of Architects, Engineers, and Other Design Consultants [AMENDED]
580:20-3-1 [AMENDED]
580:20-3-2 [AMENDED]
580:20-3-3 [AMENDED]
580:20-3-4 [AMENDED]
580:20-3-5 [AMENDED]
580:20-3-6 [AMENDED]
580:20-3-7 [AMENDED]
580:20-3-8 [NEW]
Subchapter 5. Minimum Codes for State Construction [AMENDED]
580:20-5-2 [AMENDED]
580:20-5-3 [AMENDED]
580:20-5-4 [AMENDED]
580:20-5-6 [AMENDED]
Subchapter 7. Procedures for Agencies to Perform Responsibilities Exercised by the Construction and Properties Division [AMENDED]
580:20-7-2 [AMENDED]
580:20-7-7 [NEW]
Subchapter 9. Full-time Employment by Agencies for Minor Construction Projects [AMENDED]
580:20-9-2 [AMENDED]
Subchapter 15. Energy Services Contracts [AMENDED]
580:20-15-2 [AMENDED]
580:20-15-13 [NEW]
Subchapter 17. Construction Management Procedures and Requirements [AMENDED]
580:20-17-2 [AMENDED]
580:20-17-3 [AMENDED]
580:20-17-4 [AMENDED]
580:20-17-5 [AMENDED]
580:20-17-9 [AMENDED]
580:20-17-10 [NEW]
Subchapter 19. Design-Build Procedures and Requirements [AMENDED]
580:20-19-2 [AMENDED]
580:20-19-14 [NEW]
Subchapter 21. Selection of Construction Management and Design-Build Firms [AMENDED]
580:20-21-2 [AMENDED]
580:20-21-3 [AMENDED]
580:20-21-9 [NEW]
Subchapter 23. Fees for Services [AMENDED]
580:20-23-1 [AMENDED]
580:20-23-2 [AMENDED]
580:20-23-4 [NEW]
Subchapter 25. Pre-Construction Planning [NEW]
580:20-25-1 through 580:20-25-7 [NEW]

AUTHORITY:
Department of Central Services, 61 O.S., Section 209.
DATES:
Comment Period:
February 15, 2007 through March 19, 2007
Public Hearing:
March 19, 2007
Adoption:
March 22, 2007
Submitted to Governor:
March 29, 2007
Submitted to House:
March 29, 2007
Submitted to Senate:
March 29, 2007
Gubernatorial approval:
May 4, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 24, 2007
Final Adoption:
May 24, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
These rules establish information and guidelines to administer the mandates of Senate Bill No. 558, effective July 1, 2006 which amends Title 61 related to the "Public Building Construction and Planning Act" and the "Public Competitive Bidding Act of 1974." Revisions to rules provide clarification and update procedures of the Construction and Properties Division, including bid solicitations; bid modifications; prequalification of bidders; prequalification of bond companies; contractors' proof of workman's compensation insurance; change orders; registration of consultants; construction management; and, design build construction projects. The rules prescribe procedures and requirements for bid protests, consultant and contractor dispute appeals processes. The rules also clarify and prescribe fees to be collected by the Construction and Properties Division as authorized by 61 O.S., Section 208.1. New Subchapter 25 provides information and provisions for pre-construction planning to assist agencies as well as collect State construction data for the Division in compliance with 61 O.S., Section 204(A)(1). A new rule is added to each subchapter, which allows the Director of the Department of Central Services to waive any provision of a rule when it is in the best interest of the State. Revisions to existing rules clarify definitions of construction terms.
CONTACT PERSON:
Gerry Smedley, Rules Liaison, 2401 N. Lincoln Blvd., Suite 206, Oklahoma City, OK 73105; (405) 522-8519 or gerry_smedley@dcs.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. CONSTRUCTION CONTRACTING

580:20-1-1. Purpose

(a) The Construction and Properties Division, Department of Central Services is responsible for assisting and advising the using state agency, other departments and divisions of state government, in planning, programming, arranging and contracting for the services of professionals for the planning, design and construction of assigned projects and contracting for construction. The Division is also responsible for implementing the Public Competitive Bid Act, 61 O.S., Sections 101 through 138. ~~This document is~~ These rules are provided to assist concerned parties in the bidding of projects for construction, ~~or~~ renovation or maintenance of state facilities.

(b) The State of Oklahoma does not discriminate in its hiring practices and expects its contractors to abide by all Federal rules and regulations on non-discrimination. All bidders shall acknowledge in the bidding documents they are Equal Employment Opportunity employers.

(c) The State of Oklahoma adheres to a policy which provides a drug free workplace to all of its employees. All contractors working on a state facility shall comply with the policies of the state agency controlling that facility.

580:20-1-2. Definitions

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

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

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

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

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

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

"Consultant" means *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]

"Department" means the Department of Central Services.

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

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

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

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

580:20-1-3. Bid solicitations

The manner in which bids are solicited shall be determined by the estimated cost of the project. There are ~~two~~ three categories, projects over the amount established by statute in 61 O.S., Section 102(6), ~~and~~ projects under the statutory amount and minor maintenance or repair projects exempt from bidding pursuant to 61 O.S., Section 103.C.

(1) **Projects over statutory amount.** Projects over the statutory amount established in 61 O.S., Section 102(6) are advertised in a newspaper of general circulation and published in the county where the work, or a major part of it, is to be done. The notice is published in two consecutive weekly issues of the said newspaper with the first publication at least twenty (20) days prior to the day set for bid opening. Information is also provided to various bid assistance centers and to trade publications such as the Dodge Report and Southwest Construction News. The State does not control how the trade publications handle the publishing of the information. For state agencies subject to the Public Building Construction and Planning Act (61 O.S. Section 202-209), projects are advertised and awarded by the Division.

(2) **Projects under statutory amount.** Projects under the statutory amount established in 61 O.S., Section 102(6) are not usually advertised. The state agency shall develop a written, clearly defined scope of work and detailed requirements for the project. For state agencies subject to the Public Building Construction and Planning Act (61 O.S. Section 202-209), ~~The~~ the Construction and Properties Administrator shall assess the ability of a state agency to prepare a bid package and solicit~~, award and issue construction contracts for projects~~ for bids under the statutory amount. [61 O.S., Section 209(3)] The state agency may adopt written procedures developed by the Division or internal procedures approved by the Administrator. The written procedures for soliciting bids shall include:

(A) Direct mail or facsimile solicitations are made by the state agency to three or more contractors whose place of business is preferably located in the general vicinity of the proposed construction.

(B) The state agency shall use procedures, forms and contracts developed by the Division.

(3) **Minor Maintenance or Repair.** Small projects below the amount stipulated in 61 O.S., Section 103.C. may be awarded by the state agency to any qualified vendor. A written contract and proof of insurance is required prior to issuing the vendor a notice to proceed.

(~~3~~4) **Emergency Projects.** When an emergency situation is declared to exist by the chief administrative officer or governing body of a state agency, the Division may award a contract without competitive bids to correct the emergency condition.

580:20-1-6. Modifications/withdrawal of bids

(a) **Withdrawal of bids.** Bids may be modified or withdrawn up to the time set for bid opening. Modification notices or withdrawal instructions may be sent by registered mail or delivered in person. Appropriate identification reflecting the authority of the bearer to modify or withdraw a bid must be presented to the Administrator or his authorized representative. A bid to be withdrawn shall not be opened and shall be returned at the conclusion of the bid opening. ~~The modification must state the amount of change only. Any indication of the bid amount shall disqualify the bidder.~~

(b) **Bid modifications.** A sealed bid modification shall be submitted by registered mail or delivered in person. The modification must state the amount of change, either additive or deductive, from the previously submitted sealed bid and shall not reveal the actual, new, modified bid amount. Upon acceptance of a bid modification, the Administrator or his authorized representative shall open the original bid, then open the sealed modification, add or subtract to compute the new bid amount, and publicly announce the resultant legal bid. The same bid modification procedures shall be used to submit, compute and announce any other modified bid items such as days to complete the work or unit prices. Any submission of a bid modification by fax or otherwise not in a sealed condition shall be considered an exposed bid and shall disqualify the bidder.

580:20-1-8.1. ~~Pre-qualification~~ Prequalification of bidders

(a) **Scope.** The Division may require prospective bidders, general contractors, subcontractors and material suppliers to prequalify prior to submitting bids on a public construction contract to determine the responsibility of bidders.

(b) **Notice.** The solicitation notice for specific projects described in 580-20-1-4 (a), shall contain the requirements for prequalification, if any, and the availability of ~~approved~~ forms to be submitted to the Division.

(c) **Prequalification Form.** When indicated on the solicitation notice, ~~All~~ prospective bidders, general contractors, subcontractors and material suppliers must submit a prequalification form, prescribed by the Administrator, to the Division which ~~must~~ may include the following information:

(1) Company organization type;

(2) Type of work or classification of work;

(3) Organization information;

(4) Licensing and registration information;

(5) Experience on current projects;

(6) Experience on projects completed within last five years;

(7) Experience of key personnel;

(8) Specialized experience for specific building types, subsystems or materials;

(9) References from construction trades, bank and surety company;

(10) Current financial statement, which according to statute shall remain confidential;

(11) Any other business information that will enable the Division to evaluate the responsibility of prospective bidders.

(d) **Evaluation.** The Division shall evaluate the information contained in the prequalification form and designate the qualification status as:

(1) "Approved" for a firm that demonstrates verifiable experience and that has successfully completed contract work with the State; or,

(2) "Approved/Conditional" for a firm that demonstrates verifiable experience but does not have a record of contract work with the State; or

(3) "Unsatisfactory" for a firm that:

(A) Does not demonstrate verifiable experience;

(B) Does not demonstrate verifiable size and scope experience required for a specific project;

(C) Does not have a verifiable record of successfully completed contract work with the State;

(D) Has an unsatisfactory record of contract work for the State due to any of the following:

(i) Unsatisfactory performance evaluations on past projects;

(ii) Failure to complete a State construction contract;

(iii) Demonstrated history of noncompliance with plans and specifications;

(iv) Quality of past work does not meet minimum industry standards;

(v) Failure to complete work in the specified contract time;

(vi) Uncooperative and/or unprofessional work manner of the company owner(s) or key personnel;

(vii) History of assigning unsatisfactory personnel to projects;

(viii) Failure to coordinate and manage subcontracts; or

(ix) Failure to maintain and provide accurate documentation of project records.

(E) Financial information does not indicate financial ability to complete a State contract.

(4) "Incomplete Submittal" for submittals that:

(A) Are incomplete;

(B) Do not contain the information requested in the solicitation notice.

(e) **Required status prior to bid.** Bidders, general contractors, subcontractors and material suppliers shall have "Approved" or "Approved/Conditional" status prior to submitting a bid on a public construction contract when prequalification is required in the solicitation notice or if the Division requires prequalification on all public construction contracts.

(f) **Additional requirements.** The Division may request additional information from an existing prequalified company whenever a solicitation notice requires prequalification for specific experience for specific project types, subsystems or materials.

(g) ~~**Information update; due**~~ **Due date.** If prequalification is required, ~~Prequalification~~ prequalification forms shall be ~~updated annually and submitted to the Division on or before January 31st of each year for review and approval~~ due by the date stated on the solicitation notice. The Administrator may elect to accept prequalification forms annually according to a written public procedure in order to eliminate duplicate submission for each individual project.

580:20-1-8.2. Prequalification of insurance carriers, bonding companies and surety companies

(a) Pursuant to 61 O.S., Section 204A.(11), the Division shall prequalify as good and sufficient insurance carriers, bonding companies and surety companies using the following criteria:

(1) The insurance carrier, bonding company or surety company must be licensed to do business in the State of Oklahoma pursuant to 61 O.S., Section 134.

(2) The insurance carrier, bonding company or surety company must have prior experience with insuring or bonding construction projects within the State of Oklahoma.

(3) The insurance carrier, bonding company or surety company cannot have been deemed in default by the State of Oklahoma in connection with prior construction insurance or bonds on State construction projects.

(4) The insurance carrier, bonding company or surety company shall not have a prior history of committing the following unfair claims settlement practices:

(A) Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims or demands submitted in which liability has become reasonably clear.

(B) Compelling claimants or obligees, without just cause, to institute suits to recover amounts due under the insurance policy, insurance contract or bond by offering substantially less than the amounts ultimately recovered in suits brought by them or refusing to make an offer, when such claimants or obligees have made claims for amounts reasonably similar to the amounts ultimately recovered.

(C) Failing to fully disclose to claimants or obligees benefits, coverages, or other provisions of any insurance policy, insurance contract or bond, when such benefits, coverages or other provisions are pertinent to a claim.

(D) Knowingly misrepresenting to claimants or obligees pertinent facts, policy or bond provisions relating to the coverages at issue.

(E) Failing to adopt and implement reasonable standards for prompt investigations of claims or demands on bonds arising under its insurance policy, insurance contract or bonds.

(F) Except where there is a time limit specified in the policy or bond, making statements, written or otherwise, which require a claimant or obligee to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with unless the failure to comply with such time limit prejudices an insurer's or bonding company's rights.

(G) Requesting a claimant or obligee to sign a release that extends beyond the subject matter that gave rise to the claim or demand payment.

(H) Failing to promptly pay claims that have no reasonably apparent defect or impropriety.

(I) Failing to notify the insured or obligee in writing within 30 calendar days of receipt of claim or demand that the claim is defective and/or lacks substantiating documentation, providing the insured or obligee reasons or basis for the determination.

(J) Issuing checks or drafts in partial settlement of a claim or demand with language which releases an insurer, surety company, or bonding company from its total liability.

(K) Colluding in any way with other parties to a construction claim or dispute in an effort to jointly steer a decision against the State, including but not limited to sharing legal counsel with the Contractor.

(5) An insurance carrier that has received a notice to cease and desist from the Oklahoma Insurance Department within the previous five years shall not be eligible.

(6) A bonding company shall demonstrate an "A" rating as determined by an insurance bond rating company acceptable to the Administrator.

(b) The Division may periodically, in its discretion, reevaluate an insurance carrier, bonding company or surety company utilizing the criteria established in this section.

(c) The Division may adjust or revoke the prequalification status of an insurance carrier, bonding company or surety company if a reevaluation determines the company fails to meet criteria established in this section.

580:20-1-10. Contract award

(a) Bids are ~~normally~~ awarded to the lowest responsible bidder as determined by the review of the bids pursuant to 580:20-1-9. Approximately 15 to 20 days after the bid opening, the successful bidder shall be notified by the Division of his selection and shall be provided copies of the contract to execute. The contractor shall be given a specific period of time, not to exceed sixty days, in which to execute the contract and obtain the necessary bonds and insurance. [61 O.S., Section 113(A)]

(b) The notice to proceed, or WORK ORDER, shall not be issued until the contract has been executed by all parties. Work shall not commence until the WORK ORDER has been received by the contractor.

(c) Projects over the amount set in 61 O.S., Section 113(B) require three bonds. The bonds shall be prepared on the forms provided by the Division. All bonds required by Title 61 shall be provided by insurance carriers, bonding companies or surety companies that are prequalified by the Division as good and sufficient in accordance with criteria established in 580:20-1-8.2(a). [61 O.S., Section 204A(11)

(1) **Performance bond.** A bond with good and sufficient security valued at not less than the total value of the proposed contract which shall ensure the proper and prompt completion of the work in accordance with the contract and shall ensure that the contractor shall pay all indebtedness incurred by the contractor and his subcontractors and all suppliers for such labor, material and repair of and parts for equipment as are used and consumed in the performance of the contract.

(2) **Defect bond.** A good and sufficient bond in an amount equal to the total value of the contract to protect the State against defective workmanship and materials for a period of one year after acceptance of the project.

(3) **Payment bond.** A good and sufficient bond in an amount equal to the total value of the contract to protect the State against claims or liens from subcontractors or suppliers for services or materials used in the project.

(d) **Letters of credit.** Irrevocable letters of credit may ~~now~~ be substituted for the bonds listed ~~above~~ in (c) of this Section ~~for projects with a value of less than $100,000~~. ~~One letter of credit is required for each bond.~~ Each letter of credit must be for the total value of the contract. ~~Forms for these letters of credit are available from the Construction and Properties Division.~~ All letters of credit must be executed on forms prescribed by the Administrator.

(e) **Insurance.**

(1) Public liability insurance of not less than $100/300,000, property damage insurance of not less than $50/100,000 and workers' compensation insurance during construction are required for all projects, regardless of project size.

(2) Proof of workers' compensation insurance shall be required for all projects exceeding the amount stated in 61 O.S., Section 113(B). The minimum level of coverage shall be the statutory requirement specified by Oklahoma law.

(3) For projects less than the amount stated in 61 O.S., Section 113(B), a sworn affidavit certifying an exemption to the requirement of workers' compensation insurance coverage may be accepted in lieu of proof of workers' compensation insurance. The sworn affidavit shall be executed on a form prescribed by the Administrator.

(f) **Additional insurance.** Additional forms of insurance or increases in the insurance amounts may be required. Any additions or increases shall be contained in the bid documents.

580:20-1-10.1. Bid protests

A bidder may protest a contract award by a state agency or the Construction and Properties Division to the State Construction Administrator. All remedies available to bidders through the sealed bid process pursuant to the Public Building Construction and Planning Act or the Oklahoma Central Purchasing Act are also available to online bidders in an online bidding process.

(1) **Bidder notification.** A bidder shall submit written notice to the Administrator of a protest of an award of contract by a state agency or the Division within ten (10) business days of contract award. The protest notice shall state bidder facts and reasons for protest.

(2) **State Construction Administrator review and determination.** The Administrator shall review the bidder's protest and contract award documents. Written notice of the decision by the Administrator to sustain or

deny the protest will be sent to the bidder within ten (10) business days of receipt of the protest.

(3) **Bidder appeal of State Construction Administrator denial.** The bidder may appeal a denial of protest by the State Construction Administrator to the Director of Central Services. The bidder shall file a written appeal within ten (10) business days of the date of the Administrator's notice of denial pursuant to 75 O.S., Section 309 et seq.

(4) **Director actions and determination.** The Director may hear the protest, assign the protest to an attorney employed by the Department, or assign the bidder's appeal to an administrative law judge the Department retains.

(A) If the protest is assigned to an attorney employed by the Department or to an administrative law judge, the delegated party administrative law judge shall review the protest for legal authority and jurisdiction. If legal authority and jurisdictional requirements are met, the delegated party administrative law judge shall conduct an administrative hearing and provide proposed findings of fact and conclusions of law to the Director.

(B) If the protest is heard by the Director, the Director shall have all powers granted by law including all powers delegated to the administrative law judge by this section.

(C) The Director shall send written notice of the decision to sustain or deny final order sustaining or denying the contractor's appeal to the contractor parties.

(5) **Conduct of administrative hearing.** Administrative hearings shall be conducted in accordance with the Administrative Procedures Act [75 O.S. §250 et seq.] and the following procedures:

(A) **Prehearing conference.** A prehearing conference shall be scheduled to determine the legal or factual issues which shall be limited to those brought by the bidder in its initial protest to the State Construction Administrator.

(B) **Burden of proof.** The burden of proof shall be upon the bidder, which must prove its case by a preponderance of the evidence. A preponderance of the evidence is that evidence which, in light of the record as a whole, leads the Administrative Law Judge to believe a fact is more probably true than not true.

(C) **Representation.** Corporations must be represented by legal counsel in accordance with Oklahoma law. Legal counsel must be licensed or registered pursuant to the Rules Creating and Controlling the Oklahoma Bar Association.

(D) **Proper parties.** In addition to the bidder protesting the contract award and the Department of Central Services, the bidder awarded the contract and the state agency for which the bid was let may participate in the bid protest proceedings as a proper party.

(E) **Discovery.** The conduct of discovery is governed by the Administrative Procedures Act, 75 O.S., Section 309 et seq. and other applicable law.

(F) **Authority of the Administrative Law Judge.** The Administrative Law Judge may:

(i) Establish a scheduling order;

(ii) Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;

(iii) Rule on all interlocutory motions, including requests for a temporary stay of the contract award pending a final order from the Director;

(iv) Require briefing of any or all issues;

(v) Conduct hearings;

(vi) Rule on the admissibility of all evidence;

(vii) Question witnesses; and

(viii) Make proposed findings of facts and conclusions of law to the Director.

(G) **Remedies.** The Administrative Law Judge may recommend that the Director deny the bidder's appeal or that the contract award be cancelled and rebid.

(6) **Contractor appeal of Director denial.** If the Director denies a bidder's appeal, the bidder may appeal pursuant to provisions of 75 O.S., Section 309 et seq.

580:20-1-13. Payment requests

(a) **Partial payments.** Partial payments for work completed and materials stored on site may be submitted once each month. A detailed procedure to be followed is shown below:

(1) The contractor shall be required to complete a detailed breakdown of costs, arranged according to sections of the specifications, using a format similar to the one found in the Application for Partial Payment form, and submitting it to the design consultant and the Division for approval. This breakdown shall be used throughout the job and cannot be changed without approval from the design consultant.

(2) The contractor should meet with the design consultant when the rough draft of the pay request is prepared. Then all can agree on percentages of work completed prior to typing the final form. The contractor should furnish the design consultant with five copies of the pay request and all supporting documents.

(3) An itemized listing of materials stored on site at the end of the period covered in the pay request shall be prepared on the contractor's letterhead. Copies of paid invoices are to be attached. The date on the listing must agree with the date on the pay request. The materials must be stored at the site and cannot be removed after the payment has been made. The detailed description of stored materials should show quantities and sizes of materials. The usual terms of reference such as tons of steel and types of windows shall be acceptable. If the contractor deems it necessary, and it is recommended by both the design consultant and Department of Central Services representative, the contractor may store material off-site if there is

a written agreement between the owner and the contractor. This agreement must provide the following:

(A) Proof of applicable insurance.

(B) A written guarantee of delivery to the job site.

(C) A written title to all materials covered by the request for payment, which shall pass to the owner.

(D) An on-site inspection of facilities by the design consultant to verify the authenticity of quantities of stored materials with the contractor responsible for reimbursing the design consultant for all incurred expenses resulting from each inspection.

(4) All pay requests are submitted to the Division.

(5) All partial payments are subject to retainage as specified in 61 O.S., Section 113.1.

(b) **Final pay request.** The Certificate of Contract Completion, Consent of Surety, Lien Release and the Contractor's Warranties must be submitted with the final request for pay to the state agency.

580:20-1-14. Change orders

(a) When it has been determined that a change is needed in the work and prior to the issuance of any change order, the design consultant shall ~~request information from~~ issue a Proposal Request to the contractor. The ~~Change Order~~ Proposal Request shall be completed by the contractor ~~as specified on the form. The Change Order Request~~ and shall fully describe the scope of work explaining completely what each item entails and the cost, credit, and time extension involved. The contractor shall provide a detailed breakdown of cost, showing quantities and sizes of materials, unit cost, labor, equipment, profit and overhead, and other expense items. The design consultant shall transmit the completed ~~Change Order~~ Proposal Request through the using agency to the Construction and Properties Division of the Department of Central Services. The change in work scope described in the ~~Change Order~~ Proposal Request is not authorized until it has been incorporated into a Change Order and issued by the Construction and Properties Division of the Department of Central Services. [61 O.S., Section 121]

(b) When the proposal Request(s) are approved by all parties, the contractor shall prepare a Change Order using the form prescribed by the Division. All information required on the form shall be included. The completed Change order form shall be routed to the Consultant and using Agency for signature, and then to the Division for approval and signature.

(~~b~~ c) When the change is less than $10,000, and the work involved can be costed by using a negotiated unit or lump sum price, the ~~detailed breakdown on the Change Order~~ Proposal Request as discussed in subsection (a) of this Section is not required.

~~(c) The total contract sum including change orders for projects under the statutory amount and not advertised according to 580:20-1-3(1) cannot exceed the statutory amount without advertising for bids on that part of the contract.~~

(d) Projects under the statutory amount and not advertised according to 580:20-1-3(1), that are awarded on a unit price or basis cannot exceed the statutory amount with cumulative change orders without advertising for bids on that part of the contract.

580:20-1-19. Contract completion

~~Six copies of the~~ A Certificate of Contract Completion shall be prepared by the design consultant using the form prescribed by the Division. The contractor shall complete the Contractor's Affidavit on all required copies of the Certificate of Contract Completion and return to the design consultant. The total of the contract shown on the certificate shall include the sum of all change orders. The contractor shall secure and transmit to the design consultant a completed and notarized Consent of Surety with the contractor's Certificate of Final Payment. All submittals, operating manuals, brochures, as-built drawings, receipts for keys given to the using agency, warranties, and all other requirements of the contract shall have been submitted to the design consultant with signed receipts from the using agency for the items received by them, before final payment is made.

580:20-1-21. Performance evaluations of Consultants and Contractors [REVOKED]

~~After the final inspection has been completed, the Using Agency and the Division shall evaluate the performances of the Contractor and the Consultant, using evaluation forms developed by the Division. The evaluations shall be filed in the respective Contractor or Consultant file, which shall be maintained by the Division. Copies of negative evaluations shall be mailed by certified mail to the respective parties. Written responses received from the Consultant or Contractor shall be attached to the evaluation and maintained in the respective file.~~

580:20-1-22. Contractor appeals process

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

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

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

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

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

(3) If the protest is heard by the Director, the Director shall have all powers granted by law including all powers delegated to the administrative law judge by this section.

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

(e) Administrative hearings shall be conducted in accordance with the Administrative Procedures Act [75 O.S. §250 et seq.] and the following procedures:

(1) A prehearing conference shall be scheduled to determine the legal or factual issues which shall be limited to those brought by the contractor in its initial claim.

(2) The burden of proof shall be upon the contractor, which must prove its case by a preponderance of the evidence. A preponderance of the evidence is that evidence which, in light of the record as a whole, leads the Administrative Law Judge to believe a fact is more probably true than not true.

(3) Corporations must be represented by legal counsel in accordance with Oklahoma law. Legal counsel must be licensed or registered pursuant to the Rules Creating and Controlling the Oklahoma Bar Association.

(4) In addition to the contractor and the Department of Central Services, the contractor awarded the contract and the state agency for which the bid was let may participate in the bid protest proceedings as a proper party.

(5) The conduct of discovery is governed by the Administrative Procedures Act, 75 O.S. Section 309 et seq. and other applicable law.

(6) The Administrative Law Judge may:

(A) Establish a scheduling order;

(B) Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;

(C) Rule on all interlocutory motions, including requests for a temporary stay of the contract award pending a final order from the Director;

(D) Require briefing of any or all issues;

(E) Conduct hearings;

(F) Rule on the admissibility of all evidence;

(G) Question witnesses; and

(H) Make proposed findings of fact and conclusions of law to the Director.

(7) The Administrative Law Judge may recommend that the Director deny the contactor's appeal or that the contract award be cancelled and rebid.

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

580:20-1-23. Consultant appeals process

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

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

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

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

(3) If the protest is heard by the Director, the Director shall have all powers granted by law including all powers delegated to the administrative law judge by this section.

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

(d) Administrative hearings shall be conducted in accordance with the Administrative Procedures Act [75 O.S. §250 et seq.] and the following procedures:

(1) A prehearing conference shall be scheduled to determine the legal or factual issues which shall be limited to those brought by the contractor in its initial claim.

(2) The burden of proof shall be upon the consultant, who must prove his case by a preponderance of the evidence. A preponderance of the evidence is that evidence which, in light of the record as a whole, leads the Administrative Law Judge to believe a fact is more probably true than not true.

(3) Corporations must be represented by legal counsel in accordance with Oklahoma law. Legal counsel must be licensed or registered pursuant to the Rules Creating and Controlling the Oklahoma Bar Association.

(4) In addition to the contractor and the Department of Central Services, the consultant awarded the contract and the state agency for which the bid was let may participate in the bid protest proceedings as a proper party.

(5) The conduct of discovery is governed by the Administrative Procedures Act, 75 O.S. Section 309 et seq. and other applicable law.

(6) The Administrative Law Judge may:

(A) Establish a scheduling order;

(B) Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;

(C) Rule on all interlocutory motions, including requests for a temporary stay of the contract award pending a final order from the Director;

(D) Require briefing of any or all issues;

(E) Conduct hearings;

(F) Rule on the admissibility of all evidence;

(G) Question witnesses; and

(H) Make proposed findings of fact and conclusions of law to the Director.

(7) The Administrative Law Judge may recommend that the Director deny the consultant's appeal or that the contract award be cancelled and rebid.

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

580:20-1-24. Waivers

The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

SUBCHAPTER 3. SELECTION OF ARCHITECTS, ENGINEERS, AND OTHER DESIGN CONSULTANTS

580:20-3-1. Purpose

The purpose of ~~this document is~~ these rules are to provide information to consultant firms desiring to do business with the State of Oklahoma. It is also to serve as a guide to agencies and political subdivisions of the State of Oklahoma in the selection of architects, engineers, and other design consultants for the purpose of providing design documents for the construction or renovation of state facilities. These procedures implement the provisions 61 O.S., Sections 60 through 65, titled "State Consultants".

580:20-3-2. Definitions

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

"Consultant" means ~~an individual or legal entity possessing the credentials and qualifications to provide technical services for a public work improvement project.~~ *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]

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

"Fixed fee" means the type of fee to a consultant which is expressed as a firm, fixed amount, for the services specified in the scope of work. This fee is not determined by the amount of a construction contract.

"Interview committee" means a group of individuals designated by the chief administrative officer or governing body of a state agency to interview consultants for the purpose of selecting a consultant for a planned project. This group should include licensed architects or engineers, if available.

"Percentage fee" means a fee to be paid a consultant which is based upon a negotiated percentage of the resultant construction contract. For the consultant contract purposes, the construction contract amount is estimated.

"Program" means the detailed description of the work scope of the design services. This program is written by the state agency, or may be developed by the consultant as part of his contract.

"Screening committee" means a group of individuals designated by the chief administrative officer or governing body of a state agency which reviews the files of interested consultants for the purpose of selecting a short list of consultants to be interviewed. The group should include licensed architects or engineers, if available.

"Selection criteria" means a listing of the considerations and requirements used to evaluate each prospective consultant.

"Short list" means a listing of consultants chosen during the screening process for detailed interview. This list shall contain no less than three nor more than five consultants for a single project. If the process is selecting for more than one consultant contract, there should be two consultants on the short list for every planned project.

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

580:20-3-3. Registration of consultants

(a) All consultants desiring to perform services for the State of Oklahoma must register with the Division by requesting and completing a Consultant ~~Application Form~~ Registration Questionnaire (DCS/CAP-Form 254) prescribed by the Administrator and submitting it to the Division. [61 O.S., Section 62] The Consultant Registration Questionnaire can be found on the Division's website or may be obtained by calling or writing the Division.

(b) The Administrator shall review a Consultant Registration Questionnaire submitted to the Division, determine whether the consultant qualifies for registration and notify the consultant of its registration status within twenty (20) days.

(~~b~~ c) Registrations are valid for one year from the date of receipt by the Division.

(~~c~~ d) Consultants shall not be solicited for projects with the State until the date the Consultant ~~Application Form~~ Registration Questionnaire is received by the Division. A consultant may register with the Division any time prior to the deadline for project consideration.

580:20-3-4. Selection procedure

(a) **Define project.** The state agency shall develop a description of the project which shall include: [61 O.S., Section 62(C)]

(1) A narrative description of the work being planned.

(2) The estimated cost and time schedule of the project.

(3) The source of the funding i.e., appropriated state money, federal funding or other source of funding. Any funds designated for the project which has specific limitation of use, including deadlines for expenditure, shall be clearly defined and explained in the project description.

(4) Any other pertinent data which would assist a consultant in determining his interest in the project.

(b) **Request list of consultants.** The state agency shall forward a request to the Division for a listing of consultants currently listed with the Division in the form of a letter which includes the description of the project developed in (a) of this Section. A draft of the solicitation letter described in (c) of this Section shall also be included with a request for a list of consultants. The Division shall review the request and

solicitation letter and if approved, shall print the list and/or one set of mailing labels and return them to the state agency.

(c) **Announce project.** The state agency shall send ~~a~~ the approved solicitation letter to each consultant on the list which includes the description developed in ~~Step 1~~ (a) of this Section and shall notify them of the last day their letters may be received to be considered. Any consultant not registered with the Division at the time the list is prepared, may register with the Division pursuant to this Section and submit a letter of interest to the state agency. The Consultant Registration Questionnaire (DCS/CAP-Form 254) must be received by the Division at least six (6) business days, excluding state holidays, prior to the solicitation deadline, to allow the Administrator time to evaluate and complete the review process. If the registration form requires revisions and resubmission, the Division is under no further obligation to process and approve a consultant's registration within the six-day time period. [61 O.S., Section 62(C)]

(d) **Request and review files.** The state agency shall send a list of consultants that indicated interest in being considered for the announced project(s) to the Division. The Division then assembles and transmits to the state agency a copy of the information on file for each consultant on the list. [61 O.S., Section 62(D)]

(e) **Screen the files to select the "short list".** The chief administrative officer or governing board of the state agency shall designate a screening committee of three or more persons to select the three to five best qualified consultants based upon the data in the files supplied by the Division and other information that may be supplied by the consultants. The screening committee should include licensed architects or engineers if they are available. If the selection is for more than one consultant contract, at least two consultants for each project should be included in the short list. The selection criteria is listed in 580:20-3-6. [61 O.S., Section 62(E)]

(f) **Scheduling and performing interviews.**

(1) The chief administrative officer or governing board of the state agency shall designate an interview committee. All members of the interview committee shall participate in all interviews of each consultant.

(2) An evaluation criteria list shall be developed to insure that all interviews are conducted identically. The interview committee should consider the criteria listed in 580:20-3-7.

(3) Each consultant should be notified by letter informing him that he has been selected for interview. The letter should contain:

(A) Date, time and place of interview. Interviews should be scheduled individually for each consultant.

(B) Period of time permitted for the interview. Indicate how much time the consultant shall be permitted for his presentation and how much time shall be reserved for questions by the committee.

(C) A copy of the interview criteria.

(D) Names of the interview committee members.

(E) The letter should contain any other information which shall help the committee to obtain information needed for them to properly evaluate the consultant.

(F) Oklahoma Statutes prohibit the requesting of any information on fees. Any consultant who discloses its fee, or any indication thereof, prior to subsection (j) of this Section, Negotiation of Contract, shall be removed from the request list or short list and receive no further consideration for the project. Consultants must be selected on the basis of qualifications and not on a bid basis.

(4) The interviews are conducted privately with each consultant out of the hearing of other consultants.

(5) At the conclusion of all interviews, the committee shall then rate each consultant in a manner as to recommend to the state agency the relative ranking of each consultant. This document does not attempt to designate the exact procedure the committee shall use to make their selections. All criteria and procedures used by the committee shall be documented for the record.

(g) **Forwarding of recommendations.** The recommendations are forwarded to the state agency for the final selection.

(h) **Preparation of report to the Division.**

(1) The state agency shall prepare a chronological report detailing the steps in the procedure actually followed by the state agency in making its selection. This report shall include the criteria used in the screening process as well as the interviews and the ratings of all firms considered. A copy of the approved minutes of any board action affecting the selection process shall be included.

(2) The report is submitted to the Division for the independent review of the entire process. Upon approval of the report by the Division, the state agency shall be notified that fee negotiations with the first ranked firm may begin.

(i) **Negotiation of Contract.**

(1) The negotiation of fees is the first time a discussion of costs is permitted. There are no defined procedures for negotiating. The Division shall usually open negotiations by designating a negotiator and by defining the detailed scope of work and forwarding that scope to the consultant in a letter formally requesting the cost proposal. The letter should require a detailed breakdown of costs to enable the Division to understand the cost items and have a basis for negotiation. The consultant should also be provided a copy of the proposed contract format. Copies of the approved contract formats may be obtained from the Division.

(2) The consultant shall develop his fee proposal and return it to the Division. Fee proposals shall be based on the consultant's cost to produce the work along with projected expenses and a fair profit not to exceed fifteen per cent (15%). The Administrator may establish a standard format for estimating and itemizing the costs submitted with a fee proposal.

(3) The Division shall then set up a ~~negotiation~~ meeting to negotiate and agree to the fee, or may authorize the state agency to begin fee discussions. The fee is expressed as ~~either~~ a firm fixed price fee ~~or a fixed percentage fee as defined above~~ according to an agreed scope of work, or may be based on a time and expense basis with a "not-to-exceed" cap. The choice is up to the Division.

Attached as Appendix A is a table which may be used as an aid in evaluating a fee proposal. After a fee has been determined, the consultant is asked to modify the proposal to reflect the agreed upon scope of work and fee. This modified proposal shall become part of the contract. [61 O.S., Section 62(G)]

(4) The state agency then forwards an agency requisition to the Division.

(j) **Award of contract.**

(1) The contract is processed for award by the Division. After the contracts have been signed by all parties, copies shall be provided to the state agency and the consultant.

(2) Changes to the consultant's base contract ~~are permitted~~ may be approved by the Administrator as long as the scope of the change is generally included within the scope of work developed in (1) of this subsection for which the consultant selection process was conducted. Changes ~~are initiated and negotiated by the Division. The change request letter~~ may be requested by the state agency in writing to the Division and must reference the correct contract, and include the scope of the change, the fee for the change and the source of the funding for the change.

580:20-3-5. Consultant contracts

(a) Contracts are written by the Division in standard formats as required by 61 O.S. The Division may be contacted for development of special requirements to be included in contracts. Non-standard contracts for specialized projects may be proposed by the state agency and approved by the Administrator for use on a specific project.

(b) Phases of services may involve all or any of the following depending on the size and type of project:

(1) **Program planning.** Program planning may include the following:

(A) Space plan.

(B) Written and/or graphic program document as specified.

(C) Circulation allowances.

(D) Cost estimate.

(E) Specific additional features as required in the agencies request for proposal.

(2) **Schematic Design.** Schematic design may include the following:

(A) The line drawing and graphic representation of the floor plan, perspective drawings and site orientation of the project.

(B) Energy and feasibility presentation of utility access, recommended materials, parking, traffic flow, site access, and space and volume estimates of cost.

(C) Cost estimate.

(3) **Design Development.** A set of drawings may be required to be produced which specifies the project's specified parameters, resulting in:

(A) The site plan for parking, street and pedestrian access.

(B) Overall dimensions.

(C) Rooms and traffic circulation within the buildings.

(D) Types of materials.

(E) Building elevations.

(F) Building sections.

(G) Recommended structural systems.

(H) Recommended mechanical systems and equipment based upon life cycle studies.

(I) Cost estimate.

(4) **Construction Documents.** Construction documents may include those items necessary for a construction contractor to properly bid and construct the project. They include:

(A) Working drawings.

(B) Specifications.

(C) Project manuals.

(D) Any other item specifically required by the contract.

(E) Cost estimate.

(5) **Construction phase services.** The consultant may be required to perform specific construction phase services which include:

(A) Review and approval of shop drawings.

(B) Review and approval of pay requests.

(C) All standard contracts include a reference to construction monitoring which are periodic visits at intervals appropriate to the stage of the contractor's operations, by the consultant and sub-consultants to the construction site to determine that the contractor is following the intent of the construction contract documents. When more frequent monitoring is needed, the Division shall include this in the criteria package and negotiate this increased cost service.

(D) The primary responsibility for the administration of the construction contract lies with the consultant.

580:20-3-6. Screening criteria

(a) The screening process is the examination of each consultant that has indicated interest in the project proposed by the state agency. Files on each consultant are provided by the Division for this purpose. Prior to beginning the review, a specific list of criteria must be developed and should include, but not be limited to the following:

(1) Specialized experience related to the proposed project.

(2) Similar experience on comparable projects.

(3) Technical qualifications of the design team.

(b) State agencies shall use the Consultant Screening Evaluation Form prescribed by the Administrator. The form may be modified for a specific project with prior approval of the Administrator.

(~~b~~ c) A screening evaluation sheet should be prepared listing each consultant considered with a rating for each criteria listed as in the Consultant Screening Evaluation Form. After all consultants are evaluated, the ratings are compared and the top three to five consultants are identified for interview. If multiple projects are being considered, two consultants for each project are selected for interview. [61 O.S., Section 62(E)]

(~~c~~d) A copy of the evaluation sheets shall be included in the report to the Division.

580:20-3-7. Interview criteria

(a) The interview is the most important step in the selection process. Each consultant must be evaluated against a clearly established list of criteria which is provided to the consultant within seven days in advance of the interview. ~~It is recommended that an interview evaluation sheet be made up for each consultant being interviewed such as the Consultant Interview Evaluation Form.~~ State agencies shall use the Consultant Interview Evaluation Form prescribed by the Administrator. The form may be modified for a specific project with prior approval of the Administrator. Information should be sought during the interview which shall answer these questions:

(1) How will the consultant staff the proposed project?

(2) What is the consultant's proposed management plan?

(3) What is their previous experience for this project?

(4) Where are they located? How will they reduce travel costs if they are not close to the proposed project?

(5) What are their plans for project control?

(6) What is their proposed approach to the design of this project?

(7) What are examples of the similar projects they have completed?

(8) What are their experiences in value engineering, life cycle costs analyses, critical path method of scheduling, energy conservation, new energy resources, environmental assessments or other specialized experience, if required?

~~(9) What awards have they received for their designs?~~

(~~10~~ 9) Has a judgement been paid by the consultant or on their behalf for liability caused by professional errors and/or omissions in the past five years?

(~~11~~ 10) Any other additional factors?

(b) Questions concerning fees may not be asked. Engineers, architects, and land surveyors are prohibited from being required to bid by Oklahoma Statutes. They are to be selected based upon their professional expertise and qualifications with their fees being negotiated after selection, as described in 580:20-3-6.

(c) Copies of the completed evaluation sheets shall be included in the report to the Division.

580:20-3-8. Waivers

The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

SUBCHAPTER 5. MINIMUM CODES FOR STATE CONSTRUCTION

580:20-5-2. Definitions

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

"ADA" means the Americans with Disabilities Act

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

"ASHRAE" means the American Society of Heating, Refrigeration and Air Conditioning Engineers, Inc.

"Code" means the minimum building code or codes provided by this rule.

~~**"Code Panel"** means a standing panel appointed by the Administrator and shall consist of five Division employees or contract employees of which at least three shall be registered engineers or architects. Registered engineers or architects from state agencies may be invited to assist this panel.~~

"Division" means the Construction and Properties Division of the Department of Central Services, an agency of the State of Oklahoma.

"Facility" means any building or improvement to real property constructed for state use subject to the provisions of 61 O.S. This definition shall apply also to construction of real property that the state shall lease.

"IES" means the Illuminating Engineering Society.

"NFPA" means the National Fire Protection Association.

"OSFM" means the Oklahoma State Fire Marshal.

580:20-5-3. Construction requirements; ~~appeals and interpretations~~ reviews and permits

(a) Each facility shall be constructed or improved in such a manner as to provide reasonable safety from fire, smoke, panic and related hazards and to ensure a high level of health, comfort and well-being for all occupants.

(b) ~~The Division shall determine adequacy of construction plans and specifications in accordance with the provisions of the Code. The Division, through the code panel, may permit the use of alternate materials and methods, where permitted by the applicable code, when it is clearly evident that reasonable safety is thereby secured.~~ Building construction and renovation will require formal code review and a building permit, unless otherwise determined by the Division. When required by the Division, construction plans and specifications shall be reviewed by the agency with applicable code jurisdiction according to policy prescribed by the Administrator.

(c) ~~The Department of Central Services may delegate its responsibilities relative to the determination of adequacy of construction plans and specifications in accordance with the provisions of the code to other agencies on projects it determines such other agency is qualified to perform.~~ Plans and specifications for State construction projects shall be reviewed and approved by the OSFM, who shall issue a permit upon approval. When directed by the Division, said plans shall also be reviewed by the Risk Management Division of the Department of Central Services. No project shall be let for public bids until such prescribed reviews are concluded and a building permit is issued by OSFM. Fees for plan review and permits shall be paid from the agency project funds.

(d) ~~All appeals and requests for interpretations of code by the Division through the code panel shall be made in writing. All such findings and interpretations shall also be made in writing.~~ When a State construction project requiring a permit from OSFM is located within a local code enforcement jurisdiction, the Division encourages obtaining an additional building permit from the local jurisdiction or arrangement of cooperative inspections. The Division, or it's agent, may invite a cooperative review between OSFM and the local jurisdiction and authorize payment for a local permit from the project funds.

~~(e) The referenced codes shall be subject to the order of precedence as listed. The Life Safety Code, NFPA 101, shall have precedence over other codes. When there are differing requirements among codes, then the Life Safety Code, NFPA 101, shall govern, or in cases where the Life Safety Code does not apply, the most stringent requirement shall govern.~~

580:20-5-4. Adopted codes

~~The following codes are adopted as the basic codes for the State of Oklahoma.~~

~~(1) **National Fire Codes, NFPA** current editions, and all publications as they relate to public construction contracts;~~

~~(2) **International Codes, International Code Council**, current editions, and all publications as they relate to public construction contracts; exceptions to the code include the following:~~

~~(A) All references to the department of building safety in the code shall mean the Construction and Properties Division of the Department of Central Services.~~

~~(B) All references to building official shall mean the Administrator of the Division.~~

~~(C) All references to "permits" and "fees" in the code may be disregarded for facilities constructed or existing on state property. Permits and fees are not required.~~

~~(D) The board of appeals referred to in Section 112 of the Code means the code panel defined in 580:20-5-2.~~

~~(3) **Electrical Code.** National Electrical Code, current edition.~~

(a) **Codes.** State construction projects shall comply with all applicable codes adopted by the Oklahoma State Fire Marshal, current at the time the project is initiated.

(b) **Additional Building Codes.** The division may require compliance with additional codes not currently adopted by OSFM, including but not limited to:

(1) International Energy Conservation Code, latest edition;

(2) Americans with Disabilities Act and related standards, latest edition.

580:20-5-6. Sources for codes and standards

(a) A copy of all codes adopted by reference in this subchapter are on file and available for public inspection at the following address: Construction and Properties Division, Department of Central Services, Will Rogers Office Building, 2401 N. Lincoln Blvd., Suite 106, Oklahoma City, OK 73105, (405)-521-2111.

(b) Listed below are sources for the codes and standards referred to in this Subchapter:

(1) International Code Council: 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041-3401; Telephone: 1.703.931.4533

(2) NFPA: National Fire Protection Association, Batterymarch Park, Quincy, MA 02169

(3) ASHRAE: ASHRAE Publications Sales, 1791 Tullie Circle, NE, Atlanta, GA 30329

(4) ASME: 22 Law Drive, Box 2300, Fairfield, NJ 07007-2300

(5) IES: Illuminating Engineering Society, 345 East 47th Street, New York City, NY 10017

(6) Oklahoma State Fire Marshal, 2401 N.W. 23rd Street, Oklahoma City, OK 73107; www.firemar.state.ok.us

SUBCHAPTER 7. PROCEDURES FOR AGENCIES TO PERFORM RESPONSIBILITIES EXERCISED BY THE CONSTRUCTION AND PROPERTIES DIVISION

580:20-7-2. Definitions

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

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

"Architect" means a person legally qualified to practice the profession of architecture as defined in the State Architectural Act, Section 46, Title 59, Oklahoma Statutes.

"Consultant" means ~~registered engineers or architects hired from the private sector for the purpose of providing architect/ engineering services in the design and preparation of construction documents for the construction, renovation or repair of state owned facilities.~~ *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]

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

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

"Engineer" means a person legally qualified to practice the profession of engineering as defined in Chapter 10, Engineering and Land Surveying, Title 59, O.S.

"Facility" means any building or improvement to real property constructed for state use subject to the provisions of Title 61, Oklahoma Statutes.

"FTE" means a full time equivalent personnel position authorized the state agency by current legislative authority.

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

580:20-7-7. Waivers

The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

SUBCHAPTER 9. FULL-TIME EMPLOYMENT BY AGENCIES FOR MINOR CONSTRUCTION PROJECTS

580:20-9-2. Definitions

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

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

"Architect" means a person legally qualified to practice the profession of Architecture as defined in the State Architectural Act, Section 46, Title 59, Oklahoma Statutes.

"Consultant" means ~~an individual or legal entity possessing the credentials and qualifications to provide technical services for a public work improvement project.~~ *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]

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

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

"Engineer" means a person legally qualified to practice the profession of Engineering as defined in Chapter 10, Engineering and Land Surveying, Title 59, Oklahoma Statutes.

"Facility" means any building or improvement to real property constructed for State use subject to the provisions of Title 61, Oklahoma Statutes.

"FTE" means a full time equivalent personnel position authorized the state agency by current legislative authority.

"Minor Construction" means any construction which does not require the person performing the construction to have an occupational license.

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

SUBCHAPTER 15. ENERGY SERVICES CONTRACTS

580:20-15-2. Definitions

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

"Consultant" means *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]

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

"Energy audit" means to review facilities and systems, to identify existing operating and utility costs, to specify areas of potential savings, and to quantify those savings.

"Energy service company" means the company responsible for the installation of energy conservation measures and the guarantee of energy savings.

"Energy service contract" means a contract signed by a state agency and an energy service company which conforms to the provisions of this chapter.

"ESC" means energy service company.

"Equipment portion" means the portion of the energy service contract which deals with the purchase of equipment and its installation.

"Guaranteed savings" means the amount of money per year guaranteed by the ESC that shall be saved by the state agency on present utility costs.

"Service portion" means the portion of the energy service contract which deals with guaranteed savings, period of guaranteed savings, training, and bonds.

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

580:20-15-13. Waivers

The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

SUBCHAPTER 17. CONSTRUCTION MANAGEMENT PROCEDURES AND REQUIREMENTS

580:20-17-2. Definitions

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

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

"Construction Management" (CM) means the project delivery method based on an agreement whereby the state acquires from a construction entity a series of services that can include, but are not necessarily limited to: design review, scheduling, cost control, value engineering, constructability

evaluation, preparation and coordination of bid packages, and construction administration. Construction management includes:

(A) **"Construction Management/Agency"** (CMa) whereby the construction entity applies appropriate management techniques to project planning, design and construction for the purpose of controlling time, cost and quality for the state without taking on financial risks for the execution of the actual construction. CMa services could include a range of management and/or consulting services spanning all phases of the design and construction process from conception to completion of the construction project.

(B) **"Construction Management/At-Risk"** (CMc) whereby the construction entity, after providing construction management/agency services listed in (a) of this section during the pre-construction period, takes on the financial obligation to carry out construction under a specified cost agreement.

"Construction Manager" means a person, properly certified in accordance with 20-17-3, who acts as an agent of the state for a construction project; who coordinates and manages the construction process; who is a member of the construction team with the state, design professional and other consultants that may be required for the project; and who utilizes skill and knowledge of general contracting to assist in the development of schedules, preparation of project construction estimates, study of labor conditions and provides advice concerning construction, safety and other issues related to the project that may surface. Issues may include, but are not limited to, monitoring progress, payments, changes and other factors affecting cost or as may otherwise be specified in the solicitation issued by the state agency.

"Consultant" means ~~an individual or legal entity possessing the credentials and qualifications to provide technical services for a public work improvement project.~~ *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]

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

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

"Guaranteed Maximum Price" (GMP) shall be the sum of the estimated cost of the work as defined in the contract and includes all of the contractor's fees and agreed upon contingencies.

"Notice to Proceed" shall be the formal written notice, by letter, informing the Construction Manager that the Guaranteed Maximum Price (GMP) is approved and the construction management services advance to the next phase.

"State agency" means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 202.

580:20-17-3. Qualifications

(a) **General.** An individual or business entity that desires to provide or provides construction management services to the state must meet minimum qualifications established in this Section.

(b) **Construction management certification.** An individual or business entity that desires to provide construction management services to the state shall possess certification that demonstrates the individual's or business entity's capability to provide the services.

(c) **Certification sources.** An educational program that provides certification of an individual as capable to provide construction management services shall include industry recognized standards for knowledge of construction, construction management and project management. An individual certified by one of the following sources may qualify to provide construction management services to the state.

(1) **Certified Construction Manager.** An individual certified by the Construction Management Association of America as a certified construction manager.

(2) **Certified Cost Engineer/Certified Cost Consultant.** An individual certified by the Association for the Advancement of Cost Engineering, International as a Certified Cost Engineer or Certified Cost Consultant.

(3) **Certified Professional Estimator.** An individual certified by the American Society for Professional Estimators as a Certified Professional Estimator.

(4) **Certified Professional Constructor.** An individual certified by the American Institute of Constructors as a Certified Professional Constructor.

(5) **Certified Construction Contract Administrator.** An individual certified by the Construction Specifications Institute as a Certified Construction Contract Administrator.

(6) **Designated Design-Build Professional.** An individual certified by the Design-Build Institute of America as a Designated Design-Build Professional.

(d) **Other professional certification recognition.** If an individual presents professional certification from other than a professional entity this subsection specifies, the Administrator shall determine whether the individual may provide construction management services to the state.

580:20-17-4. Registration

(a) **General.** An individual that possesses the qualifications established in 20-17-3 shall register with the Division to provide construction management services.

(b) **Registration Application.** An individual or business entity must submit registration application forms prescribed by the Administrator to the Division to request consideration for registration as a construction management firm. Registration application forms are available upon request to the Division.

(c) **Administrator review and notification.** The Administrator shall review the registration application and:

(1) **Accept the registration.** If the review determines that the applicant is qualified and the application is complete and accurate, the Administrator shall send written

notification of the acceptance to the individual or business entity; or,

(2) **Grant conditional registration.** The Administrator may consider other certification sources and grant to the applicant a one-year probationary approval of the registration application. Renewal for subsequent years shall not be approved unless the applicant submits proof of certification issued by one of the certification sources listed in 580:20-17-3(C).

(~~2~~ 3) **Reject the registration.** If the review determines that the applicant is not qualified or the application is incomplete or inaccurate, the Administrator shall send written notification of the rejection to the individual or business entity. The Administrator shall specify reasons for rejection in the notice; or,

(~~3~~ 4) **Incomplete registration.** If the review determines the application is incomplete, the Administrator may advise the individual or business entity to submit additional information to the Administrator.

(d) **Registration.** Upon approval of the registration application, an individual or business entity will be added to the official list of registered construction managers maintained by the Division. Registration shall be effective for one (1) calendar year from the date of registration approval and renewed annually on or before ~~January 31st of~~ the registration anniversary date each succeeding year.

580:20-17-5. Project designation consideration

(a) **General.** The Administrator and the Director shall consider factors in this section to determine whether a state construction project merits consideration for use of the construction management delivery system.

(b) **Consideration factors.** Each factor of this subsection must be considered prior to requesting or designating a project for construction management. [61 O.S., §202.1]

(1) The project benefits the public. When considering designation, it shall be clearly evident that Construction Management will provide a public benefit, which may include:

(A) early completion of work, allowing for beneficial public occupancy;

(B) accommodating construction progress with phased funding;

(C) enabling the project to be placed under contract prior to losing expiring funding source; or,

(D) other demonstrated public benefit.

(2) There is a need for cost control. When project requirements or technical components of a project are not fully defined, or options are available for building systems, the use of Construction Management would provide valuable input to the design process.

(3) The need exists for specialized or complex construction methods due to the unique nature of the project. Projects involving sophisticated or complicated technical systems, renovation work or work that must be completed on a critical time frame, or otherwise when a critical mission of a public agency may be in jeopardy, shall be considered specialized and complex.

(4) Other consideration factors may include:

(~~1~~ A) **Time constraints.** The time period the state agency desires for project completion.

(~~2~~ B) **State agency capabilities.** The capabilities of the Division staff and whether the staff has the ability and experience to effectively manage a project that utilizes construction management.

(~~3~~ C) **State agency funding.** The state agency shall demonstrate whether the agency has adequate funding to pay for services of the construction management firm, design consultant and construction services.

(~~4~~ D) **Project components.** The project complexity is sufficient to benefit from advisory consulting services during design or if the construction execution could be enhanced by the services of a construction manager. Such services during design might include, but are not limited to: independent preparation of cost estimates, independent design review, evaluation of alternate construction bid strategies and constructability evaluations. Services during construction that a construction manager might perform include, but are not limited to: certain elements of construction administration desired by the state agency that are outside the normal scope of the design consultant and overall coordination of multiphase, complex projects where one or more contractors may be involved in executing the work.

(c) **State agency request.** A state agency shall submit a written request for consideration of formal designation of a state construction project for the construction management delivery method to the Director after careful review of the factors in (b) of this section. The request shall specify reasons the state agency believes the project merits consideration for construction management and the funding amount the state agency has available for the project.

(d) **Director consideration.** Upon receipt of a state agency request for construction management services for a project, the Director shall consider whether the project merits designation for construction management and whether the state agency has adequate funds for the project.

(e) **Administrator consideration.** The Director may request the Administrator to consider whether a project merits designation for construction management.

(f) **Administrator notification.** Upon completion of the consideration of the state agency request, pursuant to Subsection 6, the Administrator shall forward the Director's official response to the requesting state agency which states reasons for the determination and whether the project has been determined to reasonably merit official designation for construction management.

580:20-17-9. Fee negotiation and contracts

(a) In accordance with the qualifications-based ranking of firms to perform construction management services in 580:21, the Division shall request a fee proposal from the highest ranking firm.

(b) Upon receipt of the written fee proposal, the Division shall hold fee negotiations in a manner consistent with the selection criteria.

(1) The Division shall negotiate a contract with the highest qualified firm at compensation determined in writing to be fair and reasonable.

(2) In establishing the construction management fee, the Division shall take into account the estimated value of the services to be rendered and the scope, complexity and professional nature of the services

(3) In the event the Division is unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price determined to be fair and reasonable, negotiations with that firm shall be formally terminated. The Division shall then undertake negotiations with the second most qualified firm, beginning with a formal request for a fee proposal from that business. Failing accord with the second most qualified business, the Division shall formally terminate negotiations with that firm. This process shall continue, with proposals received from and negotiations held with the next most highly qualified firm, until such time as a contract is signed with a qualified firm or the procurement process is terminated and a new request for qualifications is initiated.

(4) In general, pre-construction services are required on all types of construction management contracts. The fee for these services should be negotiated as a lump sum amount and should be based on the <u>scope and</u> duration of services.

(5) For Construction Management/At-Risk (CMc), there are essentially two phases of the contract.

(A) Phase One commences following completion of fee negotiations for pre-construction services. Pre-construction services include all activities by the construction manager up to the point at which the design is far enough along for the construction manager to establish a Guaranteed Maximum Price (GMP). The point in time when the GMP can be established will vary from one type of project to another. Included in the GMP quoted by the construction manager are the construction manager's fees for administering the construction contract (project fee) and the fee to cover the General Conditions for construction. The project schedule may also dictate the amount of contingency included in the GMP.

(B) Approval of the GMP advances the project from Phase One of construction management services to Phase Two. This is accomplished through issuance by the Division of a Notice to Proceed. Once the GMP is established, it will remain in effect through the development of the construction documents by the design consultant and the construction manager will work in conjunction with the design consultant to perform value engineering and construction coordination reviews and to develop individual bid packages for issuance to subcontractor trades.

(i) Upon receiving the Notice to Proceed, the Construction Manager/At-Risk will be required to furnish 100% performance, payment and defect bonds, in an amount equal to the GMP or lump sum. Worker's Compensation, All Risk, Property and General Liability insurance shall be required.

(ii) Non approval of the GMP allows the Division to terminate the services of the construction manager or to renegotiate, as required.

(iii) When the design is complete and bid documents have been prepared for issuance of work packages to subcontractor trades, the construction manager becomes essentially a general contractor for the project, responsible for issuing and awarding individual work packages to subcontractor trades in accordance with subchapter 1, titled "Bidding Procedures", of this Chapter.

(6) When individual work packages are bid as a lump sum, the CM's contract for that portion of the work converts from a GMP to a lump sum. Once all work packages have been bid, the construction manager's contract becomes all lump sum.

(7) In the event that the GMP is exceeded after all bids are received from subcontractor trades, the construction manager and the Division must determine whether individual work packages need to be revised and then rebid in order to reduce cost. As an alternative, the Division may allow an adjustment to the GMP in order to allow the construction manager to award all work packages.

(8) In administering the construction contract, the construction manager will adhere to Oklahoma public bidding laws in advertising and award of various work packages for a project. The estimated value of a work package will be published with the advertisement to bid.

(9) Because the construction manager is "at risk" for the total contract amount, they are permitted to self-perform portions of the work, provided that they competitively bid the work as a lump sum (each work package) under the same terms and conditions as the other bidders. If the construction manager decides to bid a work package, they must declare this intent during the pre-bid meeting held by the Division.

(10) In the award of subcontracts, the construction manager will award to the lowest responsible bidder. To be considered a "responsible bidder" the offeror must meet the minimum pre-qualification requirements, if any, that may be defined in the contract bid documents. An offeror shall meet the minimum pre-qualification requirements and complete the qualifications form that will be included as part of the bid package.

<u>(11) Procurement of project components costing less than the statutory amount established in 61 O.S., Section 103 may be accomplished by receipt of written bids pursuant to 61 O.S., Section 103. The Division may approve and direct the Construction Manager to prepare written bid solicitation for such items and furnish to at lease three known suppliers. The solicitation shall clearly state the requirements for products delivery and installation, if applicable, and shall require the written</u>

quotes to be returned to the Division or the Division's agent by a specified date and time.

(c) **Award of contract.** The construction management contract is written and processed for award by the Division. After the contracts have been signed by all parties, and processed, copies shall be provided to the state agency and the consultant.

(d) **Changes to base contract.** Changes to the base contract are permitted as long as the scope of the change is generally included within the scope of work developed for which the selection process was conducted. All changes shall be in writing and signed by all parties to the contract.

(e) **Construction Management contracts.** Contracts are written by the Division in standard formats as required by 61 O.S. The Division may be contacted for development of special requirements to be included in the contracts.

580:20-17-10. Waivers

The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

SUBCHAPTER 19. DESIGN-BUILD PROCEDURES AND REQUIREMENTS

580:20-19-2. Definitions

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

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

"Consultant" means *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]

"Delivery System" is the approach used to develop and construct a project where Design-Build or Design-Bid-Build are typical approaches.

"Design-Bid-Build"(DBB) is the delivery method used on public projects whereby a licensed design professional retained based on qualifications, shall develop the project design in its entirety. The Division shall then solicit bids and award the contract to the general contractor who demonstrates that they can complete construction, as specified in the design, and that they are the lowest responsible bidder.

"Design-Build" (DB) is the project delivery method in which the Division procures both design and construction services in the same contract from a single, legal entity referred to as the design-builder. The method uses Request for Qualifications (RFQ)/Request for Proposal (RFP) procedures rather than the DBB Invitation for Bids (IFB) procedures. The design-build entity is liable for all design and construction costs and must provide a firm fixed price in its proposal.

"Design-Build Contract" shall be a contract between the Division and a design-builder to furnish the labor, materials and other services for both the design and construction for the same public project.

"Design-Builder" shall be the entity that proposes to design and construct any public project governed by the procedures of Title 61 and this Chapter.

~~**"Design Consultant"** means any individual, firm, corporation, association, partnership, copartnership, or any other legal entity possessing the required qualifications to provide licensed architectural, registered engineering, or registered land surveying services for any construction project.~~

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

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

"Evaluation Criteria" shall be the requirements for the first phase of the selection process and shall include, as appropriate, specialized experience, technical competence, capacity to perform, past performance and other appropriate factors. Prices shall be considered only in the second phase of the selection process.

"Proposal" shall be an offer to enter into a design-build contract, as further defined in this subchapter.

"Request for Proposals" (RFP) shall be the document the state agency sends to each of the design-build firms on the "short list". The RFP shall contain the "Request for Proposals" (RFP) elements as described in OAC 580:20-19-11.

"Request for Qualifications" (RFQ) shall be the document or publication whereby a state agency solicits for qualified design-build firms.

"State agency" means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 202.

580:20-19-14. Waivers

The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

SUBCHAPTER 21. SELECTION OF CONSTRUCTION MANAGEMENT AND DESIGN-BUILD FIRMS

580:20-21-2. Definitions

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

"Consultant" means *an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.* [61 O.S., §202]

~~**"Design Consultant"** means any individual, firm, corporation, association, partnership, copartnership, or any other legal entity possessing the required qualifications to provide licensed architectural, registered engineering, or registered land surveying services for any construction project.~~

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

"Fixed Fee" means a fee to be paid to a firm which is expressed as a firm, fixed amount for the services specified in the scope of work.

"Interview committee" means a group of individuals designated by the chief administrative officer or governing body of a state agency to interview construction management or design-build firms for the purpose of selecting such a firm for a planned project. The interview committee shall include a representative from the Construction and Properties Division. This group should include licensed architects or engineers, if available.

"Percentage fee" means a fee to be paid a firm which is based upon a negotiated percentage of the resultant construction contract.

"Program" means the detailed description of the work and the scope of the design services. This program is written by the state agency or a Design Consultant.

"Request for Qualifications (RFQ)" shall be the document or publication whereby a state agency solicits for qualified construction management or design-build firms. [Reference 20-21-4 (d)]

"Screening committee" means a group of individuals designated by the chief administrative officer or governing body of a state agency which reviews the qualifications of interested firms for the purpose of selecting a short list of firms to be interviewed. The screening committee shall include a representative of the Construction and Properties Division. The group should include licensed architects or engineers, if available.

"Selection criteria" means a list of the considerations and requirements used to evaluate each prospective construction management or design-build firm.

"Short list" means a list of construction management or design-build firms chosen during the screening process for a detailed interview. This list shall contain no less than three nor more than five firms for a single project. If the screening process is selecting for more than one construction management or design-build contract, there should be two firms on the short list for every planned project.

"State agency" means all agencies, boards, commissions, offices, institutions, and other governmental bodies as defined in 61 O.S., Section 202.

580:20-21-3. Registration of construction management and design-build firms

(a) All construction management or design-build firms desiring to perform services for the State of Oklahoma must register with the Division by delivering a completed registration application form to the Division.

(b) A registration is valid for one (1) calendar year and must be renewed annually on or before ~~January 31st of each succeeding year~~ the anniversary date of the previous year's registration.

(c) Construction management or design-build firms shall not be solicited for projects with the state until the date the company's registration application is received and approved by the Division.

(d) A construction management or design-build firm may register with the Division any time prior to the deadline for project consideration.

580:20-21-9. Waivers

The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

SUBCHAPTER 23. FEES FOR SERVICES

580:20-23-1. Purpose

The Construction and Properties Division may collect reasonable fees for the purpose of providing or contracting for architectural, engineering, and land surveying services to state agencies; from persons requesting plans and notification of solicitations issued by the Division; and, for contract management for a construction project. [Title 61, Section 208.1] The purpose of this ~~chapter~~ Subchapter is to establish a schedule of fees for services provided by the Division.

580:20-23-2. Fees for services

(a) **General Provisions.** Upon requesting specific services, a state agency shall submit a requisition or request form prescribed by the Administrator which states the service requested and verifies the corresponding fee from the schedule provided by the Division. When required by the fee schedule, the Agency shall attach a purchase order for the specified fee amount, listing the Division as the vendor. The Division will invoice the Agency for the specified fee upon completion of the service. The fee is for a service provided by the Division and is fulfilled by the specified action by the Division. The fee is not contingent on the performance of an outside vendor retained as a result of the service rendered by the Division.

(b) **Fee schedule for non-mandatory services.** The following fees shall be collected for non-mandatory services provided by the Division:

(1) DCS ~~Roofing~~ Roof Asset Management Program - Five (5%) of roofing contract price.

(2) DCS On-Call Consultants Program - Ten (10%) of Consultant's Fee

(3) DCS Testing Program - Ten (10%) of Testing Consultant's Fee

~~(4) DCS Project Management Program - Ten (10%) of Consultant's Fee~~

(~~5~~ 4) DCS Land Surveying Program -Ten (10%) of Land Surveyor's Consultant Fee

(5) Other Specialized Consulting or Contracting services - Up to 10% of Consultant's fee and/or contract price

(6) Architectural or Engineering consultation services - Hourly rates of Division personnel and administrative expenses of the Division

~~(6) Bid Document Services - Actual cost of printing of bid documents.~~

~~(7) Other pilot DCS Value-added Services - Actual cost of services plus twenty five per cent (25%).~~

(c) **Fees for bid document services.** The Division shall collect a fee for the actual cost of notification of solicitations and printing of bid documents plus 15% for Division administrative expenses from persons requesting plans and notification of solicitations issued by the Division.

(d) **Contracting and contract management fees.** The Division will charge reasonable fees for providing, contracting and managing consulting or construction contracts. [61 O.S., § 208.1]

(1) Fees will be based on project size, complexity and management effort required by the Division.

(2) The Division will determine the appropriate level of contract management services for each project.

(3) A fair and reasonable fee schedule will be established by the Division for routine standard services and for expanded contract management services. The fee schedule will be published on the Department website and, in no case, will such fees exceed:

(A) a lump-sum fee of $250.00 for small construction contracts not exceeding the statutory amount defined by 61 O.S., § 103 (B);

(B) 5% of the construction contract amount for large construction contracts defined by 61 O.S., § 103 (A);

(C) $500.00 for contracting for architectural, engineering and land surveying services.

580:20-23-4. Waivers

The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

SUBCHAPTER 25. PRE-CONSTRUCTION PLANNING

580:20-25-1. Purpose

This subchapter defines the process for state agencies to follow when planning a construction project, and apply to both new construction and major renovation. [O.S.61 §209(12)]

580:20-25-2. Definitions

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

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

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

"Department" means the Department of Central Services.

"Intent" means the point in time that a State Agency decides to pursue a project, either by incorporation into the agency's long range plan, by budget action or by action to obtain future funding.

"Pre-Design Services" means a formal planning process to establish function, scope and cost of a future project.

"Project or Improvement" means the collective act of design and construction of a new State building, facility or improvement, or the renovation of an existing State building, facility or improvement; or the acquisition of a building or facility for the purpose of renovation and occupancy by the State, where the construction and/or renovation cost is reasonably anticipated to exceed $158,000.00.

"State agency" means *an agency, board, commission, counsel, court, office, officer, bureau, institution, unit, division, body, or house of the executive or judicial branches of government of this state, whether elected or appointed, excluding only political subdivisions*. [61 O.S., §202]

580:20-25-3. Project inception

When a state agency establishes intent to pursue a Project, the agency shall notify the Division in writing. The agency shall provide information specified by the Division, including but not limited to: project name, description, location, intended purpose, new construction or renovation, anticipated cost, desired completion date and description of funding sources. The notification may be used by the Division to maintain data on projected State construction pursuant to 61 O.S., §204(A)(1).

580:20-25-4. Determination of a need for pre-design services

Upon review of the notice of intent submitted by the agency, the Administrator will consult with the agency and determine the specific project planning requirements. The Administrator shall determine a need for pre-design services based on the following factors:

(1) Building type;

(2) Project complexity;

(3) Project schedule;

(4) Funding sources or funding constraints; and,

(5) Other factors unique to the project.

580:20-25-5. Pre-Design Services

When the Administrator determines pre-design services are required, the Administrator shall advise the agency of the anticipated cost of the service, and the procurement methods available to the agency. To initiate pre-design services, the agency shall submit a requisition to the Division and the Division shall procure the pre-design services on behalf of the agency.

580:20-25-6. Applicability

The requirements of sections 20-25-4 and 20-25-5 are not mandatory for state agencies employing licensed architects pursuant to 61 O.S., §207.2.

580:20-25-7. Waivers

The Director may waive or modify any provision or requirement of this Subchapter when such waiver is in the best interest of the State.

[OAR Docket #07-1226; filed 5-25-07]

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

[OAR Docket #07-1220]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
580:45-1-10. Fair and equitable distribution [REVOKED]
AUTHORITY:
Director of the Department of Central Services; 80 O.S., Section 34.2.
DATES:
Comment Period:
February 15, 2007 to March 19, 2007
Public Hearing:
March 19, 2007
Adoption:
March 22, 2007
Submitted to Governor:
March 29, 2007
Submitted to House:
March 29, 2007
Submitted to Senate:
March 29, 2007
Gubernatorial approval:
May 4, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 24, 2007
Final adoption:
May 24, 2007
Effective date:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rule revocation corrects a scrivener's error in rules promulgated in 2006. The error caused a duplication in rules due to the failure to revoke OAC 45-1-10 at the time OAC 45-1-41 was adopted and approved as its replacement.
CONTACT PERSON:
Gerry Smedley, Administrative Rules Liaison, (405) 522-8519; Department of Central Services, 2401 N. Lincoln Blvd., Suite 206, Oklahoma City, OK 73105 or email gerry_smedley@dcs.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

580:45-1-10. Fair and equitable distribution [REVOKED]

~~(a) The State Agency is responsible for the fair and equitable distribution of surplus property to all eligible donees in the state. Determining factors in equitable distribution will be relative needs and resources of eligible donees or recipients and their ability to utilize the property, except that special consideration will be placed with the donee or recipient whose authorized agent has screened the surplus property and the donee or recipient is receiving and transporting the property direct from the Holding Agency.~~

~~(b) Eligibility application forms will request program information from the applicant (a basis for determining utilization ability), funding sources and availability (a basis for determining relative resources). The State Agency will maintain a Major Item Want List (a factor for determining the actual needs of the Donee). As needs arise, the Donee shall submit a letter or Want List form requesting and justifying the need for specific item.~~

~~(c) Priorities will be based on the above factors when items are desired by multiple recipients.~~

~~(d) Consideration will also be given to the geographic location of the donee and the amount of property already in use. Specific attention will be given in cases of emergency, disaster, or specialized use requests. These factors, and any others deemed feasible by the State Agent, will be used to establish equitable distribution. The State Agent, when reporting on fair and equitable distribution, shall separate by three categories:~~

~~(1) State (including all agencies of state government);~~

~~(2) All others (public agencies including town, city, county and their respective agencies); and~~

~~(3) All non-profit institutions.~~

~~(e) Agencies and institutions may request from the State Agency the authority to have donee or recipient screener subject to State Agent and the General Services Administration.~~

~~(f) The donee recipient of special request property will be notified immediately when it becomes available and prompt pickup will be arranged by either the donee or the State Agency. The ability and willingness demonstrated by the donee to inspect, select, and remove property from a federal activity on direct pickups will be used as a guide for allowing further direct federal activity involvement. The State Agency will abide by federal regulations in the prompt removal of property from the Holding Agency.~~

~~(g) The State Agency, insofar as practicable, will select property requested by an eligible donee and, if so requested by the recipient, will arrange for shipment of the property directly to the recipient.~~

[OAR Docket #07-1220; filed 5-25-07]

TITLE 600. REAL ESTATE APPRAISER BOARD
CHAPTER 10. LICENSURE AND CERTIFICATION REQUIREMENTS

[OAR Docket #07-1033]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
600:10-1-4. Examination [AMENDED]
600:10-1-6. Experience prerequisite [AMENDED]
600:10-1-8. Course approval requirements [AMENDED]
600:10-1-16. Supervision of trainee appraisers [AMENDED]
AUTHORITY:
Oklahoma Real Estate Appraisers Act; 59 O.S. § 858-706 (B)
DATES:
Comment Period:
December 15, 2006 through January 26, 2007
Public Hearing:
February 9, 2007
Adoption:
February 9, 2007
Submitted to Governor:
February 20, 2007
Submitted to House:
February 20, 2007
Submitted to Senate:
February 20, 2007
Gubernatorial approval:
March 15, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in final approval on April 17, 2007
Final adoption:
April 17, 2007
Effective:
July 14, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
600:10-1-4. Examination [AMENDED]
600:10-1-6. Experience prerequisite [AMENDED]
600:10-1-8. Course approval requirements [AMENDED]
600:10-1-16. Supervision of trainee appraisers [AMENDED]
Gubernatorial approval:
October 18, 2006
Register publication:
24 Ok Reg 214
Docket number:
06-1378
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed amendment to rule 600:10-1-4 removes language requiring that applicants for Trainee Appraiser take an examination. The proposed amendment to rule 600:10-1-6 adds an application fee for applications requiring a work product review. The proposed amendments to rule 600:10-1-8 provide for application fees for appraiser courses and instructors. The above and foregoing changes implement changes to the Real Estate Appraisers Act by HB 2911 of the 2006 session. The proposed amendments to rule 600:10-1-16 are provided as a means of correcting confusing language created by disapproval of certain language in a 2005 permanent rule change by SJR 32, signed by the Governor on May 1, 2006.
CONTACT PERSON:
George R. Stirman III, Director, Real Estate Appraiser Board, Oklahoma Insurance Department, 2401 NW 23rd St, Ste 28, Oklahoma City, OK 73107 (405) 521-6636

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2007:

600:10-1-4. Examination

(a) To be certified as a ~~Trainee Appraiser,~~ State Licensed Appraiser, State Certified Residential Appraiser or State Certified General Appraiser the applicant must pass the examination that is appropriate for the applicable classification or certificate.

(b) Prior to taking the appraiser examination, an individual must make application for ~~Trainee,~~ State Licensed, State Certified Residential or State Certified General Appraiser and shall satisfy all licensing and certification requirements as set forth by the Appraiser Qualification Criteria promulgated by the Appraiser Qualification Board of the Appraisal Foundation, which are incorporated by reference.

(c) Applicants for ~~Trainee,~~ State Licensed, State Certified Residential and State Certified General Appraiser must complete the required hours in both education and experience before making application to take the appraiser examination. ~~Provided, there shall be no experience requirement for the Trainee Appraiser~~.

(d) If requirements are satisfactorily met by applicants for State Licensed Appraiser, State Certified Residential Appraiser or State Certified General Appraiser, notification shall be sent to the applicant allowing that applicant to take the examination on the next available test date.

(e) There shall be no examination required to be certified as a Trainee Appraiser; however, applicants ~~Applicants~~ for Trainee Appraiser must provide the identification of a qualified supervisory appraiser in the manner described by 600:10-1-16(a).

~~(e) If requirements are satisfactorily met, notification shall be sent to the applicant allowing that applicant to take the examination on the next available test date.~~

600:10-1-6. Experience prerequisite

(a) An original certification as a State Licensed Appraiser, State Certified Residential Appraiser or State Certified General Appraiser shall not be issued to any person who does not possess the minimum experience criteria set forth by the Appraiser Qualifications Board of the Appraisal Foundation provided any state licensed appraiser who becomes state licensed prior to July 1, 2001, shall not be required to attain the minimum requirements of experience promulgated by the Appraiser Qualifications Board to maintain certification as a state licensed appraiser.

(b) Applications for certification as a State Licensed Appraiser or State Certified Residential Appraiser must be accompanied by a One Hundred Fifty Dollar ($150.00) non-refundable application fee. Applications for certification as a State Certified General Appraiser must be accompanied by a Two Hundred Twenty Five Dollar ($225.00) non-refundable application fee.

(c) Experience credit shall be allowed in accordance with the guidelines set forth by the Appraiser Qualification Criteria

promulgated by the Appraiser Qualifications Board of the Appraisal Foundation.

(d) ~~(c)~~ Each applicant for certification shall furnish under oath on forms prescribed by the Board a detailed listing of the real estate appraisal reports or file memoranda for each year for which experience is claimed by the applicant.

(e) ~~(d)~~ Applicants for the State Licensed, State Certified Residential, or State Certified General classifications are required to submit, in addition to the approved application form, properly completed experience log forms according to the basic form approved by the Board. Additionally, applicants for either the State Licensed, State Certified Residential, or State Certified General classifications shall submit the following:

(1) A letter of verification from a third party (or parties, i.e., employer, appraiser supervisor, etc.) stating and confirming direct knowledge that the applicant has achieved the stated hours of real estate appraisal experience, and

(2) Copies of at least three actual written real estate appraisal reports that exemplify the type of appraisal work experience that credit is being applied for. Reports submitted must be self-contained or summary reports of appraisals. Applicants for Certified General Appraiser must submit reports of at least two non-residential appraisals.

600:10-1-8. Course approval requirements

(a) Any person or entity seeking to conduct an approved course for qualifying or continuing education credits shall make application and submit documents, statements and forms as may reasonably be required by the Board. All providers shall provide to the Board:

(1) Name and address of the provider;

(2) Contact person and his or her address and telephone number;

(3) The location of the courses or programs, if known;

(4) The number and type of education credit hours requested for each course;

(5) Topic outlines which list the summarized topics covered in each course and upon request, a copy of any course materials. If a prior approved course has substantially changed, a summarization of those changes.

(6) The names and qualifications of instructors. An instructor shall have a minimum of one (1) of the following qualifications:

(A) A baccalaureate degree in any field and three (3) years of experience directly related to the subject matter to be taught; a masters degree in any field and one (1) year of experience directly related to the subject matter to be taught; a masters or higher degree in a field that is directly related to the subject matter to be taught; five (5) years of real estate appraisal teaching experience directly related to the subject matter to be taught; seven (7) years of real estate appraisal experience directly related to the subject matter to be taught; or

(B) Possess other educational, teaching, or professional qualifications determined by the Board to constitute an equivalent to one or more of the qualifications in the previously stated paragraphs (A), (B), or (C) of this paragraph.

(b) Approval of courses and instructors shall be for a three year period. Courses and instructors may be renewed for an additional period on application to the Board.

(c) Applications for course approvals and instructor approvals shall be accompanied by application fees as provided for below:

(1) Applications for approval of qualifying education courses that have not been approved by the Course Approval Program of the Appraiser Qualifications Board must be accompanied by a Two Hundred Dollar ($200.00) non-refundable application fee.

(2) Applications for approval of qualifying education courses that have been approved by the Course Approval Program of the Appraiser Qualifications Board must be accompanied by a Fifty Dollar ($50.00) non-refundable application fee.

(3) Applications for approval of continuing education courses that have not been approved by the Course Approval Program of the Appraiser Qualifications Board must be accompanied by a Fifty Dollar ($50.00) non-refundable application fee.

(4) Applications for approval of continuing education courses that have been approved by the Course Approval Program of the Appraiser Qualifications Board must be accompanied by a Twenty Dollar ($20.00) non-refundable application fee.

(5) Applications for approval of instructors shall be accompanied by a Fifty Dollar ($50.00) non-refundable application fee.

(6) Applications for renewal of any course or instructor shall be accompanied by a Twenty Dollar ($20.00) non-refundable application fee.

(d) Course providers shall provide written notice of date, time, place, and title of courses to be presented not less than seven (7) days in advance of the beginning date of the course. Courses presented shall be subject to unannounced compliance inspection by a representative of the Board.

(e) ~~(d)~~ In addition to accepting courses approved as described in this section, qualifying and continuing education credits may be granted to an individual in such case that said individual supplies acceptable documentation showing that the offering meets applicable Board requirements for the category of credit applied for, including proof that said individual attended and successfully completed the offering.

(f) ~~(e)~~ The Board may automatically accept without further review, courses pre-approved by the Appraiser Qualifications Board of the Appraisal Foundation.

(g) ~~(f)~~ The Board may withhold or withdraw approval of any provider for violation of or non-compliance with any provision of this chapter.

(h) ~~(g)~~ No person or entity sponsoring, conducting, or teaching a course of study shall advertise that it is endorsed, recommended or accredited by the Board. Such person or entity may indicate that a course of study has been approved by the Board if that course of study has been pre-approved by

the Board before it is advertised or held. Any such statement regarding Board approval shall specify the number of classroom hours approved, and whether the course is approved for qualifying education hours, continuing education hours, or both.

(i) ~~(h)~~ At the completion of each course, the provider shall provide to the Board a list of all licensees and those attending qualifying courses who completed the course on a Course Completion Form approved by the Board.

(j) ~~(i)~~ Providers shall maintain course records for at least five (5) years. The Board may order an examination of a provider for good cause shown.

600:10-1-16. Supervision of trainee appraisers.

(a) Trainee Appraisers shall report to the Board, on a form prescribed by the Board, the identity of any supervisory appraiser. Trainee Appraisers may have more than one supervisory appraiser~~, except as permitted in subparagraph i of this paragraph~~. When a Trainee Appraiser has more than one supervisory appraiser, each shall be reported to the Board as indicated above.

(1) The supervisor-trainee relationship shall become effective on the date of receipt of the original required form with original signatures in the administrative office of the Board.

(2) A supervisory appraiser shall notify the Board in writing immediately when supervision of a Trainee Appraiser has been terminated by the supervisory appraiser or the Trainee Appraiser.

(b) Trainee Appraisers shall maintain an appraisal log on a form prescribed by the Board. Separate appraisal logs shall be maintained for work performed with each supervisory appraiser. This appraisal log shall record the following information:

(1) Client name and date of report,

(2) Address or legal description of the real property appraised,

(3) Description of the work performed by the trainee appraiser and the scope of review and supervision of the supervisory appraiser,

(4) Number of actual hours worked,

(5) Type of property appraised,

(6) Form number or description of report rendered, and

(7) The signature and state certificate number of the supervisory appraiser.

(c) Experience credit for the purpose of upgrading will not be given unless:

(1) a properly completed trainee-supervisory report form is on file in the administrative office of the Board, and

(2) the Trainee Appraiser either signs the certification required by Standards Rule 2-3 of the Uniform Standards of Professional Appraisal Practice, or the supervisory appraiser gives credit to the Trainee Appraiser in the certification and complies with the requirements of Standards Rule 2-2(a)(vii), 2-2(b)(vii), or 2-2(c)(vii) as applicable.

(d) Both supervisory and trainee appraisers shall maintain complete workfiles as required by the Uniform Standards of Professional Appraisal Practice and the Oklahoma Certified Real Estate Appraisers Act.

(e) A supervisory appraiser shall meet the following requirements:

(1) have been a State Licensed or Certified Appraiser for a period of at least three (3) years;

(2) be a State Certified General Appraiser, ~~or~~State Certified Residential Appraiser or State Licensed under AQB Criteria Appraiser on a credential issued by the Oklahoma Real Estate Appraiser Board, provided however, that trainee-supervisor relationships between State Licensed under AQB Criteria Appraisers shall only be permissible until January 1, 2008;

(3) be in good standing with the Board and not subject to any disciplinary action within the last two years that affects the supervisor's legal eligibility to engage in appraisal practice; and

(4) accept responsibility for training, guidance, and direct supervision of the Trainee Appraiser by signing the form referenced in (a), above.

(f) A supervisory appraiser shall:

(1) accept responsibility for a Trainee Appraiser's appraisal reports by signing each report and certifying that the report is in compliance with the Uniform Standards of Professional Appraisal Practice, and

(2) personally inspect each appraised property with the Trainee Appraiser until the supervisory appraiser determines that the Trainee Appraiser is competent, in accordance with the Competency Rule of the Uniform Standards of Professional Appraisal Practice, for the property type.

(g) A supervisory appraiser shall notify the Board immediately when supervision of a Trainee Appraiser has been terminated by the supervisory appraiser or the Trainee Appraiser.

(h) Prior to assuming duties as a supervisory appraiser, an appraiser who has been disciplined by the Board must receive approval from the Board.

(i) A supervisory appraiser may assume responsibility for more than three Trainee Appraisers only under the following terms and conditions:

(1) The supervisor must apply for authority to supervise more than three Trainee Appraisers with the Board on forms approved by the Board for this purpose. This approval shall extend to the supervisor or supervisors, the facility and the training plan. Any approval issued hereunder shall specify a maximum number of trainees authorized.

(2) The supervisor must specify the location of the facility to be used for this purpose, which may not be a residence. The facility must have posted hours, approved by the Board, during which the facility will be open and a qualified supervisor present. During the operating hours, the facility and all records specified herein shall be subject to unannounced compliance inspection by a representative of the Board.

(3) The supervisor must prepare a training plan, based on the Core Curriculum and the Real Property Appraiser

Body of Knowledge promulgated by the Appraiser Qualification Board of The Appraisal Foundation, appropriate to the level of licensure to which the trainee aspires and for which the supervisor is qualified. This training plan should, as a minimum, include learning objectives for the experience to be gained, a planned time line for further qualifying and continuing education required to bring the trainee to a fully qualified status, and a checklist for monitoring progress by the trainee toward meeting these objectives.

(4) Records maintained in the training facility must include the training plan, an appraisal log, a workfile for each appraisal assignment, and a progress checklist, each maintained on a contemporaneous basis, for each Trainee Appraiser. In addition, appropriate reference materials should be on hand, which must include the current edition of the USPAP.

(5) Approval of any supervisor or supervisors under this paragraph may be conditioned upon an interview of such supervisors by a representative of the Board. Trainee-supervisor relationships existing as of July 13, 2005 that do not otherwise qualify under this paragraph shall remain permissible until January 1, 2008.

[OAR Docket #07-1033; filed 5-15-07]

TITLE 600. REAL ESTATE APPRAISER BOARD
CHAPTER 15. DISCIPLINARY PROCEDURES

[OAR Docket #07-1032]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
600:15-1-14. Disciplinary alternatives [AMENDED]
AUTHORITY:
Oklahoma Real Estate Appraisers Act; 59 O.S. § 858-706 (B)
DATES:
Comment Period:
December 15, 2006 through January 26, 2007
Public Hearing:
February 9, 2007
Adoption:
February 9, 2007
Submitted to Governor:
February 20, 2007
Submitted to House:
February 20, 2007
Submitted to Senate:
February 20, 2007
Gubernatorial approval:
March 15, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in final approval on April 17, 2007
Final adoption:
April 17, 2007
Effective:
July 14, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
600:15-1-14. Disciplinary alternatives [AMENDED]
Gubernatorial Approval:
October 18, 2006
Register publication:
24 Ok Reg 218
Docket number:
06-1377
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed amendment to rule 600:15-1-14 brings the rule into agreement with changes to the Oklahoma Certified Real Estate Appraisers Act enacted in 2006. This change makes permanent an emergency rule adopted by the Board effective November 1, 2006.
CONTACT PERSON:
George R. Stirman III, Director, Real Estate Appraiser Board, Oklahoma Insurance Department, 2401 NW 23rd St, Ste 28, Oklahoma City, OK 73107, (405) 521-6636

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2007:

600:15-1-14. Disciplinary alternatives

(a) The Panel may make any of the following disciplinary recommendations with respect to a Trainee, State Licensed, State Certified Residential or State Certified General Appraiser:

(1) ~~Revoke~~Revocation of the ~~Certification/License~~ certificate with or without the right to reapply;

(2) ~~Suspend~~Suspension of the ~~Certification/License~~ certificate for a period not to exceed five (5) ~~up to two (2)~~ years;

(3) ~~Issue a written, public censure;~~ Probation, for a period of time and under such terms and conditions as deemed appropriate by the Board;

(4) ~~Issue a written, private censure;~~ Stipulations, limitations, restrictions, and conditions relating to practice;

(5) ~~Require educational or professional retraining courses, classes or other remedial efforts as singular discipline or in conjunction with other imposed disciplinary requirements;~~ Censure, including specific redress, if appropriate;

(6) Reprimand;

(7) Satisfactory completion of an educational program or programs;

(8) Administrative fines as authorized by the Oklahoma Certified Real Estate Appraisers Act;

(9) Payment of costs expended by the Board for any legal fees and costs and probation and monitoring fees including, but not limited to, staff time, salary and travel expense, witness fees and attorney fees;

(~~6~~10) Recommend a dismissal of the complaint.

(b) Informal disposition may be made of any individual proceeding by stipulation, agreed settlement, consent order or default.

[OAR Docket #07-1032; filed 5-15-07]

TITLE 605. OKLAHOMA REAL ESTATE COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #07-1100]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
605:1-1-4. Operational procedures [AMENDED]
AUTHORITY:
Oklahoma Real Estate Commission; 59 O.S. §858-208
DATES:
Comment period:
February 1, 2007 through March 9, 2007
Public Hearing:
March 14, 2007
Adoption:
March 14, 2007
Submitted to Governor:
March 16, 2007
Submitted to House:
March 16, 2007
Submitted to Senate:
March 16, 2007
Gubernatorial approval:
April 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 10, 2007
Final adoption:
May 10, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Adding to the rules fees for inspecting and copying open records of the Real Estate Commission by way of License Data extract, Examinee Data extract and electronic/on-line transaction.
CONTACT PERSON:
Anne M. Woody, Executive Director, Oklahoma Real Estate Commission, 2401 N.W. 23rd Street, Suite 18, Oklahoma City Oklahoma 73107, 405-521-3387

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

605:1-1-4. Operational procedures

(a) **Organization.** The organization of the Commission is declared to be that as enumerated in Sections 858-201 through 858-204 of the heretofore described Code.

(b) **Operational procedures.** The general course and method of operation shall be as hereinafter specified in overall provisions of the rules of this Title.

(c) **Open Records Act.** In conformance with Title 51, Section 24 A.1., et seq, Oklahoma Statutes, 1985, titled "Oklahoma Open Records Act" all open records of the Real Estate Commission may be inspected and copied in accordance with procedures, policies, and fee as required by the Commission. The Commission shall charge the following:

(1) A fee of $.25 for each xerographic copy or micrographic image.

(2) A fee of $1.00 for each copy to be certified.

(3) A fee of $10.00 per hour for a record or file search.

(4) A fee of Forty Dollars ($40.00) per extract for License Data extract.

(5) A fee of Fifty Dollars ($50.00) every three (3) months for an Examinee Data extract.

(6) A fee of no more than Seven Dollars and Fifty Cents ($7.50) for a convenience fee for any electronic/on-line transaction.

(d) **Directory of Licensees.** One copy of the Directory of Licensees shall be provided each licensee if Commission funds permit. Additional copies shall be available to licensees and the public from the Commission upon payment of a charge based on actual cost of production and printing. Copies of the Directory may be furnished to governmental agencies without charge as inventory permits.

(e) **Petition for promulgation, amendment or repeal of any rule.** Any person may petition the Commission in writing requesting a promulgation, amendment or repeal of any rule.

(1) The petition must be in writing in business letter form or in the form of petitions used in civil cases in this State, and shall contain an explanation and the implications of the request and shall be:

(A) Signed by the person filing the petition and be filed with the Secretary-Treasurer of the Commission.

(B) Submitted to the Commission at least thirty (30) days prior to a regular meeting.

(C) Considered by the Commission at its first meeting following such thirty (30) days.

(D) Scheduled for a public hearing before the Commission within sixty (60) days after being considered by the Commission in a regular meeting.

(2) Within sixty (60) days after the public hearing, the Commission shall either grant or deny the petition. If the petition is granted, the Commission shall immediately begin the procedure for the promulgation, amendment or repeal of any rule pursuant to Title 75 O.S. 303.

(3) If the petition is denied the parties retain their rights under 75 O.S. Sec. 318, to proper Judicial Review.

(f) **Petition for declaratory ruling of any rule or order.**

(1) Any person may petition the Commission for a declaratory ruling as authorized by Section 307 of Title 75 of the Oklahoma Statutes as to the applicability of any rule or order of the Commission. Such petition shall:

(A) be in writing;

(B) be signed by the person seeking the ruling;

(C) state the rule or order involved;

(D) contain a brief statement of facts to which the ruling shall apply; and

(E) if known and available to petitioner, include citations of legal authority in support of such views.

(2) The Commission shall have at least thirty (30) days to review the petition. Following the review period, the Commission shall consider the petition at its next meeting.

(3) The Commission may compel the production of testimony and evidence necessary to make its declaratory ruling.

(4) Declaratory rulings shall be available for review by the public at the Commission office.

(g) **Contract Forms Committee.**

(1) The contract forms committee is required to draft and revise residential real estate purchase contracts and any related addenda for standardization and use by real estate licensees (Title 59 O.S. 858-208 {14}).

(2) The committee shall consist of eleven (11) members. Three (3) members shall be appointed by the Oklahoma Real Estate Commission; three (3) members shall be appointed by the Oklahoma Bar Association; and five (5) members shall be appointed by the Oklahoma Association of Realtors, Incorporated.

(3) The initial members' terms shall begin upon development of the forms and each member shall serve through the effective date of implementation of form(s) plus one (1) year. Thereafter, the Oklahoma Real Estate Commission shall appoint one (1) member for one (1) year, one (1) member for two (2) years, and one (1) member for three (3) years; the Oklahoma Bar Association shall appoint one (1) member for one (1) year, one (1) member for two (2) years, and one (1) member for three (3) years and; the Oklahoma Association of Realtors, Incorporated shall appoint two (2) members for one (1) year, two (2) members for two (2) years, and one (1) member for three (3) years. Thereafter, terms shall be for three (3) years and each member shall serve until their term expires and their successor has been appointed. Any vacancy which may occur in the membership of the committee shall be filled by the appropriate appointing entity.

(4) A member can be removed for just cause by the committee.

(5) Each member of the committee shall be entitled to receive travel expenses essential to the performance of the duties of his appointment, as provided in the State Travel Reimbursement Act.

[OAR Docket #07-1100; filed 5-18-07]

TITLE 605. OKLAHOMA REAL ESTATE COMMISSION
CHAPTER 10. REQUIREMENTS, STANDARDS AND PROCEDURES

[OAR Docket #07-1101]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Education and examination requirements
605:10-3-1. Prelicense education requirements [AMENDED]
605:10-3-5. Examinations [AMENDED]
Subchapter 5. Instructor and Entity Requirements and Standards
605:10-5-1.1. Approval of postlicense course offerings [AMENDED]
605:10-5-2. Approval of continuing education offerings [AMENDED]
Subchapter 7. Licensing procedures and options
605:10-7-1. License issuance [AMENDED]
605:10-7-2. License terms and fees; renewal; reinstatements [AMENDED]
Subchapter 9. Broker's Operational Procedures
605:10-9-4. Advertising [AMENDED]
AUTHORITY:
Oklahoma Real Estate Commission; 59 O.S. §858-208
DATES:
Comment period:
February 1, 2007 through March 9, 2007
Public Hearing:
March 14, 2007
Adoption:
March 14, 2007
Submitted to Governor:
March 16, 2007
Submitted to House:
March 16, 2007
Submitted to Senate:
March 16, 2007
Gubernatorial approval:
April 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 10, 2007
Final adoption:
May 10, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 3. Education and examination requirements
605:10-3-1. Prelicense education requirements [AMENDED]
Gubernatorial approval:
October 18, 2006
Register publication:
24 Ok Reg 218
Docket number:
06-1384
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Adds and amends language pertaining to qualification requirements for applicant examination and review of a failed exam. Also adds and amends language regarding Instructor renewal requirements, the new expiration period for approval/renewal of offered continuing education courses and related fees for entities seeking approval/renewal of continuing education courses. Also adds language that requires associates who advertise websites to have the approval of their sponsoring broker. Adds language that relates to the late penalty on license renewals that are filed online.
CONTACT PERSON:
Anne M. Woody, Executive Director, Oklahoma Real Estate Commission, 2401 N.W. 23rd Street, Suite 18, Oklahoma City Oklahoma 73107-2431, 405-521-3387

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. EDUCATION AND EXAMINATION REQUIREMENTS

605:10-3-1. Prelicense education requirements

(a) On and after July 1, 1993, as evidence of an applicant's having satisfactorily completed those education requirements as set forth in Sections 858-302 and 858-303 of the Code, each applicant for licensure shall present with his or her application a certification showing successful completion of the applicable course of study approved by the Commission as follows:

(1) To qualify an applicant for examination and licensure as a provisional sales associate, the course shall consist of at least ~~forty-five (45)~~ ninety (90) clock hours of instruction or its equivalent as determined by the Commission. In order for a provisional sales associate to obtain a sales associate license, the provisional sales associate must, following issuance of a provisional license, complete additional education as required in Section 858-302 of the Code. The prelicense course of study shall be referred to as the Basic Course of Real Estate, Part I of II and shall encompass the following areas of study:

~~(A) Nature of Real Estate~~
~~(B) Rights and Interests in Real Estate~~
~~(C) Agency Concepts Between Broker and Affiliated Associates~~
~~(D) Listing Contracts and Pricing~~
~~(E) Valuation and Appraisal~~
~~(F) Marketing and Selling~~
~~(G) Contract Law~~
~~(H) Legal Descriptions~~
~~(I) Offer and Purchase Contracts~~
~~(J) Title Search, Encumbrances, and Land Use Control~~
~~(K) Financing Real Estate~~
~~(L) Transfer of Interest in Real Estate~~
~~(M) Duty to Account~~
~~(N) Regulations Affecting Real Estate Transactions~~
~~(O) Brokerage Relationships With Parties to a Transaction~~
(A) Real Estate Economics and Marketing
(B) Nature of Real Estate
(C) Rights and Interest in Real Estate
(D) Legal Descriptions
(E) Title Search, Encumbrances, and Land Use Control
(F) Transfer of Rights
(G) Service Contracts
(H) Estimating Transaction Expenses
(I) Value and Appraisal
(J) Marketing Activities
(K) Fair Housing
(L) Contract Law Overview
(M) Contract Law and Performance
(N) Offers and Purchase Contracts
(O) Financing Real Estate
(P) Closing a Transaction
(Q) Regulations Affecting Real Estate
(R) Disclosures and Environmental Issues
(S) Property Management and Leasing
(T) Risk Management
(U) Professional Standards of Conduct

(2) To qualify an applicant for examination and licensure as a broker, the course shall consist of at least ~~seventy-five (75)~~ ninety (90) clock hours of instruction or its equivalent as determined by the Commission. Such course of study shall be referred to as the Advanced Course in Real Estate and shall encompass the following areas of study:

~~(A) Laws and Rules Affecting Real Estate Practice~~
~~(B) Establishing a Real Estate Office~~
~~(C) Office Management~~
~~(D) Anti-Trust and Deceptive Trade~~
~~(E) Oklahoma Broker Relationships Act~~
~~(F) Risk Management and Insurance~~
~~(G) Disclosures, Hazards and Zoning~~
~~(H) Financial Management~~
~~(I) Real Estate Financing~~
~~(J) Specialized Operations~~
~~(K) Transaction File Maintenance~~
~~(L) Trust Accounts and Trust Funds~~
~~(M) Closing a Real Estate Transaction~~
~~(N) Closing Statements~~
(A) Laws and Rules Affecting Real Estate Practice
(B) Broker Supervision
(C) Establishing a Real Estate Office
(D) Professional Development
(E) Business Office Management
(F) Office Financial Management
(G) Anti-Trust and Deceptive Trade
(H) Risk Management and Insurance
(I) Disclosures, Hazards, and Zoning
(J) Real Estate Financing
(K) Specialized Property Operations
(L) Transaction Management
(M) Closing a Real Estate Transaction
(N) Closing Statements
(O) Professional Standards of Conduct

(b) As evidence of an applicant's having successfully completed those education requirements as set forth in Section 858-304 of the Code, each applicant shall present a certified transcript from an institution of higher education, accredited by the Oklahoma State Regents for Higher Education or the corresponding accrediting agency of another state.

(1) The basic course of real estate shall be limited to Basic Real Estate Principles and Practices; provided, however, that a course or combination of courses not so titled may be accepted if the course content has been determined by the Commission to be equivalent as one and the same as enumerated in this Section.

(2) The advanced course of real estate shall be limited to Advanced Real Estate Principles and Practices; provided that a course or combination of courses not so titled may be accepted if the course content has been determined by the Commission to be equivalent as one and the same as that enumerated in this Section.

(3) The Commission shall accept in lieu of a certified transcript a course completion certificate as prescribed by the Commission.

(c) **Entities allowed to seek approval.** The education courses required of this Section shall be satisfied by courses approved by the Commission and offered by:

(1) The Commission

(2) An area vocational-technical school

(3) A college or university

(4) A private school

(5) The Oklahoma Association of Realtors, the National Association of Realtors, or any affiliate thereof,

(6) The Oklahoma Bar Association, American Bar Association, or any affiliate thereof; or

(7) An education provider.

(d) **Attendance and successful completion required for in-class credit.** To complete any in-class offering, a person must physically be present during all of the offering time and successfully complete all course requirements to include an examination.

(e) **Successful completion of materials and examination required for distance education credit.** To complete a distance education course offering, a person must successfully complete all course requirements to include all modules and an examination.

605:10-3-5. Examinations

(a) **Applicant must appear in person.** When an application for examination has been submitted to the Commission, the applicant shall be required to appear in person, at a time and place to be designated by the Commission, and answer questions based on the required subject matter as prescribed elsewhere in the rules of this Chapter. Unless otherwise directed by the Commission, all examinations will be conducted in Oklahoma City. On and after August 1, 2001, each broker examination fee shall be Seventy-five Dollars ($75.00) and each provisional sales associate/sales associate examination fee shall be Sixty Dollars ($60.00)

(b) **Computer and written examinations.** In the event a computer is available and in working order, the Commission shall administer the examination by computer. If an applicant requests to take the examination in a written form and a computer is available, a charge of Twenty Dollars ($20.00) in addition to the regular examination fee will be assessed the applicant. In the event a written request is made by a handicapped individual, the Commission may waive the fee.

(c) **Failure to pass examination.** If an applicant fails to pass the examination prescribed by the Commission, the Commission may permit subsequent examinations upon receipt of a new examination fee for each examination to be attempted.

(d) **Applicant request to view failed examination.** An applicant who fails the examination may, within thirty (30) days of the date of the examination, personally visit the Commission office and view his or her examination. If, as a result of such viewing, the applicant is of the opinion incorrect grading was the cause for his or her receiving a failing grade, he or she may within ten (10) days request a review by the Commission of his or her examination. The purpose of such a review by the Commission shall be to determine whether or not such examination was correctly graded. Applicants will be allowed up to one (1) hour to review their exam and the applicant will not be allowed to test on the same day they review a failed examination. No notes, pencils, or electronic devices will be allowed during review.

(e) **Application valid for one year.** The original examination application shall be valid for one (1) year from date of filing. A request to write an examination submitted more than one (1) year from the most recent original application filing must be accompanied by a new original application form.

(f) **Passing percentile of examination.** A score of seventy-five percent (75%) or more shall be considered a passing grade on the broker or provisional sales associate/sales associate examination.

(g) **Validity period of examination results.**

(1) **Approved or incomplete application.** The results of an examination wherein an applicant scored a passing grade shall be valid for ninety (90) days from the date of such examination.

(2) **Unapproved application.** The results of an examination wherein an applicant scored a passing grade shall be valid for ninety (90) days from the date the application has received final approval but shall not be valid for more than one year from the date of examination.

(h) **Extension of examination grade validity period.** An applicant may request in writing for an extension of the validity period, showing cause why such period should be extended. At the discretion of the Commission, such validity period may be extended.

(I) **Disciplinary examination fee.** A fee shall be charged for an examination which is directed by Order of the Commission as disciplinary action.

(j) **Broker applicants.** A broker applicant who completes an entire broker examination and who is unsuccessful, may, if he or she retakes the examination within thirty (30) days, elect not to complete the written closing statement portion again, but be given his or her first written closing statement and re-enter his or her multiple choice closing statement answers.

SUBCHAPTER 5. INSTRUCTOR AND ENTITY REQUIREMENTS AND STANDARDS

605:10-5-1.1. Approval of postlicense course offerings

(a) **Course approval.** In accordance with Section 858-304 of the License Code, the Commission shall provide a syllabus outline for the Basic postlicense course of real estate to each person or entity conducting a postlicense course and requesting approval thereof. Any person or entity seeking to conduct an approved course of study shall make application and submit documents, statements and forms as may reasonably be required by the Commission. The request shall include the following:

(1) Completed course application.

(2) Application fee of One Hundred Twenty-five Dollars ($125.00) for each course.

(3) An approved course syllabus encompassing the contents enumerated in 605:10-3-7 and divided by instructional periods, and the name, author and publisher of the primary textbook, or a statement stating the entity will use

OREC syllabus and other items as may be required by the Commission.

(b) **Course offering requirements.**

(1) An offering entity not conducting the approved course within any thirty-six (36) month period shall automatically be removed from approved status. In such event, the person and/or entity must re-apply as an original applicant.

(2) If a course of study is to be conducted in the name of a corporation, the application shall include the names and addresses of all directors and officers.

(3) An approved entity shall immediately report any changes in information in regards to the application previously filed with the Commission.

(c) **Denied applications.** No portion of the fees enumerated in this Section are refundable. If an instructor, entity or course application is not approved, the applicant may appeal the decision by filing a written request for a hearing before the Commission. The hearing procedure shall be that as outlined in 605:10-1-3 titled "Appeal of administrative decisions; procedures."

(d) **Advertising course offerings.** No person or entity sponsoring or conducting a course of study shall advertise that it is endorsed, recommended or accredited by the Commission. Such person or entity may indicate that a course of study has been approved by the Commission.

(e) **Instructor application and approval requirements.** An individual determined by the Commission to possess one or more of the following qualifications may, upon receipt of an application and evidence of education and/or experience, be considered for approval as an approved instructor. Each application for approval must be accompanied by a One Hundred Dollar ($100.00) application fee. In order to qualify, an individual must possess proof of one of the following:

(1) Possession of a bachelor's degree in a related field.

(2) Possession of a valid teaching credential or certificate from Oklahoma or another state authorizing the holder to teach in an applicable field of instruction at the entity.

(3) Five (5) years full-time experience out of the previous ten (10) years in a profession, trade, or technical occupation in the applicable field of instruction.

(4) An individual determined by the Commission to possess a combination of education and/or experience, in a related field to that in which the person is to teach, which constitutes an equivalent to one or more of the qualifications in (1), (2) or (3) of subsection (e) of this Section.

(f) **Instructor renewal requirements.**

(1) In order to maintain approved status, an instructor must comply with the following:

(A) Attend a Commission directed Instructor Renewal Course, or its equivalent, every twelve (12) months. An exception to this rule may be given by the Commission if such instructor is licensed or certified through another regulatory body. Instructors approved solely for distance education offerings must complete three (3) hours every twelve (12) months of instructor training as accepted by the Commission and sign a statement that changes to current law and rules have been reviewed and that the instructor has made applicable amendments to the course material.

(B) Furnish evidence that the instructor has taught a Commission approved Postlicense course, or any other real estate related course(s) the Commission determines to be equivalent, within a required thirty-six (36) month period.

(2) Any instructor not meeting the requirements of this subsection will be required to re-apply as an original instructor applicant.

(~~f~~g) **Guest instructors.** Guest instructors may be utilized provided an approved instructor is also present during presentations. Total guest instruction and lectures shall not consume more than thirty percent (30%) of the total course time.

(~~g~~h) **Instructor and entity requirements.**

(1) **Instructor must be present.** An approved instructor must be present in the same room during all course instruction for students to receive credit toward course completion.

(2) **Retention of records.** An instructor/entity shall maintain a record of enrollment records and roll sheets which include number of hours attempted by each student.

(3) **Course completion certificate.** Each individual successfully completing a course of study approved by the Commission shall be furnished a certificate prescribed or approved by the Commission certifying completion. The Commission shall accept from a college or university a certified transcript or a course completion certificate as prescribed by the Commission.

(4) **Commission authorized to audit and inspect records.** A duly authorized designee of the Commission may audit any offering and/or inspect the records of the entity at any time during its presentation or during reasonable office hours or the entity may be required to provide the records to the Commission.

(5) **Clock hours and breaks.** Not more than one clock hour may be registered within any one sixty (60) minute period and no more than ten (10) minutes of each hour shall be utilized for breaks.

(6) **Class size limited.** Instructor ratio to students shall not exceed sixty (60).

(~~h~~i) **Facility approval requirements.** Before an approved course offering can be presented at a location, the person or group presenting the course must seek approval of the facility to be used for presentation of the course. A Commission approved application must be completed and accompanied by a Seventy-five Dollar ($75.00) application fee.

(1) The application fee may be waived if the facility request for approval has been approved for use as a classroom by the State Department of Education, State Regents of Higher Education, or State Vocational and Technical Education.

(2) The application fee may be waived if an entity is requesting to utilize a facility that is currently approved by the Commission as an active facility site.

(3) The Commission shall act on a facility application within thirty (30) days of receipt of application.

(~~i~~j) **Disciplinary action.** An approved course of study, director, instructor and/or facility may be withdrawn or disciplined as outlined in Title 59, O.S., Section 858-208, paragraph 6 either on a complaint filed by an interested person or the Commission's own motion, for the following reasons, but only after a hearing before the Commission and/or a Hearing Examiner appointed by the Commission:

(1) In the event the real estate license of a director is suspended or revoked, the course of study shall automatically be revoked.

(2) In the event the real estate license of an instructor is suspended or revoked.

(3) Failure to comply with any portion of the Code or the rules of this Chapter.

(4) Falsification of records and/or application(s) filed with the Commission.

(5) False and/or misleading advertisement.

(6) Any other improper conduct or activity of the director, instructor, or entity the Commission determines to be unacceptable.

605:10-5-2. Approval of continuing education offerings

(a) **Approval and expiration of application.** An entity seeking to conduct an approved continuing education offering shall make application for the approval or renewal of each offering. Such approval or renewal shall expire at the end of the ~~twelfth (12) month~~ twenty-fourth (24) month including the month of issuance.

(b) **Application form.** Each application by a sponsoring entity for approval of an offering or group of offerings not exceeding thirty-six (36) hours covered by the same application must be accompanied by a non-refundable ~~Thirty-five Dollar ($35.00)~~ Seventy Dollar ($70.00) application fee. Such application shall be made on a form prescribed by the Commission. The application shall include, but not limited to, the following information:

(1) The name(s), address(es), and telephone number(s) of the sponsoring entity, the owner(s), and the coordinator/director responsible for the quality of the offering.

(2) The title(s) of the course offering or offerings.

(3) A complete description of or copies of all materials to be distributed to the participants except that if materials provided by the Commission are to be used, a complete description shall not be required.

(4) The number of hours in each course offering.

(5) The tuition/registration fee and cancellation/refund policy.

(6) A copy of each offering's curriculum, or revised curriculum with revisions noted, including comprehensive course objectives, detailed outline of the course subject matter, instructor for each segment, and teaching technique used in each segment.

(7) The method of evaluation of the course offering which will be used by the entity.

(8) The procedure for monitoring attendance.

(9) A personal resume indicating name(s) and qualifications of the instructor(s).

(10) The number of years the entity has been offering real estate related education.

(11) Any other relevant information useful in determining that the entity is presenting an offering which will meet the definition, purposes, goals and objectives adopted by the Commission.

(12) A statement attesting to the fact that in accepting approval as a continuing education offering entity, the entity will protect and promote the purposes, goals and objectives of continuing education as stated in the License Code and Rules.

(c) **Commission course approval notice.** The Commission shall within sixty (60) days after receipt of an application inform the entity as to whether the offering has been approved, denied, or whether additional information is needed to determine the acceptability of the offering.

(d) **Ccourse renewal requirements.** An application for renewal of any offering or group of offerings by an entity shall also be accompanied by a non-refundable application fee of ~~Thirty-five Dollars ($35.00)~~ Seventy Dollars ($70.00) for a twenty-four (24) month period. Renewal applications shall be subject to the same requirements as original applications, but may cross-reference an earlier application regarding previously approved course offerings to the extent that items have not changed since a previous application.

(e) **Change of information notice requirement.** Whenever there is any change in an offering, the entity shall notify the Commission prior to the effective date of the change. Such change shall not be considered approved until written notice is received from the Commission.

(f) **Advertising of course offering.** An entity advertising an offering as being approved for continuing education credit shall state in such advertisement, "Approved by the Commission for (correct number) hours of continuing education credit."

(g) **Course guidelines and limitations.**

(1) An offering approved pursuant to this Section shall be open to all licensees, except as may otherwise be approved by the Commission upon request of the offering entity.

(2) An offering will not be approved by the Commission if its duration is less than two (2) consecutive clock hours or its equivalent as determined by the Commission.

(3) To meet the statutory requirement, a clock hour shall equal sixty (60) minutes, with no more than ten minutes of each hour utilized for breaks.

(4) An entity conducting an offering shall, within five (5) days of the completion thereof, submit to the Commission on a form prescribed by the Commission, a list of the names and license numbers of those licensees who successfully completed the said offering, along with other information which may reasonably be required.

(5) Each licensee successfully completing an offering shall be furnished a certificate, prescribed or approved by the Commission, certifying completion.

(6) Each offering shall be presented in such facilities and on such premises as shall be necessary to properly present the course as determined by the Commission.

(7) An approved instructor must be present in the same room during all course instruction for students to receive credit toward course completion. If an instructor is presenting a Commission approved course offering which is delivered to the licensees by way of television, the Commission may require that each delivering entity have a monitor in lieu of a Commission approved instructor.

(h) **Recruitment disallowed.**

(1) A coordinator/director or instructor shall not allow the premises or the facilities to be used by anyone to advertise and/or recruit new affiliates for any company. The coordinator/director shall cause the following statement to be posted at the premises or the facilities in such a manner as will be readable by all participants: "No recruiting for employment opportunities for any real estate brokerage firm is allowed in this class or on the premises. Any recruiting on behalf of, or permitted by, the Instructor should be promptly reported to the Oklahoma Real Estate Commission."

(2) An instructor shall not wear any identification relating to a specific name or identity of a real estate company, a group of companies or franchises while in the class or on the premises.

(i) **Instructor approval requirements.** An individual determined by the Commission to possess one or more of the following qualifications may, upon receipt of an application and evidence of education and/or experience, be considered for approval as an approved instructor. Each application for approval must be accompanied by a Ten Dollar ($10.00) application fee. In order to qualify, an individual must possess proof of one of the following:

(1) Possession of a bachelor's degree in a related field.

(2) Possession of a valid teaching credential or certificate from Oklahoma or another state authorizing the holder to teach in an applicable field of instruction.

(3) Five (5) years full-time experience out of the previous ten (10) years in a profession, trade, or technical occupation in the applicable field of instruction.

(4) An individual determined by the Commission to possess a combination of education and/or experience, in a related field to that in which the person is to teach, which constitute an equivalent to one or more of the qualifications in (1), (2) or (3) of this subsection.

(j) **Denied application; appeal.** If the Commission shall be of the opinion that a proposed continuing education offering does not qualify under the Code and/or Rules of the Commission, the Commission shall refuse to approve the offering and shall give notice of that fact to the party applying for approval within fifteen (15) days after such decision. Upon written request from such party, filed within thirty (30) days after receipt of such notice of denial, the Commission shall set the matter for hearing to be conducted within sixty (60) days after receipt of such request. The hearing procedure shall be that as outlined in 605:10-1-3, titled "Appeal of administrative decisions; procedures."

(k) **Disciplinary action.** The Commission may withdraw or discipline as outlined in Title 59, O.S., Section 858-208, paragraph 6 the approval of a coordinator/director, instructor, offering or entity either on a complaint filed by an interested person or on the Commission's own motion, for any of the following reasons, but only after a hearing before the Commission and/or a Hearing Examiner appointed by the Commission:

(1) In the event the real estate license of an instructor and/or coordinator/director is revoked or suspended.

(2) Failure to submit all documents, statements and forms as may be reasonably required by the Commission.

(3) Falsification of records and/or applications filed with the Commission.

(4) False and/or misleading advertising.

(5) Failure to revise an offering so as to reflect and present current real estate practices, knowledge, and laws.

(6) Failure to maintain proper classroom order and decorum.

(7) Any conduct which gives the coordinator/director, instructor or entity presenting the offering an unfair advantage over other brokers and/or real estate companies.

(8) Failure to comply with any portion of the Code or rules of this Chapter.

(l) **Retention of records.** An instructor/entity shall maintain a record of enrollment records and roll sheets which include number of hours attempted by each student.

(m) **Commission authorized to audit.** A duly authorized designee of the Commission may audit any offering and/or inspect the records of the entity at any time during its presentation or during reasonable office hours or the entity may be required to provide the records to the Commission.

(n) **Licensee/Instructor course credit.**

(1) A licensee who shall instruct an approved offering for continuing education shall be credited with one (1) hour for each hour of actual instruction performed.

(2) An instructor may not receive continuing education credit for instructing an offering more than one time during a license term.

(3) Records of such instruction shall be reported and maintained in the same manner as prescribed for participants elsewhere in the rules of this Chapter.

SUBCHAPTER 7. LICENSING PROCEDURES AND OPTIONS

605:10-7-1. License issuance

No real estate licensee shall begin operations in the real estate business without first having been issued his or her numbered active license certificate. This includes all original licenses, activations, reinstatements and all license types being changed from an associate to a broker or branch office broker, as defined in the rules.

605:10-7-2. License terms and fees; renewals; reinstatements

(a) **License term and fees.** Each original license issued under the Code on and after July 1, 1981, shall be issued to expire at the end of the thirty-sixth (36) month including the month of issuance. Each original provisional sales associate

license issued under the Code on and after August 1, 2001, shall be issued to expire at the end of the twelfth (12th) month including the month of issuance. On and after August 1, 2001:

(1) For an original broker license and each subsequent license renewal, to include corporations, associations or partnerships, the fee shall be Two Hundred and Ten Dollars ($210.00).

(2) For an inactive original broker license and each subsequent inactive license renewal, with the exception of corporations, associations or partnerships, the fee shall be One Hundred and Twenty-five Dollars ($125.00.) In order to activate such license that was renewed inactive in the same license term, the licensee shall pay One Hundred and Thirty Dollars ($130.00.) Thereafter, any future request to activate in the same license term shall be in accordance with Rule 605:10-7-4.

(3) For an active original sales associate license and each subsequent active license renewal the fee shall be One Hundred and Fifty Dollars ($150.00.)

(4) For an inactive original sales associate license and each subsequent inactive license renewal the fee shall be Ninety-five Dollars ($95.00.) In order to activate a sales associate license that was renewed inactive in the same license term, the licensee shall pay One Hundred Dollars ($100.00.) Thereafter, any future request to activate in the same license term shall be in accordance with Rule 605:10-7-4.

(5) For a non-renewable original provisional sales associate license the fee shall be Seventy Dollars ($70.00.)

(6) For an original branch office license and each subsequent license renewal the fee shall be One Hundred and Twenty-five Dollars ($125.00.)

(7) For each duplicate license or pocket card, where the original license is lost or destroyed, and a written request is made, a fee of Seven Dollars and fifty cents ($7.50) shall be charged.

(8) An additional Fifteen Dollar ($15.00) fee, the Education and Recovery Fund fee, shall be added and payable with the license fee for an original license and subsequent license renewal for each license with the exception of a provisional sales associate license which fee shall be Five Dollars ($5.00) for their twelve (12) month license term and a branch office which shall not pay the fee.

(b) **Terms cannot be altered.** Terms shall not be altered except for purposes of general reassignment of terms which might be necessitated for the purpose of maintaining an equitable staggered license term system.

(c) **Expiration date.** The actual expiration date of a license shall be midnight of the last day of the month of the designated license term.

(d) **Late penalty.** All renewals shall be filed on or before midnight of the tenth day of the month in which said license is due to expire, except in the event that date falls on a Saturday, Sunday or holiday; in such case, the next Commission working day shall be considered the due date <u>for all renewals except electronic online renewals wherein this exception would not apply</u>. Any such renewal application filed after such date shall be subject to a late penalty fee of Ten Dollars ($10.00).

(e) **Actual filing of license renewal.** A license shall lapse and terminate if a renewal application and required fees have not been filed with the Commission by midnight of the date on which the license is due to expire<u>, except in the event that date falls on a Saturday, Sunday or holiday; in such case, the next Commission working day shall be considered the due date</u>. A renewal application and required fees are considered filed with the Commission on the date of the United States postal service postmark or the date personal delivery is made to the Commission office.

(f) **Reinstatement of license.** Any licensee whose license term has expired shall be considered for reinstatement of such license upon payment of an amount equal to the current examination fee in addition to the license and late penalty fee(s) for each delinquent license period(s). The following documents and fees must be submitted:

(1) **Lapsed less than one year.** In the case of a license lapsed less than one year:

(A) License and late penalty fee.

(B) Reinstatement fee.

(C) Documents as required by the Commission.

(2) **Lapsed more than one year but less than two years.** In the case of a license lapsed more than one year but less than two years.

(A) License and late penalty fee.

(B) Reinstatement fee.

(C) A completed reinstatement application.

(D) A statement that the applicant has read a current License Code and Rules booklet.

(E) If applicable, a statement as to why the license fee was not paid in a timely manner.

(F) Documents as required by the Commission.

(3) **Lapsed more than two years.** In the case of a license lapsed more than two years.

(A) License and late penalty fee(s).

(B) Reinstatement fee(s).

(C) A completed reinstatement application.

(D) Successful completion of the appropriate licensing examination.

(E) Documents as required by the Commission.

(4) **Lapsed more than five years.** If such late application is submitted more than five (5) years subsequent to the most recent year of licensure, the applicant shall be regarded as an original applicant.

(5) **May apply as an original if lapsed more than two years.** In the case of a license lapsed more than two (2) years but less than five (5) years, the applicant may at his or her option apply as an original applicant provided evidence is submitted to show that the applicant has successfully completed the appropriate prelicense course(s). A person who does not possess a valid license may be considered for re-license only through the provision for reinstatement unless such license has been lapsed more than two (2) years. In the case of a provisional sales associate, the applicant would be required to repeat and successfully complete the postlicense requirement. If this option is elected by a previously licensed sales associate, the sales associate shall be regarded as an original applicant.

(g) **Reinstatement of a provisional sales associate license wherein postlicense education was completed prior to license expiration date.** On and after June 1, 1996, an applicant who successfully completed the postlicense education requirement before their first license expiration date and failed to renew their license on or before such date shall be eligible to reinstate the license as a sales associate according to 605:10-7-2 (f), (1) through (5).

(h) **Reinstatement of a provisional sales associate license wherein postlicense education was not completed prior to license expiration date.** On and after June 1, 1996, an applicant who has not successfully completed the postlicense educational requirement prior to the first license expiration date shall not be eligible to reinstate such license and shall apply and qualify as an original applicant.

(i) **Reinstatement of revoked license.** An applicant may not apply for re-license or reinstatement of license for a minimum of three (3) years from the effective date of license revocation. Upon the passage of the three (3) year period, the applicant shall be required to comply with the requirements of an original applicant.

(j) **Reinstatement of a surrendered or cancelled license.** A surrendered or cancelled applicant may be reinstated provided the applicant has received approval for re-issuance from the Commission. The following forms and fees must be submitted:

(1) **Reinstatement with term of license still current.** A surrendered or cancelled applicant whose license term is still current:

(A) Applicable reinstatement fee.

(B) Re-issuance fee.

(C) Documents as required by the Commission.

(2) **Reinstatement with term of license expired.** A surrendered or cancelled applicant whose license term has expired shall be required to comply with the requirements of (f) of this Section.

(3) **Reinstatement of provisional sales associate with term of license expired.** A surrendered or cancelled provisional sales associate whose license term has expired shall be required to comply with the following:

(A) If a provisional sales associate completed the postlicensing requirement on or before the first license expiration date, the applicant shall be eligible to reinstate the license according to 605:10-7-2 (f), (1) through (5).

(B) If a provisional sales associate did not complete the postlicensing requirement on or before the first license expiration date, the applicant shall be required to apply and qualify as an original applicant.

(k) **Continuing education requirement.** On and after July 1, 1984, each licensee with the exception of those as listed in Title 59, O.S., Section 858-307.2 (D) seeking renewal of a license must submit evidence that he or she has completed the continuing education requirements enumerated in Section 858-307.2 of Title 59. Further, on and after July 1, 1984, an applicant seeking active reinstatement of a lapsed license must submit evidence that he or she has completed continuing education requirements. The applicant must meet the continuing education requirement for each term in which an active license is requested.

(l) **Sales to broker license fee prorated.** If a real estate sales associate or provisional sales associate shall qualify for a license as a real estate broker, the unused license fee shall be credited to the broker license fee. The unused license fee credit shall commence with the first full month following the month in which the broker license is to be issued.

(m) **Issuance of license from provisional sales associate to sales associate if licensed prior to August 1, 2001.** A provisional sales associate is required to furnish to the Commission evidence of successful completion of the postlicense education requirement as set forth in Section 858-302 of Title 59, of the Oklahoma Statutes. Upon successful completion of the postlicense education requirement, the provisional sales associate must apply by submitting the appropriate document(s) and fee of Twenty-five Dollars ($25.00) to the Commission for issuance of a renewable sales associate license. The issuance of the license from a provisional sales associate to a sales associate only changes the license type and does not change the expiration date of the license.

(n) **Issuance of license from provisional sales associate to sales associate if licensed on and after August 1, 2001.** A provisional sales associate is required to furnish to the Commission evidence of successful completion of the Provisional Postlicense Course of Real Estate, Part II of II education requirement as set forth in Section 858-302 of Title 59, of the Oklahoma Statutes. Upon successful completion of the Provisional Postlicense Course of Real Estate, Part II of II education requirement, the provisional sales associate must submit the appropriate document(s) to the Commission prior to the provisional sales associate's license expiration date for issuance of a renewable sales associate license. The Commission shall not issue the provisional sales associate a renewable sales associate license until the end of the provisional sales associate's license term and until the provisional sales associate has successfully completed the Provisional Postlicense Course of Real Estate, Part II of II education requirement and has initiated a renewal for a renewable sales associate license.

(o) **Active status requested, however, Commission unable to activate for reasons as stated in statutes elsewhere.** In the event a licensee requests an active original license or subsequent license renewal to be issued on active status and for reasons beyond the Commission's control the licensee is unable to obtain an active license at that time, the fees as received by the Commission shall be retained and not refunded. Once the licensee corrects the problem with the appropriate regulatory agency and such agency authorizes the issuance of an active license, the Commission will then, upon receipt of an activation fee and required documentation, initiate the issuance of an active license within the respective license term.

(p) **License fees non-refundable.** On and after August 1, 2001, in the event an active sales associate within six (6) months of obtaining their original license, reinstatement or license renewal qualifies for an inactive broker license, the Commission shall not refund the difference in the license fees.

SUBCHAPTER 9. BROKER'S OPERATIONAL PROCEDURES

605:10-9-4. Advertising

(a) **Requirements and prohibitions.**

(1) A broker, when advertising, must use his or her business trade name or the name under which the broker is licensed. The advertisement must indicate that the party is a real estate broker and not a private party, to include, but not limited to, "agency", "company", "realty", or "real estate", as the case may be. Legal abbreviations following the trade name or name under which the broker is licensed shall be acceptable as long as they are easily identifiable by the public as such.

(2) No real estate advertisement shall show only a post office box number, telephone number or street address.

(3) A broker, when operating under a franchise name, shall clearly reveal in all office identification and in all advertising other than institutional type advertising designed to promote a common name, the franchise name along with the name of the broker or business trade name as registered with the Commission. A franchise name shall not be the complete business trade name. All institutional type franchise advertising shall indicate that each office is independently owned and operated.

(4) A licensee shall not advertise, either personally or through any media, to sell, buy, exchange, rent, or lease property when such advertisement is directed at or referred to persons of a particular race, color, creed, religion, national origin, familial status or handicap. The contents of any advertisement must be confined to information relative to the property itself, and any advertisement which is directed at or referred to persons of any particular race, color, creed, religion, national origin, familial status, or handicap is prohibited.

(5) Any advertising in any media which is misleading or inaccurate in any material fact or in any way misrepresents any property, terms, values, services, or policies is prohibited.

(6) A licensee shall not advertise any property for sale, rent, lease, or exchange in any media unless the broker has first secured the permission of the owner or the owner's authorized representative and said permission has a definite date of expiration.

(b) **Associates advertising.**

(1) An associate is prohibited from advertising under only his or her name.

(2) All advertising by an associate must be under the direct supervision of his or her broker.

(3) In all advertising, the associate must include the name of his or her broker or the name under which the broker operates, in such a way that the broker's reference is prominent, conspicuous and easily identifiable. If allowed by a broker, an associate may include in the advertisement:

(A) The associate's personal insignia of which such approval is to be maintained by the broker and which cannot be construed as that of a company name.

(B) The associate's personal nickname or alias which must be registered at the Commission prior to its use and which cannot be construed as that of a company name.

(C) An associate's contact information.

(D) A team name, approved by the broker, so long as the broker's reference is prominent, conspicuous, and easily identifiable, and which cannot be construed as that of a company name.

(E) A slogan which cannot be construed as that of a company name.

(F) A domain/website name that is registered with the broker.

(4) A sign rider with the associate's contact information may be attached to a yard sign if the yard sign contains the name or trade name and office telephone number of the broker.

(5) Open house or directional signs used in conjunction with broker's signs do not have to contain the name or trade name of the associate's broker and broker's telephone number.

(c) **Licensee acting as owner, purchaser or direct employee of owner.**

(1) When a licensee, either active or inactive, is purchasing real estate or is the owner of property that is being sold, exchanged, rented or leased and such is being handled either by the licensee or marketed through a real estate company, the licensee is required to disclose in writing on all documents that pertain to the transaction and in all advertisements that he or she is licensed.

(2) A licensee who is not acting in the capacity of a licensee but is engaged in buying, selling, leasing or renting real estate as a direct employee for the owner or as an officer for a corporate owner is not required to indicate in the advertising that he or she is licensed.

[OAR Docket #07-1101; filed 5-18-07]

TITLE 660. DEPARTMENT OF SECURITIES CHAPTER 2. ORGANIZATION AND PROCEDURES OF DEPARTMENT OF SECURITIES

[OAR Docket #07-1228]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. Individual proceeding practices and procedures
660:2-9-1. Hearings in general [AMENDED]
660:2-9-2. Initiation of individual proceedings [AMENDED]
660:2-9-3. Prehearing proceedings and processes [AMENDED]
660:2-9-4. Authority to subpoena witnesses [AMENDED]
660:2-9-6. Conduct of ~~hearings~~ individual proceeding [AMENDED]
660:2-9-7. Record of hearing [AMENDED]
660:2-9-8. Final orders [AMENDED]

AUTHORITY:

Administrator, Oklahoma Department of Securities; 71 O.S.Supp.2004, § 1-605

DATES:
Comment Period:
February 15, 2007 through March 19, 2007
Public Hearing:
March 19, 2007
Adoption:
March 19, 2007
Submitted to Governor:
March 29, 2007
Submitted to House:
March 29, 2007
Submitted to Senate:
March 29, 2007
Gubernatorial approval:
May 4, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 24, 2007.
Final adoption:
May 24, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rule amendments will provide clarification with regard to the procedures of the Department in individual proceedings when conducted pursuant to the Oklahoma Uniform Securities Act of 2004, 71 O.S.Supp.2004 §§ 1-101 through 1-701.
CONTACT PERSON:
Faye Morton, Counsel, Oklahoma Department of Securities, 120 N. Robinson, Suite 860, Oklahoma City, OK 73102, (405) 280-7727

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. INDIVIDUAL PROCEEDING PRACTICES AND PROCEDURES

660:2-9-1. Hearings in general

(a) **Authority.** Prior to the issuance of a final order in an individual proceeding, all parties shall be afforded an opportunity for hearing after reasonable notice. ~~If the person to whom notice is addressed does not request a hearing within twenty (20) days after the service of notice is effective, a final order may be issued.~~ The notice shall be in writing and advise the parties of their right to a hearing and their obligation to file an answer, the time period within which a hearing must be requested, and the effect of a failure to file an answer and to request a hearing.

(b) **Public hearing.** All hearings shall be open to the public but may not be recorded by the public or any respondent by any electronic means.

(c) **Hearings on summary orders.** The provisions of this Subchapter shall not apply to proceedings for summary orders. The procedures for hearings on summary orders shall be those set forth in:

(1) Sections 1-306.D, 1-411.F, or 1-604.B of the Securities Act;

(2) Section 814(D) of the Business Opportunity Act;

(3) Sections 628(D), 634(C), or 660 of the Land Sales Act; and

(4) Subsections (D) and (E) of Section 453 of the Takeover Act.

660:2-9-2. Initiation of individual proceedings

(a) **Request for hearing and answer.** The person to whom the notice of opportunity for hearing is addressed shall file with the Administrator a written answer within the time specified in the notice. The ~~request for hearing shall be in writing and~~ answer shall indicate whether the party requests a hearing and shall specifically admit or deny each allegation of the Department or state that the party does not have, and is unable to obtain, sufficient information to admit or deny each allegation. When a person intends in good faith to deny only a part of an allegation, the party shall specify so much of it as is true and shall deny only the remainder. A statement of a lack of information shall have the effect of a denial. Any allegation not denied shall be deemed admitted. Failure of a party to file ~~a request for hearing~~ an answer in ~~substantial~~ compliance with this subsection shall ~~constitute grounds for denial of the request~~ result in the issuance of a final order against that party.

(b) **Setting or denial of hearing.** Upon receipt of a written request for a hearing, the Administrator shall either promptly schedule a hearing ~~to commence within ninety (90) days from the receipt of the request~~ or shall issue a written order denying a hearing.

(c) **Time of notice.** Notice of all hearings shall be served by regular first class mail or by personal delivery within a time reasonable in light of the circumstances, in advance of the hearing, but not less than forty-five (45) days in advance thereof, to all parties. For good cause shown, any hearing may be rescheduled, provided all persons entitled to notice of such hearing are promptly advised thereof.

(d) **~~Contents~~ Content of notice.** The notice of hearing shall contain the following information:

(1) the date, time, place and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a short plain statement of the matters asserted; and

(4) a reference to the particular sections of the statutes and rules involved.

(e) **Appointment of hearing officer.** The Administrator may delegate authority to a Hearing Officer to conduct an individual proceeding and prepare a proposed order for submission to the Administrator whenever deemed appropriate under the circumstances. The Administrator shall enter into a written contract with each Hearing Officer appointed, which shall govern the terms of appointment.

(f) **Authority of presiding officer.** The Administrator, or the Hearing Officer, shall have the authority to do all things necessary and appropriate to ~~discharge his duties~~ conduct the individual proceeding. The duties of the Administrator, or the Hearing Officer, include, but are not limited to, the following:

(1) Administering oaths and affirmations;

(2) Issuing subpoenas authorized by law and ~~revoking,~~ quashing~~,~~ or modifying any such subpoena;

(3) Receiving relevant evidence and ruling upon the admission of evidence and offers of proof;

(4) Regulating the course of a proceeding and the conduct of the parties and their counsel;

(5) Holding prehearing and other conferences and requiring the attendance at any such conference of any party;

(6) Recusing himself ~~or herself~~ upon a motion ~~made by~~ of a party based on reasonable grounds, or upon his ~~or her~~ own motion;

(7) Considering and ruling upon all procedural and other motions, subject to any limitations otherwise specified;

(8) Requiring the filing of briefs, if so desired; and

(9) Requiring the filing of proposed findings of fact and conclusions of law. ~~in preparation for the proposed final order if so desired; and~~

~~(10) Preparing a proposed final order for submission to the Administrator.~~

(g) **Submission of case on documentary record.** The Administrator, or the Hearing Officer, may elect not to hold a hearing if all parties agree to submit the case on the documentary record and waive their right to appear.

660:2-9-3. Prehearing proceedings and processes

(a) **Scheduling.** As soon as is practicable after the request for hearing is received, but in no event later than thirty (30) days after the request for hearing is received, the Administrator, or Hearing Officer, shall enter a scheduling order that is intended to expedite the disposition of the action and insure the fair, orderly and efficient conduct of the proceedings. The parties shall confer in person or by telephone and attempt to prepare a single agreed scheduling order to submit to the Administrator or the Hearing Officer. If the proposed scheduling order is acceptable to the Hearing Officer, no scheduling conference need be held. If the parties are unable to agree, the Hearing Officer shall issue an appropriate scheduling order or hold a scheduling conference in person or by telephone. The scheduling order should establish at least the following:

~~(1) a statement of the issues as they then appear;~~

(~~2~~1) a schedule of discovery;

(~~3~~2) any limitations to be placed on discovery;

(~~4~~3) a preliminary list identifying all witnesses, documents and exhibits intended to be utilized at the hearing;

~~(5) a schedule for filing and exchanging prehearing briefs, if any;~~

(~~6~~4) identification of any expert witness intended to be called;

~~(7) the date or dates and time for the prehearing conference;~~

(~~8~~5) ~~the date and time of the hearing~~ the date for exchanging the documents and exhibits intended to be utilized at the hearing and the final list identifying all witnesses intended to be called at the hearing; and

(~~9~~6) such other matters as may aid in the disposition of the matter.

(b) **Discovery.** Discovery may be obtained by one or both of the following methods:

(1) A party may serve a written request on any other party requiring the party to produce, within fifteen (15) days, for inspection and copying, any documents or tangible items that are relevant to the subject matter of the individual proceeding and are not privileged; and/or

(2) A party may take the testimony of a witness by oral deposition at the expense of that party. A party desiring to take the deposition shall serve written notice to the witness and all other parties to the proceeding in accordance with 660:2-9-4. Such notice shall state the time and place for taking the deposition and shall be served in order to allow the adverse party sufficient time, by the usual route of travel, to attend, and three (3) days for preparation, exclusive of the date of service of the notice.

(c) **Motions in general.**

(1) Unless otherwise permitted by these rules or by the Administrator, or the Hearing Officer, motions shall:

(A) be made in writing;

(B) state concisely the question to be determined and be accompanied by any necessary supporting documentation; and

(C) be served on all parties.

(2) A response to a written motion shall be filed within ten (10) days after receipt of the motion but no later than the date and time of the hearing.

(3) The Administrator, or the Hearing Officer, may allow oral argument if it appears necessary to a fuller understanding of the issues presented.

(4) The filing or pendency of a motion does not alter or extend any time period prescribed by this Subchapter or by an order of the Administrator or the Hearing Officer.

(d) **Motions for summary decision.** A party may move for summary decision as to any substantive issue in the case. The Administrator, or the Hearing Officer, may issue a summary decision if he finds that there is no genuine issue as to any material fact and that the moving party is entitled to prevail as a matter of law.

(~~b~~e) **Prehearing conference**

(1) ~~A~~Upon the request of a party or when the Administrator, or the Hearing Officer, believes it necessary or appropriate, a prehearing conference shall be held, as close to the time of hearing as is reasonable under the circumstances, ~~but not less than twenty (20) days in advance thereof. No less than ten (10) days before the prehearing conference each party shall submit to the Hearing Officer and serve on all other parties, by personal delivery or facsimile, their final witness list, final exhibit list and specific factual contentions and legal contentions. No less than five (5) days before the prehearing conference any objections to any witnesses or exhibits listed shall be submitted to the Administrator, or the Hearing Officer, in writing stating the specified grounds for each objection, and served on all other parties, by personal delivery or facsimile . At the conclusion of the prehearing conference a ruling or order shall be entered reciting the action taken. The order shall control the subsequent course of the action unless modified by a subsequent order. The order shall be modified only to prevent manifest injustice. The order~~

~~shall include the results of the prehearing conference and shall present~~ to address the following matters:

(A) ~~all factual and legal~~ simplification of issues ~~to be determined in the case~~;

(B) the final list of witnesses and exhibits to be utilized at the hearing;

(C) ~~any~~ admissions and stipulations of fact ~~and any stipulations regarding admission and authenticity of documents~~; ~~and~~

(D) ~~if there is objection to the admission of any exhibit or witness, a list of the specific grounds for each objection. Absent proper objection, a listed exhibit or the testimony of a listed witness is admitted when offered at the hearing.~~ stipulations regarding admission and authenticity of documents;

(E) requests for official notice;

(F) discovery disputes;

(G) pending motions; and

(H) other matters that will promote the orderly and prompt conduct of the hearing.

(2) ~~Each party and the Administrator, or the Hearing Officer, shall approve the prehearing order and the order shall supersede the previous scheduling order and shall govern the hearing unless modified only to prevent manifest injustice.~~ At the conclusion of the prehearing conference, a ruling or order shall be entered reciting the action taken. The order shall control the subsequent course of the action unless modified by a subsequent order. The order shall be modified only to prevent manifest injustice.

~~(3) The Administrator, or the Hearing Officer, may conduct the prehearing conference by telephone. Upon notice to the participants, all or part of the prehearing conference may be recorded.~~

(~~e~~f) **Failure to appear or participate.** Failure to participate and cooperate in the preparation of a scheduling order or prehearing conference order, failure to comply with a scheduling order or prehearing conference order, failure to appear at any hearing or conference, failure to appear ~~at a conference~~ substantially prepared, or failure to participate in good faith ~~in any prehearing proceedings~~ may result in any of the following sanctions:

(1) striking of any pleading;

(2) a preclusion order;

(3) staying the proceeding;

(4) default judgment; or

(5) such other order as the Administrator, or the Hearing Officer, may deem just and appropriate.

(~~d~~g) **Post prehearing conference.** If additional exhibits are discovered after the prehearing conference order is issued or after the date final documents and exhibits are exchanged, the party intending to use them shall immediately notify all other parties and furnish copies of the additional exhibits to such parties. If additional witnesses are discovered, all other parties shall be notified immediately and furnished the nature of the testimony along with the names and addresses of the witnesses. These additional exhibits or the testimony of the additional witnesses ~~shall be deemed admitted unless written objection is filed prior to or at the commencement of the hearing by the party objecting. If a written objection is filed, no the exhibit or testimony of the witness may be added to the prehearing conference order~~ shall not be admitted at the hearing without the agreement of all parties or without a showing to the Administrator, or the Hearing Officer, that manifest injustice would be created if the ~~addition of such~~ exhibit or witness testimony were not permitted.

(~~e~~h) ~~**Filing**~~ **Service and filing of papers.** Service of papers upon a party shall be made by personal delivery, regular first class mail, facsimile transmission or electronic mail. All papers required to be served by a party shall be filed with the Administrator within the applicable time for service. When a Hearing Officer is appointed, a person making a filing with the Administrator shall promptly provide to the Hearing Officer a copy of such filing. Papers filed with the Administrator shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method ~~or~~ of service and the mailing address, ~~or~~ facsimile telephone number or electronic mail address to which service was made, if not made in person.

(~~f~~i) **Signature ~~requirement~~ and certification.** Every filing of a party represented by counsel shall be signed by at least one counsel of record ~~in his name~~ and shall state that counsel's business address and telephone number. A party who ~~acts as his own~~ is not represented by counsel shall sign his individual name and state his address and telephone number on every filing. The signature of a counsel or party shall constitute a certification that:

(1) the person signing the filing has read the filing;

(2) to the best of his knowledge, information, and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and the filing is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of adjudication~~.~~; and

(3) If a filing is not signed, the Administrator, or the Hearing Officer, shall strike the filing, unless it is signed promptly after the omission is called to the attention of the party making the filing.

(j) **Computation of time.** A paper is filed when it is received by the Administrator. Unless otherwise specifically provided by the Securities Act or this Subchapter, computation of any time period prescribed by this Subchapter, or by an order of the Administrator or the Hearing Officer, begins with the first day following the act or event that initiates the time period. The last day of the time period so computed is included unless it is a Saturday, Sunday, state holiday, or any other day when the Department's office is not open for public business, in which event the period runs until the end of the next business day. If a notice or other filing is served by mail and the party served is entitled or required to take some action within a prescribed time period after service, the date of mailing is the date of service, and three (3) days shall be added to the prescribed time period.

660:2-9-4. Authority to subpoena witnesses

(a) **Subpoenas.** ~~The Administrator, or the Hearing Officer, shall have the power to subpoena witnesses and administer oaths or to subpoena documentary evidence in any cause before him.~~ Any party to a hearing shall have the right to have subpoenas issued to require the attendance and testimony of witnesses at a designated time and place, or to require the production of ~~documentary evidence~~ documents and tangible items in the possession or under the control of the witness at a designated time and place. A party requesting the issuance of a subpoena shall submit the proposed subpoena in writing to the Administrator or the Hearing Officer, The proposed subpoena shall contain the name and address of the person to be subpoenaed; the name, address and telephone number of the party requesting the subpoena; and if the production of documents or tangible items is sought, a particular description of such documents or tangible items. Where it appears to the Administrator, or the Hearing Officer, that the subpoena sought may be unreasonable, oppressive, excessive in scope, unduly burdensome, or not relevant, he may, in his discretion, as a condition precedent to the issuance of the subpoena, require the party seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought. If after consideration of all the circumstances, the Administrator, or the Hearing Officer, determines that the subpoena or any of its terms is unreasonable, oppressive, excessive in scope, unduly burdensome or not relevant, he may refuse to issue the subpoena, or issue the subpoena only upon such conditions as fairness requires.

(b) **Service.** Service of the subpoena shall be ~~in the manner provided by law and~~ by personal delivery or by certified mail with a return receipt requested and delivery restricted to the person named in the subpoena. ~~shall be the responsibility of the~~ The party requesting the subpoena shall be responsible for, and bear the cost of, service. Appropriate service shall be made at least three (3) calendar days before the person is required to appear. ~~Proof of service shall be filed with the Administrator.~~

(c) **Return of service.** The party requesting the subpoena shall promptly file a return of service with the Administrator including a certificate signed by the person making service.

(d) **Objection to subpoena.** A person who has been served with a subpoena may object to the subpoena by filing a motion to quash with the Administrator within ten (10) days of service of the subpoena or by the date the person is ordered to appear, whichever is earlier.

(e) **Enforcement of subpoenas.**

(1) If a person under subpoena fails to appear as required, or fails to produce the documents or tangible items set forth in the subpoena, a party may apply to the Administrator for enforcement of the subpoena.

(2) An application to the Administrator for enforcement of a subpoena shall be made immediately upon the failure to comply with the subpoena or within such other time period as the Administrator may establish.

(3) Upon a timely request by a party for enforcement of a subpoena, the Administrator may apply to the district court of Oklahoma County or the district court in any other county where service can be obtained to enforce the subpoena as authorized by the Securities Act.

(~~c~~ f) **Fees.** ~~Witnesses~~ Non-party witnesses subpoenaed pursuant to this section shall be paid the same fees and mileage as are paid witnesses in the courts of the state of Oklahoma. Such fees shall be paid by the party requesting that the subpoena be issued at the time their testimony is completed.

660:2-9-6. Conduct of ~~hearings~~ individual proceeding

(a) **Order of proceeding.** The hearing shall proceed as follows:

(1) The Administrator, or the Hearing Officer, shall call the hearing to order;

(2) the Administrator, or the Hearing Officer, shall briefly explain the purpose and nature of the hearing;

(3) the Administrator, or the Hearing Officer, may allow the parties to present preliminary matters;

(4) the Administrator, or the Hearing Officer, may allow the parties to make opening statements;

(5) the Administrator, or the Hearing Officer, shall state the order of presentation of evidence;

(6) witnesses shall be sworn or put under affirmation to tell the truth; and

(7) the Administrator, or the Hearing Officer, may allow the parties to present summations and closing argument.

(~~a~~b) **Rules of evidence.** The rules of evidence need not be strictly followed or observed by the Administrator, or the Hearing Officer, during the hearing in order to obtain a full and fair disclosure of facts relevant to the matters at issue. However, ~~the Administrator, or the Hearing Officer, may look to~~ the admissibility of evidence shall be governed by the provisions of Section 310 of the Administrative Procedures Act ~~for guidance on any matter not specifically provided for in this Subchapter~~.

~~(b) **Photocopies.** Documentary evidence may be received in the form of copies if the original is not readily available and no party or interested person has objected to the authenticity of the document or asserted it has been altered. Upon such objection or assertion, the Administrator, or the Hearing Officer, may require the original to be produced.~~

(c) **Official notice.** Notice may be taken by the Administrator, or the Hearing Officer, of judicially cognizable facts. In addition, notice may be taken of generally recognized practices, procedures and facts relating to the securities industry. Parties shall be notified either before or during the hearing of the material noticed and they shall be afforded an opportunity to contest the material so noticed. The Administrator, or the Hearing Officer, shall utilize his experience, technical competence and specialized knowledge in evaluating the evidence presented.

(d) **~~Sequestration~~ Examination of witnesses.**

(1) Witnesses shall testify under oath or affirmation. If the Administrator, or the Hearing Officer, determines that a witness is hostile or unresponsive, the Administrator, or the Hearing Officer, may authorize the party calling

the witness to proceed as if the witness were under cross-examination.

(2) A party may conduct direct examination or cross-examination of a witness without strict adherence to formal rules of evidence, particularly, the rules on hearsay, in order to obtain a full and fair disclosure of facts relevant to the matters at issue.

(3) Upon request by any party, the Administrator, or the Hearing Officer, may exclude witnesses other than parties from the hearing room when those witnesses are not testifying. A party that is not a natural person may designate an individual as its representative to remain in the hearing room, even though the individual may also be a witness. An expert witness who is to render an opinion based on the testimony given at the hearing may remain in the hearing room during ~~the~~ all testimony. The Administrator, or the Hearing Officer, may order the witnesses, parties, their counsel, and any person under their direction not to disclose to any sequestered witness the substance of the testimony, exhibits, or other evidence introduced during the absence of the witness.

(~~e~~4) ~~**In person testimony.**~~ No witness shall testify by telephone or other electronic means unless by agreement of the parties.

660:2-9-7. Record of ~~hearing~~ individual proceeding

(a) **Requirement to record.** Oral proceedings shall be electronically recorded. Copies of the recordings shall be provided ~~at the expense of~~ by the Department at the request of any party to the proceeding. Costs of transcription of the recordings shall be borne by the party requesting transcription and shall be paid directly to the person ~~transcribing~~ performing the ~~proceeding~~ transcription. Parties to any proceeding may have the proceedings recorded and transcribed by a court reporter at their own expense.

(b) **~~Contents~~ Content of record.** The record in any hearing shall include the following:

(1) all pleadings, motions, ~~and~~ intermediate rulings and orders;

(2) all evidence received or considered, including a statement of matters officially noted;

(3) questions ~~or~~ and offers of proof, objections and rulings thereon;

(4) proposed findings of fact, conclusions of law, and exceptions;

(5) the ~~decision, opinion, or report~~ proposed order of the ~~Administrator, or the~~ Hearing Officer;

(6) all other evidence or data submitted to the Administrator, or the Hearing Officer, in connection with their consideration of the case provided all parties have had access to such evidence; and

(7) the final order of the Administrator.

660:2-9-8. Final orders

A final order ~~adverse to a party~~ in any individual proceeding shall be in writing ~~or stated in the record~~. A final order shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, upon request, a party submits proposed findings of fact, the order shall include a ruling upon each proposed finding. Parties shall be notified either personally or by certified mail, return receipt requested, of any final order. ~~A copy of the order shall be delivered or mailed promptly to each party and to his attorney of record, if any.~~

[OAR Docket #07-1228; filed 5-25-07]

TITLE 660. DEPARTMENT OF SECURITIES CHAPTER 11. OKLAHOMA UNIFORM SECURITIES ACT OF 2004

[OAR Docket #07-1227]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Investment advisers and investment adviser representatives
Part 7. Record keeping and ethical standards
660:11-7-41. Record keeping requirements [AMENDED]
660:11-7-48. Custody requirements [NEW]
AUTHORITY:
Administrator, Oklahoma Department of Securities; 71 O.S.Supp.2004, §§ 1-410, 1-605 and 1-608
DATES:
Comment Period:
February 15, 2007 through March 19, 2007
Public Hearing:
March 19, 2007
Adoption:
March 19, 2007
Submitted to Governor:
March 29, 2007
Submitted to House:
March 29, 2007
Submitted to Senate:
March 29, 2007
Gubernatorial approval:
May 4, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 24, 2007.
Final adoption:
May 24, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Section 1-410 of the Oklahoma Uniform Securities Act of 2004, 71 O.S.Supp.2004, §§ 1-101 through 1-701, authorizes the Administrator to establish record keeping requirements for investment advisers. The amendments to OAC 660:11-7-41 are intended to minimize differences among such requirements of the federal government and the various states.

71 O.S.Supp.2004, §§ 1-410 also authorizes the Administrator to impose conditions on investment advisers regarding custody of securities or funds of a client. OAC 660:11-7-48 imposes certain requirements to safeguard a client when an investment adviser has such custody.
CONTACT PERSON:
Faye Morton, Counsel, Oklahoma Department of Securities, 120 N. Robinson, Suite 860, Oklahoma City, OK 73102, (405) 280-7700

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. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

PART 7. RECORD KEEPING AND ETHICAL STANDARDS

660:11-7-41. Record keeping requirements

(a) **General requirements.** Every investment adviser registered or required to be registered under the Securities Act shall make and keep true, accurate and current the following books and records ~~relating to his investment advisory business~~:

(1) A journal or journals, including cash receipts and disbursements, records, and any other records of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts. In no event shall the general ledger be posted less than once a month.

(3) A record of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The record shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

(4) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.

(5) All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such.

(6) All trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the business of such investment adviser. The trial balance shall be prepared no later than fifteen (15) business days after the end of the accounting period.

(7) Originals of all written communications received and copies of all written communications sent by the investment adviser relating to the business of the investment adviser, including, but not limited to:

(A) any recommendation made or proposed to be made and any advice given or proposed to be given,

(B) any receipt, disbursement or delivery of funds or securities, or

(C) the placing or execution of any order to purchase or sell any security; provided, however:

(i) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and

(ii) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to 2 or more persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and the source thereof.

(8) A list or other record identifying all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

(9) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

(10) A copy of all agreements entered into by the investment adviser with any client and all other agreements relating to the business of the investment adviser as such, including agreements which set forth the fees to be charged, the manner of computation and method of payment.

(11) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including any communication by electronic media, that the investment adviser circulates or distributes, directly or indirectly, to 2 or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including any communication by electronic media, recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

(12) When providing investment advice is the primary business of the investment adviser:

(A) A record of every transaction in a security in which the investment adviser or any ~~investment adviser~~ advisory representative (as defined in (B) of this paragraph) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment adviser nor the ~~investment adviser~~ advisory representative of the investment adviser has any direct or indirect

influence or control, and (ii) transactions in securities which are direct obligations of the United States. The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or ~~investment adviser~~ advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded no later than ten (10) days after the end of the calendar quarter in which the transaction was effected.

(B) For purposes of this paragraph, the following definitions will apply:

(i) The term "advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

(I) any person in a control relationship to the investment adviser,

(II) any affiliated person of a controlling person, and

(III) any affiliated person of an affiliated person.

(ii) "Control" shall mean the power to exercise a controlling influence over the management or policies of a company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control such company.

(13) ~~A record of each customer account containing the name, address, date of birth, net worth and investment objectives of the beneficial owner of such account.~~ When providing investment advice is not the primary business of the investment adviser:

(A) Notwithstanding the provisions of (12) of this subsection, where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as defined in (C) of this paragraph) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

(i) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

(ii) transactions in securities which are direct obligations of the United States.

(B) Each record required by (A) of this paragraph shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(C) For purposes of this paragraph, the following definitions will apply:

(i) The term "advisory representative", when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director or employee of the investment adviser who participates in any way in the determination of which recommendations shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of such recommendations or of the information concerning the recommendations:

(I) any person in a control relationship to the investment adviser,

(II) any affiliated person of a controlling person, and

(III) any affiliated person of an affiliated person.

(ii) "Control" shall mean the power to exercise a controlling influence over the management or policies of a company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control such company.

(iii) An investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is

lesser, the investment adviser derived from such other business or businesses, on an unconsolidated basis, more than 50% of:

(I) its total sales and revenues, and

(II) its income (or loss) before income taxes and extraordinary items.

~~(14) Ledgers or other records itemized separately as to each account of every investment adviser representative of such investment adviser reflecting all purchases, sales, receipts and deliveries of securities and commodities for such account and all other debits and credits to such accounts. Said records shall reflect transactions as of the date they occur and should be prepared no later than the day following the transaction.~~

(14) A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser, and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

~~(15) A copy of the written supervisory procedures of the investment adviser.~~

(15) For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser:

(A) evidence of a written agreement to which the adviser is a party related to the payment of such fee;

(B) a signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and

(C) a copy of the solicitor's written disclosure statement.

(16) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.

(17) A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.

(18) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

(19) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

(20) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to the registrant or its investment adviser representatives, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

(21) Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

(22) Where the adviser inadvertently held or obtained a client's securities or funds and returned them to the client within three business days or has forwarded third party checks within 24 hours the adviser will be considered as not having custody but shall keep a ledger or other listing of all securities or funds held or obtained relating to the inadvertent custody disclosing the following information:

(A) issuer;

(B) type of security and series;

(C) date of issue;

(D) for debt instruments, the denomination, interest rate and maturity date;

(E) certificate number, including alphabetical prefix or suffix;

(F) name in which registered;

(G) date given to the adviser;

(H) date sent to client or sender;

(I) form of delivery to client or sender, or copy of the form of delivery to client or sender; and

(J) mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

(23) If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody in (c)(2) of 660:11-7-48, the adviser shall keep the following records:

(A) a record showing the issuer or current transfer agent's name, address, phone number and other applicable contact information pertaining to the party responsible for recording client interests in the securities; and

(B) a copy of any legend, shareholder agreement or other agreement showing that those securities are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(b) **Special requirements due to type of custody.**

(1) **Custody as defined in 660:11-7-48.** If an investment adviser has custody, as that term is defined in 660:11-7-48, the records required to be made and kept under (a) of this Section shall include:

(A) a copy of any and all documents executed by the client (including a limited power of attorney) under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian.

(B) a journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

(C) a separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

(D) copies of confirmations of all transactions effected by or for the account of any client.

(E) a record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

(F) a copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain copies of such statements along with the date such statements were sent to the clients.

(G) if applicable to the adviser's situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.

(H) a record of any finding by the independent certified public accountant of any material discrepancies found during the examination.

(I) if applicable, evidence of the client's designation of an independent representative.

(2) **Adviser to pooled investment vehicle.** If an investment adviser has custody because it advises a pooled investment vehicle, the adviser shall also keep the following records:

(A) true, accurate and current account statements;

(B) When the exception set forth in (c)(3) of 660:11-7-48 applies, the records required to be made and kept shall include:

(i) the date(s) of the audit;

(ii) a copy of the audited financial statements; and

(iii) evidence of the mailing of the audited financial to all limited partners, members or other beneficial owners within 120 days of the end of its fiscal year.

(C) When the description set forth in (b)(7) of 660:11-7-48 applies to an investment adviser, the investment adviser is required to make and keep records to include:

(i) a copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party.

(ii) copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.

(3) **Trustee.** If an investment adviser has custody because it is acting as the trustee for a beneficial trust as described in (c)(5) of 660:11-7-48 the investment adviser shall also keep the following records until the account is closed or the adviser is no longer acting as trustee:

(A) a copy of the written statement given to each beneficial owner setting forth a description of the requirements of (b) of 660:11-7-48 and the reason why the adviser will not be complying with those requirements; and

(B) a written acknowledgement signed and dated by each beneficial owner, and evidencing receipt of the statement required under (A) of this paragraph.

(c) **Managed accounts.** Every investment adviser subject to (b) of this Section who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

(1) Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale.

(2) For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each security held by the client, and the current amount or interest of the client.

(d) **Client identity.** Any books or records required by this Section may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(e) **Records retention.** Every investment adviser subject to (a) of this Section shall preserve the following records in the manner prescribed:

(1) All books and records required to be made under the provisions of (a) to (c)(1), inclusive, of this Section (except for books and records required to be made under the provisions of (a)(11) and (a)(16) of this Section), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years in the principal office of the investment adviser.

(2) Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

(3) Books and records required to be made under the provisions of (a)(11) and (a)(16) of this Section shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media.

(4) Books and records required to be made under the provisions of (a)(17)-(22), inclusive, of this Section shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

(5) Notwithstanding other record preservation requirements of this Section, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services: (A) records required to be preserved under (a)(3),(a)(7)-(10), (a)(14)-(15), (a)(17)-(19), (b) and (c) inclusive, of this Section, and (B) the records or copies required under the provision of (a)(11) and (a)(16) of this Section which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the applicable period described in this Subsection.

(f) **Ceasing business.** An investment adviser subject to (a) of this Section, before ceasing to conduct or discontinuing business as an investment adviser shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this Section for the remainder of the period specified in this Section, and shall notify the Administrator in writing of the exact address where the books and records will be maintained during the period.

(g) **Format and storage of records.**

(1) The records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on:

(A) paper or hard copy form, as those records are kept in their original form; or

(B) micrographic media, including microfilm, microfiche, or any similar medium; or

(C) electronic storage media, including any digital storage medium or system that meets the terms of this section.

(2) The investment adviser must:

(A) arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(B) provide promptly any of the following that the Administrator or his representatives may request:

(i) a legible, true, and complete copy of the record in the medium and format in which it is stored;

(ii) a legible, true, and complete printout of the record; and

(iii) means to access, view, and print the records; and

(C) separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(3) In the case of records created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:

(A) to maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(B) to limit access to the records to properly authorized personnel and the Administrator and his representatives; and

(C) to reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(h) **Investment supervisory services.** For purposes of this Section, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

(i) **Compliance with federal law.** Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 [17 C.F.R. 240.17a-3] and l7a-4 [17 C.F.R. 240.l7a-4] under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this Section, shall be deemed to be made, kept, maintained and preserved in compliance with this Section.

(~~b~~ j) **Compliance with other state requirements.** Every investment adviser registered or required to be registered under the Securities Act that has its principal place of business in a state other than Oklahoma shall be exempt from the requirements of this section, provided the investment adviser is licensed in the state in which it maintains its principal place of business and is in compliance with that state's books and records requirements. ~~For purposes of this subsection, the term "principal place of business" means "the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser."~~

~~(c) All books and records required to be maintained under the provisions of (a) of this section shall be maintained and~~

~~preserved in an easily accessible place for a period of not less than five (5) years, the first two (2) years in the principal office of the investment adviser.~~

660:11-7-48. Custody requirements for investment advisers

(a) **Definitions.** For purposes of this Section:

(1) "Custody" means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them or the ability to appropriate them.

(A) Custody includes:

(i) possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them;

(ii) any arrangement (including a general power of attorney) under which you are authorized or permitted to withdraw client funds or securities maintained with a custodian upon your instruction to the custodian; and

(iii) any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives you or your supervised person legal ownership of or access to client funds or securities.

(B) Receipt of checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if forwarded to the third party within 24 hours of receipt and the adviser maintains the records required under 660:11-7-41.

(2) "Independent representative" means a person who:

(A) acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;

(B) does not control, is not controlled by, and is not under common control with you; and

(C) does not have, and has not had within the past two years, a material business relationship with you.

(3) "Qualified custodian" means the following independent institutions or entities that are not affiliated with the adviser by any direct or indirect common control and have not had a material business relationship with the adviser in the previous two years:

(A) A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;

(B) A registered broker-dealer holding the client assets in customer accounts;

(C) A registered futures commission merchant registered under Section 4f(a) of the Commodity Exchange Act, holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

(D) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

(b) **Safekeeping required.** If you are an investment adviser registered or required to be registered, it is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice or course of business for you to have custody of client funds or securities unless:

(1) **Notice to Administrator.** The investment adviser notifies the Administrator promptly in writing that the investment adviser has or may have custody. Such notification is required to be given on Form ADV.

(2) **Qualified custodian.** A qualified custodian maintains those funds and securities:

(A) in a separate account for each client under that client's name; or

(B) in accounts that contain only your clients' funds and securities, under your name as agent or trustee for the clients.

(3) **Notice to clients.** If you open an account with a qualified custodian on your client's behalf, either under the client's name or under your name as agent, you promptly notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, when the account is opened and following any changes to this information.

(4) **Account statements.** Account statements must be sent to clients, either:

(A) by a qualified custodian. The investment adviser has a reasonable basis for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period; or

(B) by the investment adviser.

(i) The investment adviser sends an account statement, at least quarterly, to each client for whom the investment adviser has custody of funds or securities, identifying the amount of funds and of each security of which the investment adviser has custody at the end of the period and setting forth all transactions during that period; and

(ii) An independent certified public accountant verifies all client funds and securities by actual examination at least once during each calendar year at a time chosen by the accountant without prior notice or announcement to the adviser and that is

irregular from year to year, and files a copy of the auditor's report and financial statements with the Administrator within 30 days after the completion of the examination, along with a letter stating that it has examined the funds and securities and describing the nature and extent of the examination; and

(iii) The independent certified public accountant, upon finding any material discrepancies during the course of the examination, notifies the Administrator within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Administrator;

(C) **Special rule for limited partnerships and limited liability companies.** If you are a general partner of a limited partnership (or managing member of a limited liability company, or hold a comparable position for another type of pooled investment vehicle), the account statements required under (b)(4) of this Section must be sent to each limited partner (or member or other beneficial owner or their independent representative).

(5) **Independent representatives.** A client may designate an independent representative to receive, on his behalf, notices and account statements as required under (b)(3) and (b)(4) of this Section.

(6) **Direct fee deduction.** An adviser who has custody as defined in (a)(1)(A)(ii) of this Section by having fees directly deducted from client accounts must also provide the following safeguards:

(A) Written authorization. The investment adviser must have written authorization from the client to deduct advisory fees from the account held with the qualified custodian;

(B) Notice of fee deduction. Each time a fee is directly deducted from a client account, the investment adviser must concurrently:

(i) send the qualified custodian an invoice of the amount of the fee to be deducted from the client's account; and

(ii) send the client an invoice itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee.

(C) Notice of safeguards. The investment adviser notifies the Administrator in writing that the investment adviser intends to use the safeguards provided in (A) and (B) of this paragraph. Such notification is required to be given on Form ADV.

(D) Waiver of audited financial statements. An investment adviser having custody solely because it meets the definition of custody as defined in (a)(1)(A)(ii) of this Section and who complies with the safekeeping requirements in (b)(1)-(6) of this Section will not be required to meet the financial requirements for custodial advisers as set forth in 660:11-7-31.

(7) **Pooled Investments.** An investment adviser who has custody as defined in (a)(1)(A)(iii) of this Section and who does not meet the exception provided under (c)(3) of this Section must, in addition to the safeguards set forth in (b)(1)-(5) of this Section also comply with the following:

(A) Engage an Independent Party. Hire an Independent Party to review all fees, expenses and capital withdrawals from the pooled accounts;

(B) Review of fees. Send all invoices or receipts to the Independent Party, detailing the amount of the fee, expenses or capital withdrawal and the method of calculation such that the Independent Party can:

(i) determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement) and

(ii) forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser.

(C) For purposes of this paragraph, an "Independent Party" means a person that:

(i) is engaged by you to act as a gatekeeper for the payment of fees, expenses and capital withdrawals from the pooled investment;

(ii) does not control and is not controlled by and is not under common control with you; and

(iii) does not have, and has not had within the past two years, a material business relationship with you.

(D) Notice of safeguards. The investment adviser notifies the Administrator in writing that the investment adviser intends to use the safeguards provided in (A) and (B) of this paragraph. Such notification is required to be given on Form ADV.

(E) Waiver of audited financial statements. An investment adviser having custody solely because it meets the definition of custody as defined in (a)(1)(A)(iii) of this Section and who complies with the safekeeping requirements in (b)(1)-(5) and (7) of this Section will not be required to meet the financial requirements for custodial advisers as set forth in 660:11-7-31.

(8) **Investment Adviser or Investment Adviser Representative as Trustee.** When a trust retains an investment adviser; investment adviser representative; or employee, director or owner of an investment adviser as trustee and the investment adviser acts as the investment adviser to that trust, the investment adviser will:

(A) [Notice of safeguards] notify the Administrator in writing that the investment adviser intends to use the safeguards provided in (B) and (C) of this paragraph. Such notification is required to be given on Form ADV.

(B) [Invoice requirement] send to the grantor of the trust, the attorney for the trust if it is a testamentary

trust, the co-trustee (other than the investment adviser; investment adviser representative; or employee, director or owner of the investment adviser); or a defined beneficiary of the trust, at the same time that it sends any invoice to the qualified custodian, an invoice showing the amount of the trustees' fee or investment management or advisory fee, the value of the assets on which the fees were based, and the specific manner in which the fees were calculated.

(C) [Agreement requirement] enter into a written agreement with a qualified custodian which specifies:

(i) [Payment of fees] that the qualified custodian will not deliver trust securities to the investment adviser, any investment adviser representative or employee, director or owner of the investment adviser, nor will transmit any funds to the investment adviser; any investment adviser representative or employee; director or owner of the investment adviser, except that the qualified custodian may pay trustees' fees to the trustee and investment management or advisory fees to investment adviser, provided that:

(I) the grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than the investment adviser; investment adviser representative; or employee, director or owner of the investment adviser); or a defined beneficiary of the trust has authorized the qualified custodian in writing to pay those fees;

(II) the statements for those fees show the amount of the fees for the trustee and, in the case of statements for investment management or advisory fees, show the value of the trust assets on which the fee is based and the manner in which the fee was calculated; and

(III) the qualified custodian agrees to send to the grantor of the trust, the attorneys for a testamentary trust, the co-trustee (other than the investment adviser; investment adviser representative; or employee, director or owner of the investment adviser); or a defined beneficiary of the trust, at least quarterly, a statement of all disbursements from the account of the trust, including the amount of investment management fees paid to the investment adviser and the amount of trustees' fees paid to the trustee.

(ii) [Distribution of assets] except as otherwise set forth in (b)(8)(C)(i) of this Section, that the qualified custodian may transfer funds or securities, or both, of the trust only upon the direction of the trustee (who may be the investment adviser; investment adviser representative; or employee, director or owner of the investment adviser), who the investment adviser has duly accepted as an authorized signatory. The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than the investment adviser; investment adviser representative; or employee, director or owner of the investment adviser); or a defined beneficiary of the trust, must designate the authorized signatory for management of the trust. The direction to transfer funds or securities, or both, can only be made to the following:

(I) to a trust company, bank trust department or brokerage firm independent of the investment adviser for the account of the trust to which the assets relate;

(II) to the named grantors or to the named beneficiaries of the trust;

(III) to a third person independent of the investment adviser in payment of the fees or charges of the third person including, but not limited to:

a. attorney's, accountant's, or qualified custodian's fees for the trust; and

b. taxes, interest, maintenance or other expenses, if there is property other than securities or cash owned by the trust;

(IV) to third persons independent of the investment adviser for any other purpose legitimately associated with the management of the trust; or

(V) to a broker-dealer in the normal course of portfolio purchases and sales, provided that the transfer is made on payment against delivery basis or payment against trust receipt.

(D) [Waiver of audited financial statements] not be required to meet the financial requirements for custodial advisers as set forth in 660:11-7-31 if the investment adviser has custody solely because it meets the definition of custody as defined in (a)(1)(A)(iii) of this Section and who complies with the safekeeping requirements in (b)(1)-(5) and (8) of this Section.

(c) **Exceptions.**

(1) **Shares of mutual funds.** With respect to shares of an open-end company as defined in Section 5(a)(1) of the Investment Company Act of 1940 [15 U.S.C. 80a-5(a)(1)] ("mutual fund"), you may use the mutual fund's transfer agent I n lieu of a qualified custodian for purposes of complying with (b) of this Section;

(2) **Certain privately offered securities.**

(A) You are not required to comply with (b) of this Section with respect to securities that are:

(i) acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(ii) uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and

(iii) transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(B) Notwithstanding (A) of this paragraph, the provisions of this paragraph are available with respect to

securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, the audited financial statements are distributed as described in (3) of this Subection, and the investment adviser notifies the Administrator in writing that the investment adviser intends to provide audited financial statements. Such notification is required to be given on Form ADV.

(3) **Limited partnerships subject to annual audit.** You are not required to comply with (b)(3) of this Section with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year. The investment adviser must also notify the Administrator in writing that the investment adviser intends to employ the use of the audit safeguards described in (2)(B) of this subsection. Such notification is required to be given on Form ADV.

(4) **Registered investment companies.** You are not required to comply with this Section with respect to the account of an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 to 80a-64].

(5) **Beneficial Trusts.** An investment adviser is not required to comply with safekeeping requirements of (b) of this Section or 660:11-7-31 if the investment adviser has custody solely because the investment adviser, investment adviser representative or employee, director or owner of the investment adviser is a trustee for a beneficial trust, if all of the following conditions are met for each trust:

(A) The beneficial owner of the trust is a parent, a grandparent, a spouse, a sibling, a child or a grandchild of the trustee. These relationships shall include "step" relationships.

(B) For each account under (A) of this paragraph you comply with the following:

(i) You provide a written statement to each beneficial owner of the account setting forth a description of the requirements of (b) of this Section and the reasons why you will not be complying with those requirements.

(ii) You obtain from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement required under (i) of this subparagraph.

(iii) You maintain a copy of both documents described in (i) and (ii) of this subparagraph until the account is closed or you are no longer trustee.

(6) Any adviser who intends to have custody of client funds or securities but is not able to utilize a qualified custodian as defined in (a) of this Section must first obtain approval from the Administrator and must comply with all of the applicable safekeeping provisions under (b) of this Section including taking responsibility for those provisions that are designated to be performed by a qualified custodian.

[OAR Docket #07-1227; filed 5-25-07]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 10. AD VALOREM TAX

[OAR Docket #07-1028]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Equalization Study
Part 1. General Provisions
710:10-3-1 [AMENDED]
710:10-3-10 [AMENDED]
710:10-3-18 [AMENDED]
710:10-3-20 [AMENDED]
Part 3. Data Collection
710:10-3-24 [AMENDED]
710:10-3-30 [AMENDED]
710:10-3-33 [AMENDED]
Part 5. Authorities and Methodology
710:10-3-61 [AMENDED]
710:10-3-63 [AMENDED]
Subchapter 4. Annual Valuation Mandate
710:10-4-2 [AMENDED]
710:10-4-3 [AMENDED]
710:10-4-6 [AMENDED]
710:10-4-7 [AMENDED]
710:10-4-8 [AMENDED]
710:10-4-9 [AMENDED]
Subchapter 7. Manufacturing Facilities
710:10-7-2 [REVOKED]
710:10-7-2.1 [REVOKED]
710:10-7-2.2 [NEW]
710:10-7-4 [AMENDED]
710:10-7-6 [AMENDED]
710:10-7-8 [AMENDED]
AUTHORITY:
68 O.S. §§ 203, 2817, and 2902(H); Oklahoma Tax Commission
DATES:
Comment Period:
February 1, 2007 to March 5, 2007
Public hearing:
March 6, 2007
Adoption:
March 13, 2007 (Commission Order No. 2007-03-13-39)
Gubernatorial approval:
April 2, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 10, 2007
Final adoption:
May 10, 2007
Effective:
June 25, 2007
SUBMITTED TO GOVERNOR:
March 15, 2007
SUBMITTED TO HOUSE:
March 15, 2007
SUBMITTED TO SENATE:
March 15, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:

Proposed amendments to **Subchapter 3,** "*Equalization Study*" have been made to clarify policy and procedures relating to various aspects of equalization studies, to add and update statutory and other references, and to improve readability

Proposed amendments to **Subchapter 4**, *"Annual Valuation Mandate"*, have been made to clarify policy and procedures regarding the various aspects of the annual valuation process and to add and update statutory and other references.

Proposed amendments to **Subchapter 7**, *"Manufacturing Facilities"*, have been made to implement the amendments to the five-year manufacturing exemption. [Senate Bill 1577, 50th Legislature, 2nd Regular Session]. The provisions of Senate Bill 1577 retained all applicable definitions, exemption terms, qualification requirements and application and review procedures but omitted the different qualification requirements listed based on the year of the exemption application. Other minor rule amendments have been made for clarification purposes, to delete and update obsolete references and to improve readability.

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 25, 2007:

SUBCHAPTER 3. EQUALIZATION STUDY

PART 1. GENERAL PROVISIONS

710:10-3-1. Purpose of the equalization study

(a) The equalization study set forth in this Subchapter is mandated by law pursuant to 68 O.S.1992, §2865(a) of the Ad Valorem Tax Code. The purpose of this study is to collect and analyze data for the purpose of formulating recommendations to be presented to the State Board of Equalization. The State Board of Equalization may use the recommendations of the Oklahoma Tax Commission for the equalization and adjustment of the valuation of the real property within and among the several counties pursuant to Article 10, Section 21 of the Oklahoma Constitution and 68 O.S. ~~1992,~~ §2865 of the Ad Valorem Tax Code. See also: **Board of County Commissioners of Canadian County v. State Board of Equalization**, ~~Okl.,~~ 363 P.2d 242 (Okl. 1961); **In Re McNeal's Appeal**, 35 Okl. 17, 128 P. 285 (1912).

(b) The purpose of the equalization study among the counties is to insure the legal level of assessment of each county is at the level ordered by the State Board of Equalization. Should the State Board of Equalization determine that new legal levels of assessments be mandated, the purpose of this study among the counties will be to insure that each county maintains the constitutionally-mandated assessment level.

(c) The purpose of the equalization study within each county is to insure that all classes of real property are valued uniformly and assessed at one ratio. **Cantrell v. Sanders**, ~~Okl.,~~ 610 P.2d 227 (Okl. 1980).

(d) The purpose of the equalization study is also to notify the State Board of Equalization as to any inequities that exist within any class or classes of real property within a county or among the several counties. 68 O.S. ~~1997,~~ §2864.

(e) The purpose of such equalization study is to conduct a comprehensive review of the assessments in each county assessor's office. This equalization study shall be the basis for the Oklahoma Tax Commission findings and recommendations presented to the State Board of Equalization under its responsibilities defined by 68 O.S. ~~1992,~~ § 2865.

(f) The provisions of this Subchapter are not to be construed to limit the constitutional and statutory authority of the State Board of Equalization to equalize within and among the counties, nor the statutory authority of the Oklahoma Tax Commission to make recommendations to the State Board of Equalization under the provisions of Section 2865, Title 68, Oklahoma Statutes.

710:10-3-10. Scope of equalization study

(a) The Oklahoma Tax Commission Ad Valorem Division shall perform an equalization study of each county in Oklahoma on annual basis. [**See:** 68 O.S. ~~1992,~~ § 2865(A)]

(b) The purpose of such equalization study is to conduct a comprehensive review of the levels of assessment in each county assessor's office. This equalization study shall be the basis for the Oklahoma Tax Commission findings and recommendations presented to the State Board of Equalization under its responsibilities defined by 68 O.S. ~~1992,~~ § 2865(A)].

(c) This Section is not to be construed to limit the constitutional and statutory authority of the State Board of Equalization to equalize within and between the counties nor the statutory authority of the Oklahoma Tax Commission to make recommendations to the State Board of Equalization under the provisions of Section 2865 of Title 68 of the Oklahoma Statutes.

710:10-3-18. Equalization study finding; submission to State Board of Equalization

(a) **Compliance with equalization study requirements.** Upon completion of the equalization study, the Oklahoma Tax Commission Ad Valorem Division shall report median audited assessment percentages for each property classification. Counties found to be within the Constitutional assessment percentage range of 11 to 13.5 percent, with all three classes of real property within the deviation range of 1.5 percent from the highest to the lowest ratio, shall be certified to the State Board, as being in compliance with equalization audit requirements.

(1) **Class deviations.** All counties must have all three classes of real property within the deviation range of 1.5 percent range, from the highest to the lowest ratio, in order to be in compliance, regardless of overall median ratio. [**See:** Art. 10, Section 8A2, Okla. Const.]

(2) **Annual valuation.** The county must annually value all taxable real and personal property within the county, as required by 68 O.S. ~~1997~~, §§ 2817; ~~68 O.S.1992, §~~ 2829; and ~~68 O.S.1996, §~~ 2830, regardless of overall median ratio.

(3) **Constitutional compliance.** The county must be in compliance with Article 10, Section 8, of the Oklahoma Constitution, concerning assessment percentage limitation for real and personal property; with Section 8B, concerning the five percent (5%) limit on increase in fair cash value; and Section 8C, concerning limitations on fair cash value on certain homestead property, regardless of the overall median ratio.

(b) **Categories of non-compliance.** As specified in 68 O.S. ~~1996,~~ §2830, the findings of the equalization study shall constitute the monitoring responsibilities specified in that statute. For purposes of that statute, the following three categories specified are defined:

(1) **Category One non-compliance.** If a county is found out of compliance on its annual equalization study in December, the county would be classed in Category One non-compliance. The county would have until the following June 15 meeting of the State Board of Equalization to correct the deficiencies noted in the equalization study. [**See:** 68 O.S. ~~1996~~, § 2830]

(2) **Category Two non-compliance.** If the county did not correct the problems noted in the equalization study by the June 15 date, this will be noted in the Oklahoma Tax Commission's report to the State Board of Equalization with a recommendation to re-classify the county to Category Two non-compliance. At the next State Board of Equalization meeting in December, if all compliance criteria have been achieved, the State Board of Equalization would determine the county in compliance. If the county was found not in compliance at the December meeting, the county would then have until the following June 15 meeting to achieve compliance. If compliance was not achieved, the State Board of Equalization would have the option not to certify the county abstract until all compliance criteria had been achieved and to reclassify the county Category Three non-compliance.

(3) **Category Three non-compliance.** If a county which has been previously classified Category Two and has failed to meet compliance criteria set forth by the State Board, the county would be classified Category Three non-compliance. The State Board of Equalization may elect not to certify the abstract.

(c) **Right of appeal.** Under 68 O.S. ~~1992,~~ § 2882, a district attorney, acting under the direction of the board of county commissioners, can appeal a decision of the State Board of Equalization. Pursuant to 68 O.S.~~1992,~~ § 2883, a county assessor may appeal the decision of the Oklahoma Tax Commission of Category Two or Three non-compliance.

710:10-3-20. Classes of Property

(a) For the purpose of the equalization study in this Subchapter, the stratum of real property will be sub-divided into the following strata (use classification):

(1) Residential

(2) Commercial - Industrial

(3) Agricultural. [See: **Techniques, Guidelines and Definitions for Determining Use Value of Real Property for Ad Valorem Tax Purposes.** (Adopted by the State Board of Equalization on July 21, 1981)]

(b) The State Board of Equalization may further stratify the classes of property for the purpose of equalization pursuant to Article 10, §21 of the Oklahoma Constitution.

(c) The Oklahoma Tax Commission may recommend further stratification pursuant to 68 O.S. ~~1992,~~ § 2865.

(d) This Section is not to be construed to limit the constitutional and statutory authority of the State Board of Equalization to equalize within and between the counties, or the statutory authority of the Oklahoma Tax Commission to make recommendations to the State Board of Equalization as to the stratification or consolidation of classes of property for the purposes of equalization. [**See: Poulos III**, Supra.; **Cantrell v. Sanders**, Supra; **Board of Commissioners of Canadian County v. State Board of Equalization**; ~~Supra.~~ supra; **Shell Petroleum Corporation v. State Board of Equalization**, 170 Okl. 581, 41 P.2d 106(1935); **In Re McNeal's Appeal**, supra.; Also: Werner W. Doering, "Property Tax Equalization and Conventional Measures of Assessment Performance," **Analyzing Assessment Equity**, (~~Chicago:~~ IAAO, 1977) PP. 23-45.]

PART 3. DATA COLLECTION

710:10-3-24. Screening of sales; exclusions from sampling

(a) Transactions which are presumed not to be arms-length sales ~~will not~~ may be used in the equalization study ~~(unless allowed~~ after determining that adequate consideration exists~~)~~.

(b) If one of the following conditions exists, there ~~is~~ may be a presumption that a non-arms-length sale exists:

~~(1) Sales involving government agencies and public utilities.~~

~~(2) Sales involving charitable, religious, or educational institutions.~~

~~(3) Sales in which a financial institution is the buyer or seller.~~

~~(4) Sales between relatives.~~

~~(5) Sales between corporate affiliates.~~

~~(6) Correction deeds.~~

~~(7) Sales settling an estate.~~

~~(8) Forced sales - judicial sales and auctions.~~

~~(9) Sales other than warranty deeds.~~

~~(10) Sheriff sales.~~

~~(11) Splits and combinations.~~

~~(12) Sales involving owner financing.~~

~~(13) Trades of real estate.~~

~~(14) Sales of partial interest.~~

~~(15) Real estate contract sales.~~

~~(16) Quit claim deeds.~~

(1) Sales which secure debt or other obligation.

(2) Sales without additional consideration, conform, correct, modify or supplement a deed previously recorded.

(3) Sales between a husband and wife, parent and child, grandparent and grandchild, those deeds within the second degree of consanguinity, without actual consideration thereafter or sales between any person and a revocable trust. See: 68 O.S.§ 2802.1(4)(a).
(4) Sales of release of property which is security for debt or other obligation.
(5) Sales of partition, those between co-owners, resulting in individual ownership of the interests of each.
(6) Sales between corporate affiliates with no consideration or sales made pursuant to mergers or sales from a person to a partnership, LLC or corporation.
(7) Sales pursuant to foreclosure proceedings in which the grantee is the holder of a mortgage on the property being foreclosed.
(8) Sales pursuant to a judicial ordered sheriff sales.
(9) Sales of property to the United States Government, State of Oklahoma or the counties and cities within Oklahoma.
(10) Splits or combinations of non-contiguous property.
(11) Sales contract for deed in excess of one (1) year.
(12) Trades of property with no consideration stated.
(13) Sales of partial interests in property.

(c) Real estate sales including personal property and business goodwill (inventories, furniture, fixtures and etc.) will be excluded unless terms of the sale are known and the personal property value and value attributed to goodwill can be ascertained. [**See: IAAO Standards on Assessment Ratio Studies**, Latest edition.~~(Chicago: IAAO Standards Committee, July 1990.)~~]

710:10-3-30. Adequate sample size

(a) For purposes of assessment and equalization data for the equalization study, a sample size of one (1) percent of the total parcel count of a county will be deemed generally adequate for the equalization study, not to exceed 1,000 samples. The Ad Valorem Division will prepare an annual ~~state-wide~~ statewide list of the number of samples to be used in each county.

(b) A substantial deviation from the annual ~~state-wide~~ statewide list of the number of samples to be used in each county must be approved in writing by the Director of the Ad Valorem Division prior to the beginning of the study.

(c) Additional samples may be added from the original samples taken in the county for the Equalization Study, if the sample size falls below the minimum sample requirement. These additional samples will be selected on a random basis. The selection process will be documented and made a part of the findings on the county assessor's Equalization Study. Any additional samples will be subject to the same verification process provided for in 710:10-3-24.

710:10-3-33. Informal protest by the county assessor; detection of sampling problems

(a) A county assessor may file an informal protest related to the findings of his equalization study detailing any suspected problem in sampling which may distort the true picture of the assessment levels and uniformity in his county or any other finding in the study with which he disagrees. This informal protest should be made in writing, as soon as possible after an examination of documents provided by the Oklahoma Tax Commission which would alert the assessor to a possible problem. This informal protest must be filed before the first Monday in November and should specifically state the suspected problem and the class or classes of property affected.

(b) The Tax Commission may use any generally accepted statistical techniques or methods of observation that would detect problems in sampling.

(c) The county assessor will be notified in writing of any sampling problems and ~~method~~ methods used to correct them and will also be notified of the new results to be submitted to the State Board of Equalization. [**See: IAAO Standard on Assessment Ratio Studies**, Latest edition. ~~(Chicago: IAAO Standards Committee, July 1990)~~]

PART 5. AUTHORITIES AND METHODOLOGY

710:10-3-61. Selective reappraisal of properties sold; investigation; alternate methodology

(a) A presumption of selective reappraisal will exist if the following conditions exist:

(1) A comparison of assessments of properties sold with assessments of properties not sold reveals a consistently higher valuation and assessment on the sold properties.
(2) A comparison of new construction properties with properties not sold reveals a consistently higher valuation and assessment on the new construction properties.
(3) Extraordinarily low coefficients of dispersion in a county where little or no annual adjustments are made or the reassessment program is less than aggressive. [**See: IAAO Standard on Assessment Ratio Studies**: Latest edition. ~~(Chicago: IAAO Standards Committee, July 1990)~~]

(b) The following methodology will be used for the equalization study of a county using selective reappraisal.

(1) The county assessor of that county will be given a written notification by the Oklahoma Tax Commission, by the third Monday in October, of intent to use an alternate methodology in the determination of an equalization ratio within the county because of selective reappraisal.
(2) The assessment ratio study will be conducted by the use of the current year sales and the previous year assessments.
(3) The methodology set out in this Section will not be the exclusive method of adjusting the equalization ratio. Any method, such as the use of an appraisal ratio study, that is reasonable and calculated to reflect the true market value of the taxable real property in that county may be utilized.

(c) The State Board of Equalization shall be notified of the special equalization ratio determined pursuant to this Section, and it will be noted in the recommendations by the Oklahoma Tax Commission to the Board.

710:10-3-63. School funding code compliance

(a) Each assessment and equalization analyst will note sale samples taken from the visual inspection area of the counties assigned.

(b) These samples will be taken in the area shown on the plan filed with the Oklahoma Tax Commission as being inspected for the current year.

(c) These samples are to be used to determine if visual inspection is being implemented according to the plan filed with the Oklahoma Tax Commission and that the filed plan is verifiable.

(d) The analyst will also check a sufficient number of the property assessment records in the visual inspection area against the actual existing structure to determine if actual physical inspections are being made and proper appraisal techniques are being applied.

(e) The analyst will report the lack of property assessment records, inadequate property assessment records, and other discrepancies upon a worksheet for that function. A copy of the present compliance report may be obtained from the Ad Valorem Tax Division and will be updated periodically to conform to current law and changing requirements as determined by the Director of the Ad Valorem Tax Division.

(f) This Section is not part of the normal equalization study but is part of the Oklahoma Tax Commission's parallel duties prescribed by law. The enforcement of the school funding code compliance or visual inspection statutes is not the statutory or constitutional duty of the State Board of Equalization. [**See:** 70 O.S.~~1991, §18-109.1~~ §18-109.1(4)]

SUBCHAPTER 4. ANNUAL VALUATION MANDATE

710:10-4-2. Definitions

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

"Annual valuation" means the systematic review and adjustment of the appraisals and assessments, by the county assessor, of taxable real and personal property, county-wide, on an annual basis, necessary to meet constitutional and statutory responsibilities of the ad valorem assessment process.

"Visual inspection program" means that program mandated by law and instituted by the counties *to gather data about real property from physical examination of the property and improvements in order to establish the fair cash values of properties so inspected at least once each four (4) years and the fair cash values of similar properties on an annual basis*. [**See:** 68 O.S. §2802(30)]

"Actual fair cash value" means the value or price at which a willing buyer would purchase property and a willing seller would sell property if both parties are knowledgeable about the property and its uses and if neither party is under any undue pressure to buy or sell and for real property shall mean the value for the highest and best use for which such property was actually used, or was previously classified for use, during the calendar year next preceding the applicable January 1 assessment date. [**See:** 68 O.S. ~~Supp. 2005,~~ §2802(18)].

"Taxable Value" means the percentage of fair cash value, less applicable exemptions upon which an ad valorem tax rate is levied pursuant to the provisions of Article 10, Section 8 of the Oklahoma Constitution.

710:10-4-3. Responsibilities of County Assessor

(a) **Assessor responsible for annual valuation.** It shall be the responsibility of the county assessor to value all taxable real property ~~annually as of January 1 at not less than 11 percent and not more than 13.5 percent of its fair market value or~~ and agricultural land at use value as established by the Oklahoma Constitution, Article 10 § 8, and all taxable personal property shall be valued annually as of January 1 at ~~not less than 10 percent and not more than 15 percent of~~ its actual fair cash value. The methods utilized for valuation shall be those defined by the Oklahoma Constitution, state statutes, and applicable Commission rules. Where valuation methodology is not specified by the Oklahoma Constitution, Oklahoma Statutes, State Board of Equalization guidelines, Commission rules, or bulletins, an assessor shall follow generally accepted principles of Computer Assisted Mass Appraisal as detailed in the International Association of Assessing Officers (I.A.A.O.), most recent edition, standards, books, training manuals, and similar educational courses.

(b) **Assessor responsible for all actions necessary to make, maintain, and update actual fair cash value and assessment records.** The county assessor shall carry out those activities necessary to maintain and update existing appraisal and assessment information essential for accurate annual assessments as required by law. Work activities necessary to accomplish this include review of new construction, construction of additions or modifications to existing structures, building permits (if available), demolitions, fire damage, or natural disasters such as flood, wind, rain, tornado or other causes. These work activities shall be performed utilizing approved Oklahoma Tax Commission computer generated or printed forms.

(c) **Assessor responsible for making all visual inspections required by law.** All taxable real property shall be visually inspected by the county assessor's staff on a four-year visual inspection cycle as specified in state statutes. (ref: 68 O.S. § 2820)

(d) **Assessor responsible for utilization of most current values and methodologies.** Assessors shall utilize the most current~~,~~ local, regional and statewide information to value all real and personal property at actual fair cash value as of January 1 each year. See: 68 O.S. § 2829. Assessors shall use the approved agricultural use value dollar per point developed for each respective county, and shall utilize the use value methodology specified in 68 O.S. § 2817(C) for valuation of agricultural land. Assessors shall periodically review agricultural land use constant with 68 O.S. § 2920 to determine if use has changed. Modifications to land use types shall be made annually if a significant change in land use has occurred, pursuant to 68 O.S. §§ 2817 and 2829.

710:10-4-6. Annual valuation of all real and personal property outside visual inspection area

(a) **All taxable property to be valued on an annual basis.** Pursuant to 68 O.S. §§ 2829, ~~and 68 O.S. §§~~2817, and 2830, county assessors shall value all taxable real and personal property on an annual basis, including non-sold property outside a county's visual inspection area, for any particular tax year. Counties failing to annually value all real and personal property shall be subject to non-compliance actions as specified in 68 O.S. § 2830

(b) **Systematic county-wide review of all actual fair cash values to be conducted.** Counties shall conduct a systematic county-wide review of all market values established for ad valorem taxation on an annual basis, to adjust for changing market conditions, areas which are rapidly increasing or decreasing in value, and any other market influences affecting actual fair cash values. This shall include sales ratio studies by neighborhood or market area and county-wide. Any additions, neighborhoods, or market areas which are showing significant change through county sales ratio analysis shall be adjusted to bring those groups of properties to actual fair cash value. The IAAO Standard on Ratio Studies, latest edition, may be utilized as a guide for review parameters, in conjunction with applicable Constitutional, statutory and administrative directives.

(c) **Annual valuation of real and personal property outside of visual inspection area.** Analysis of value change impact data should be made for modified properties. Upon completion of an annual county-wide value review, an analysis of value change impact data may be obtained by the Oklahoma Tax Commission for certain additions, neighborhoods, or market areas which have been modified.

710:10-4-7. CAMA completion requirement as evidence of annual valuation

(a) **Annual valuation utilizing CAMA program required.** In order to be found in compliance with statutory annual valuation requirements, counties shall be required to generate and maintain actual fair cash values for all taxable property, utilizing a system of Computer Assisted Mass Appraisal (CAMA), which meets state standards, pursuant to 68 O.S. §§ 2820(C), 2829, 2830(B). Utilization of CAMA shall include an ongoing, systematic CAMA valuation program, as well as an ongoing sales verification program, with all current sales information to be entered into the respective CAMA systems for analysis and use in the valuation process.

(b) **Non-compliance.** Any county not satisfying the requirements of this section may be recommended for non-compliance to the State Board of Equalization dependent upon a detailed review of the information obtained as a part of the Annual Valuation audit contained in rules 710:10-4-8 and 710:10-4-9.

710:10-4-8. Determination of compliance with annual valuation requirements; certification to the State Board of Equalization

Data and other information as to each component of the ~~assessment~~ appraisal process shall be gathered, reviewed, and analyzed, for each county~~,~~ for the previous year after any adjustments by the county assessor, county board of equalization, and county board of tax roll corrections, in order to make various compliance determinations. The non-exclusive factors listed in (1) through ~~(14)~~ (11) of this Section describe the basis and methodologies which the Commission shall utilize in its compliance review of the various counties, and from which certification of annual valuation may be made to the State Board of Equalization.

(1) Review of the county's median ~~assessment~~ appraisal / sales price ratio overall and by property class.

(2) Review of the county's coefficient of dispersion (COD), overall, and by property class.

(3) Review of standard statistical measures defined and described in the ***International Association of Assessing Officers (IAAO)*** most recent edition, textbooks, reference materials, and coursework or comparable.

(4) Determination of compliance, based upon ~~audit~~ review of the county's visual inspection plan and any amendments to the plan on file with the Commission.

(A) Review of the inspection area schedule contained in the current visual inspection plan on file with the Ad Valorem Division of the Commission, to determine whether adequate progress is being made.

(B) Review of area outside current year visual inspection area, to determine whether annual valuation county-wide is being performed. [**See:** 68 O.S. § 2829(C)]

(5) Review of all property subject to value limitation, to determine compliance with Constitutional, statutory, and administrative directives.

(6) Determination of compliance, based upon a comprehensive review and comparison of ~~current assessment roll~~ previously qualified prior year sales with ~~previous assessment roll,~~ actual fair cash value at time of sale. ~~analyzing the types and nature of changes, and typical change percentages.~~ Analysis will be conducted in accordance with IAAO Standards on Ratio Studies, 1999 edition. Ref: Sections 5.3 and 10.7.

(A) Median/COD comparison between the current ~~assessment roll and~~ sales~~, current~~ and between the previous ~~assessment roll and sales~~ actual fair cash value.

~~(B) Findings regarding comparison of Medians/COD's.~~

(~~C~~B) Review of the numbers, types, nature, and location of properties changed overall, for the visual inspection area, and for the remainder of the county.

(~~D~~C) Review of the date, numbers, type and nature of ~~non-inspection area notices sent.~~ increases or decreases to actual fair cash value on all property.

(7) Determination of compliance, based upon a review of samples of agricultural, business, and household personal property renditions and valuations (where assessment of household personal property has not been abolished pursuant to Article X, Section 6(b) of the Oklahoma Constitution).

(8) Findings upon review of personal property samples for determination of whether uniform ~~assessment percentage~~ actual fair cash value is being applied on all personal property classes and types. (**See:** ~~Okl. Const. Art. 10 § 6(b).~~ 68 O.S § 2807).

(9) Findings based upon review of CAMA system to determine whether the systematic generation and maintenance of values and ongoing sales file maintenance and analysis mandated by state statute is being utilized in a state-approved system of computer assisted mass appraisal. [**See:** 68 O.S. § 2829]

(10) Findings based upon review of Oklahoma Tax Commission and State Board of Equalization approved agricultural use value methodology to determine if the county is utilizing the most current approved dollar per point and the use value methodology specified in 68 O.S. § 2817(C) for valuation of agricultural land and non-residential improvements.

(11) Findings based upon review to determine if the county is monitoring agricultural land use constant with 68 O.S. § 2820 on an annual basis to determine if the actual use has changed.

710:10-4-9. Findings of the annual valuation audit

(a) The annual valuation audit shall be based upon the factors contained in 710:10-4-8.

(b) Each county shall be given a score based upon the degree of compliance with each factor listed. The county shall be required to obtain a score of seventy percent (70%) in order to be certified as conducting annual valuation pursuant to 68 O.S. §§ 2817, 2829, and 2830(B).

(c) The Oklahoma Tax Commission will recommend to the State Board of Equalization upon review of the criteria set forth in this subsection that the county is in compliance with the annual valuation requirement by achieving a score of seventy (70) percent.

(1) The county has complied with the State Constitutional provisions regarding assessment percentages. [**See:** Article 10. Section 8A, Okla. Const]

(2) The county's ~~assessment~~ appraisal procedures are not increasing the taxable value of capped property in excess of the five percent cap unless the property is improved or transferred.

(3) The county's ~~assessment~~ appraisal procedures ~~properly applied the~~ are not increasing the taxable value of property subject to the Constitutional Senior Valuation limitation ~~to eligible properties~~ unless the property is improved or transferred. [**See:** Article 10. Section 8C, Okla. Const.]

(4) Uncapped property is valued at its actual fair cash value, based upon its highest and best use for which used, pursuant to Title 68 of the Oklahoma Statutes and Article 10, Section 8 of the Oklahoma Constitution.

(5) The county is applying the same assessment percentage for all locally valued personal property.

(6) The county is properly applying Article 10, Sections 8, 8B, and 8C, of the Oklahoma Constitution and is implementing those provisions in a consistent manner, using the approved forms.

(7) The county is conducting its visual inspection program as described in its approved visual inspection plan.

(8) The county is conducting maintenance activity, i.e. addition of new construction and add-ons, deletions, demolition, fire/storm damage.

(9) The county is making adjustments as needed to sold and unsold property to maintain ~~market value~~ actual fair cash value ~~both inside and outside of the visual inspection area~~ countywide on an annual basis. See: OAC 710:10-4-8-6.

(10) The county is using appropriate agricultural use value methodology for land and non-residential improvements, approved by the Oklahoma Tax Commission Ad Valorem Division and State Board of Equalization for valuation of agricultural classified properties.

(d) If the county score is less than seventy percent (70%), the Oklahoma Tax Commission shall certify that the county is not in compliance with the annual valuation requirements and shall recommend to the State Board of Equalization the appropriate category of non-compliance, as required by 68 O.S. § 2830(B).

(e) The Oklahoma Tax Commission may notify the county assessor of any areas of improvements or concerns from the results of the Annual Valuation Audit. The Commission may provide the county with statistical data and other information that the Commission determines may be beneficial to the advancement of the annual valuation program.

SUBCHAPTER 7. MANUFACTURING FACILITIES

710:10-7-2. Requirements for exemption for qualified manufacturing facilities established, expanded, or acquired, on or before July 1, 2003 [REVOKED]

~~(a) **Manufacturing.** In order to be approved as a **"manufacturing facility,"** the facility must be engaged in an activity defined as "manufacturing" by the **Standard Industrial Classification (SIC) Manual** or the **North American Industrial Classification System (NAICS)**, published by the U.S. Office of Management and Budget, as supplemented, or as defined by the Oklahoma Legislature pursuant to Article 10, Section 6(B) of the Oklahoma Constitution. Businesses holding a Manufacturers Sales Exemption Certificate from sales and/or use tax are not necessarily eligible for the ad valorem five (5) year Manufacturers Exemption.~~

~~(b) **Research and development.** In order to be approved as **"research and development"** the facility must be engaged in activities so defined by 68 O.S.1994, § 2902(B)(4), which states that "*research and development shall mean activities directly related to and conducted for the purpose of discovering, enhancing, increasing or improving future or existing products or processes or productivity*". The **qualifying** Industrial Group Number in the SIC or NAICS Manual will be determined by the Commission.~~

~~(c) **Statutory requirements.** Facilities must meet requirements mandated by statute and summarized in this subsection.~~

~~(1) Facilities must satisfy the requirements of being new, expanded, or acquired. [**See:** 68 O.S. § 2902]~~

~~(2) For applications received by the county assessor:~~

~~(A) **On or before July 1, 2003.** The net increase in payroll shall be Two Hundred Fifty Thousand Dollars ($250,000.00) or more in annualized payroll, or a net increase of Two Million Dollars ($2,000,000.00) in capital improvements, while maintaining or increasing payroll;~~

~~(B) **After July 1, 2003. Net increase in payroll:** The net increased payroll must be at least Two Hundred Fifty Thousand Dollars ($250,000.00) if the facility is located in a county with a population of fewer than fifty thousand (50,000) persons; or at least One Million Dollars ($1,000,000.00) for applicants located in counties with populations of fifty thousand (50,000) persons or more while maintaining or increasing payroll.~~

~~(C) **After December 31, 2002, excluding payroll:** A manufacturing facility shall have the option of excluding from its payroll, payments to sole proprietors, members of partnerships, members of a limited liability company or stockholder employees under certain circumstances. Manufacturing facilities electing this option shall document the election by an attached addendum to the application at time of filing which states in detail any payroll exclusions. (See: 68 O.S. 2005 Supp.§ 2902(C)(4)~~

~~(D) **After July 2003. Oil refineries:** Refineries defined in N.A.I.C.S. Code 324110, provided the facility is used wholly and exclusively for the desulphurization of gasoline or diesel fuel is located in any county regardless of population and has a net increase in annualized payroll of Two Hundred Fifty Thousand Dollars ($250,000.00) or more.~~

~~(E) **After July 1, 2005. Net increase in payroll:** The net increase in payroll must be at least Two Hundred Fifty Thousand Dollars ($250,000.00) if the facility is located in a county with a population of less than seventy-five thousand (75,000) persons, or a payroll of One Million Dollars ($1,000,000.00) if located in a county with a population in excess of seventy-five thousand (75,000) persons. The net increase in payroll must be attributed to capital improvements while maintaining or increasing payroll at the facility. (See: 68 O.S. 2005 Supp. § 2902(C)(4).~~

~~(F) **Health care benefit plan required.** All facilities must offer, within one hundred eighty (180) days of employment, a basic health benefits plan to the full time employees of the facility, pursuant to 68 O.S.Supp.2003, § 2902(C)(4)(b).~~

~~(3) A manufacturing concern, which does not meet the payroll requirement, shall submit with the initial application for exemption, an affidavit to the Oklahoma Tax Commission, signed by an officer. This affidavit will state that from the start of the initial construction, acquisition, or expansion, to the completion of said construction, acquisition, or expansion, or for up to three (3) years, whichever occurs first, the establishment or expansion of the facility will result in a net increase in payroll that meets the qualification criteria.~~

~~(4) A manufacturing facility requesting an exemption must hold title to real or personal property, or have an equity interest in real or personal property.~~

~~(5) The amount of increased payroll may include payroll for FTE in this State who are employed by an entity other than the facility which has otherwise qualified for the exemption. The Tax Commission shall audit all payroll submissions.~~

~~(6) **"Annualized payroll"** when used in this Section means using the average of the third and fourth quarters for the initial base line calculation and multiplying the result by four. This method shall be used for calculation of the initial base year and all subsequent years.~~

~~(7) **"Base line payroll"** When used in this section shall mean payroll for the calendar year immediately preceding the initial construction, acquisition or expansion. The base line payroll will then be compared to the payroll immediately preceding the January application date for the year of initial application and the subsequent four (4) years of eligibility.~~

~~(d) **Requirements for acquired existing facility.** An acquired existing facility must be unoccupied for a period of twelve (12) months prior to acquisition for initial qualification. [**See:** Art. 10, Section 6B, Okla. Const. and 68 O.S.Supp.2003, § 2902(A)]~~

~~(e) **Transfer of exemption.** If the ownership of a qualified facility currently enrolled in the exemption program, changes during the five year exemption period, the exemption shall continue in effect for the balance of the five year period, so long as all other qualifications are maintained.~~

710:10-7-2.1. Manufacturing facility exemption for facilities which are established, expanded, or acquired on or after January 1, 2000 [REVOKED]

~~(a) **Manufacturing facility.** **"Manufacturing facility"** means a facility engaged in mechanical or chemical transformation of materials or substances into new products. . . which have received a manufacturers exemption permit pursuant to the provisions of 68 O.S.Supp.1999, § 1359.2, and all the facilities and establishments described in 68 O.S. § 2902(B)(1)(b) (d). [**See:** 68 O.S. § 2902(B)(1)]. Machinery and equipment that is a direct replacement is not eligible for the exemption. Investment Cost shall not include the cost of direct replacement, refurbish, repair or maintenance of existing machinery or equipment.~~

~~(b) **Facilities with sales tax exemptions.** The Tax Commission shall recognize all businesses issued Manufacturers Exemption Permits pursuant to 68.O.S. § 1359.2 however, businesses holding a Manufacturers Exemption Permit for sales and/or use tax must qualify for all conditions of eligibility in 68 O.S. §2902.~~

~~(c) **Research and development.** **"Research and development"** means activities directly related to and conducted for the purpose of discovering, enhancing, or increasing or improving future or existing products or processes or productivity. [**See:** 68 O.S. § 2902(B)(4)]~~

~~(d) **Statutory requirements.** Facilities must meet requirements mandated by statute and summarized in (1) through (4) of this subsection.~~

~~(1) Facilities must satisfy the requirements of being new, expanded, or acquired. [**See:** 68 O.S. § 2902]~~

~~(2) For applications submitted on or before July 1, 2003, the investment cost of the construction, acquisition or expansion of the manufacturing facility is Two Hundred Fifty Thousand Dollars ($250,000.00) or more within the calendar year in which the construction, acquisition or expansion occurred. Facility or facilities shall mean and include the land, building, structures, improvements, machinery, fixtures, equipment and other personal property used directly and exclusively in the manufacturing process.~~

~~(3) While maintaining the number of FTE's required by previous statutes:~~

~~(A) **For applications submitted after Dec. 31, 2000, and before July 1, 2003.** A net increase of Two Hundred Fifty Thousand Dollars ($250,000.00) or more, in annualized payroll, or a net increase of Two Million Dollars ($2,000,000.00) or more, in capital improvements in the calendar year in which the construction, acquisition, or expansion has occurred, while maintaining or increasing payroll is required during the full five years of the exemption.~~

~~(B) **For applications submitted after July 1, 2003.** A net increase of Two Hundred Fifty Thousand Dollars ($250,000.00) or more, in annualized payroll for facilities located in counties with a population of fewer than Fifty Thousand (50,000) persons in the calendar year in which the construction, acquisition, or expansion has occurred. For facilities located counties with a population of Fifty Thousand (50,000) persons or greater, the net increase in annualized payroll is One Million Dollars ($1,000,000.00) in annualized payroll. [**See:** 68 O.S.Supp.2003, § 2902]~~

~~(C) **Before July 1, 2005: Base line payroll.** To determine base line payroll, the Tax Commission shall verify all payroll information through the Oklahoma Employment Security Commission (OESC) by using the average of the third and fourth quarter OESC reports of the calendar year immediately preceding the year for which initial application is made. [**See:** 68 O.S. § 2902(C). For subsequent year applications for exemption, payroll shall also be calculated using the average of the preceding third and fourth quarters' payroll, as certified by the OESC, immediately preceding the January application date. The base line payroll will then be compared to the payroll immediately preceding the January application date for the year of initial application and the subsequent four (4) years of eligibility.~~

~~(D) **After July 1, 2005: Base line payroll.** To determine base line payroll the net increase must be at least Two Hundred Fifty Thousand Dollars ($250,000.00) if the facility is located in a county with a population fewer than seventy five thousand (75,000) persons; or at least One Million dollars ($1,000,000.00) if located in counties with a population of seventy five thousand (75,000) persons or more while maintaining or increasing payroll.~~

~~(i) A manufacturing concern which does not meet the amount of increased payroll shall submit to the Commission, with the initial application year of exemption, an affidavit, signed by an officer. The signed affidavit must state that from the start of initial construction, acquisition, or expansion - to the completion of said construction, acquisition, or expansion, or for three (3) years, which ever occurs first, the establishment or expansion of the facility will result in a net increase of the required annualized payroll. The amount of increased payroll may include payroll for full-time equivalent employees in this state who are employed by an entity other than the facility which has qualified to receive an exemption pursuant to the provisions of this Section and who are leased or otherwise provided to the facility, if such employment did not exist in this state prior to the start of initial construction or expansion of the facility. It will be the responsibility of the manufacturer to supply the Oklahoma Employment Security Commission or the Oklahoma Tax Commission, or both, with verifiable data of payroll as required by the manufacturers with employees pursuant to (d)(3)(C) of this Section.~~

~~(ii) The facility will offer within one hundred eighty (180) days of the date of employment, a basic health benefit plan to the full time employees of the facility [**See:** 68 O.S. § 2902(C)(4)(b).] Calculation of the number of employees shall be made in the same manner as required pursuant to 68 O.S. § 2357.4 for an investment tax credit.~~

~~(4) A manufacturing facility requesting an exemption must hold title to real or personal property, or have an equity interest in real or personal property.~~

~~(e) **Requirements for acquired existing facility.** An acquired existing facility must be unoccupied for a period of twelve (12) months prior to acquisition. [**See:** Art. 10, Section 6B, Okla. Const.] This requirement shall be construed as a qualification for a facility to initially receive an exemption and not as a qualification for that facility to continue to receive an exemption in each of the four (4) subsequent years following the year that the exemption was granted. [**See:** 68 O.S.Supp.2003, § 2902(A)] The FTE or payroll requirements for eligibility will be determined based on the year in which the acquisitions were obtained.~~

~~(f) **Transfer of exemption.** If a facility has initially qualified for an exemption on or after January 1, 1999, and ownership of the facility changes during the five-year period of the exemption, the exemption shall continue in effect for the balance of the five-year period, provided all qualification criteria set by statute are met by the new owners of the facility. Annual application for the exemption must be filed with the county assessor as required by statute. [**See:** 68 O.S.Supp.2003, § 2902(C)(1)]~~

710:10-7-2.2. Exemption requirements for qualified manufacturing and research and development facilities established, expanded or acquired.

(a) **Manufacturing.** In order to be approved as a "manufacturing facility," the facility must be engaged in an activity defined as "manufacturing" by the Standard Industrial Classification (SIC) Manual or the North American Industrial Classification System (NAICS), published by the U.S. Office of Management & Budget, as supplemented, or as defined by the Oklahoma Legislature pursuant to Article 10, Section 6B of the Oklahoma Constitution.

(b) **Research & Development.** In order to be approved as "research and development" the facility must be engaged in activities defined by 68 O.S. §2902(B)(3).

(c) **Facilities with sales tax exemptions.** The Tax Commission shall recognize all business issued Manufacturers Exemption Permits pursuant to 68 O.S. § 1359.2.

(d) **Definitions.** The following words and terms, when used in this Section shall have the following meanings unless the context clearly indicates otherwise:

(1) ***Manufacturing facilities*** *means facilities engaged in the mechanical or chemical transformation of materials or substances into new products*. 68 O.S. Supp. 2006 § 2902(B)(1).

(2) ***Facility or facilities*** *means and includes the land, building, structures, improvements, machinery, fixtures, equipment and other personal property used directly and exclusively in the manufacturing process*. 68 O.S. Supp. 2006 § 2902(B)(2).

(3) ***Research & development*** *means activities directly related to and conducted for the purpose of discovering, enhancing, increasing or improving future or existing products or processes or productivity*. 68 O.S. Supp. 2006 § 2902(B)(3).

(4) **Annualized payroll** means using the average of the third and fourth quarters for the initial base line calculation and multiplying the result by four. This method shall be used for calculation of the initial base year and all subsequent years.

(5) **Base-line payroll** means payroll for the calendar year immediately preceding the initial construction, acquisition or expansion. The base-line payroll will then be compared to the payroll immediately preceding the January application date for the year of initial application and the subsequent four (4) years of eligibility.

(e) **Qualification or Statutory Requirements.** Except as otherwise provided in (e)(6) of this Section, facilities must meet the requirements mandated by statute and summarized in (e)(1) through (e)(5) of this Section:

(1) Facilities must satisfy the requirement of being new, expanded, or acquired.

(2) The investment cost of the construction, acquisition or expansion of the manufacturing facility must be Two Hundred Fifty Thousand Dollars ($250,000.00) or more within the calendar year in which the construction, acquisition or expansion occurred. Investment Cost shall not include the cost of direct replacement, refurbish, repair or maintenance of existing machinery or equipment.

(3) The net increase in annualized payroll must be at least Two Hundred Fifty Thousand Dollars ($250,000.00) if the facility is located in a county with a population of less than seventy-five thousand (75,000) persons according to the most recent federal decennial census while maintaining or increasing payroll; or at least One Million Dollars ($1,000,000.00) if the facility is located in a county with a population of seventy-five thousand (75,000) or more, according to the most recent federal decennial census while maintaining or increasing payroll.

(A) To determine base-line payroll, the Tax Commission must verify all payroll information through the Oklahoma Employment Security Commission (OESC) utilizing OESC reports for the calendar year immediately preceding the year for which initial application is made. [See: 68 O.S. § 2902(C)(4)].

(B) The amount of increased payroll may include payroll for full-time-equivalent employees in this state who are employed by an entity other than the facility which has qualified to receive an exemption pursuant to the provisions of this Section and who are leased or otherwise provided to the facility, if such employment did not exist in this state prior to the start of initial construction or expansion of the facility. It will be the responsibility of the manufacturer to supply the Oklahoma Employment Security Commission or the Oklahoma Tax Commission, or both, with verifiable data of payroll as required by the manufacturers with employees pursuant to (d)(3)(C) of this Section.

(C) A manufacturing facility shall have the option of excluding from its payroll, payments to sole proprietors, members of partnerships, members of a limited liability company or stockholder employees under certain circumstances. Manufacturing facilities electing this option shall document the election by an attached addendum to the application at time of filing which states in detail any payroll exclusions. (See: 68 O.S. Supp. 2005 § 2902(C)(4)

(D) A manufacturing concern which does not meet the amount of increased payroll shall submit to the Tax Commission, with the initial application year of exemption, an affidavit, signed by an officer. The signed affidavit must state that from the start of initial construction, acquisition, or expansion, to the completion of said construction, acquisition, or expansion, or for three (3) years, whichever occurs first, the

establishment or expansion of the facility will result in a net increase of the required annualized payroll.

(4) The facility will offer within one hundred eighty (180) days of the date of employment, a basic health benefit plan to the full-time employees of the facility. [**See:** 68 O.S. § 2902(C)(4)(b)] Calculation of the number of employees shall be made in the same manner as required pursuant to 68 O.S. § 2357.4 for an investment tax credit.

(5) A manufacturing facility requesting an exemption must hold title to real or personal property, or have an equity interest in real or personal property.

(6) Entities engaged in the generation of electric power by means of wind, as described in the North American Industry Classification System No. 221119, if there is a net increase in annualized payroll at the facility of at least Two Hundred Fifty Thousand Dollars ($250,000.00), or a net increase of Two Million Dollars ($2,000,000.00) or more in capital improvements while maintaining or increasing payroll, and all other requirements of this Section are met.

(f) **Requirements for acquired existing facility.** An acquired existing facility must be unoccupied for a period of twelve (12) months prior to acquisition for initial qualification. [**See:** Art. 10, Section 6B, Okla. Const. and 68 O.S. Supp. 2003, § 2902(A)].

(g) **Transfer of exemption.** If the ownership of a qualified facility currently enrolled in the exemption program changes during the five-year exemption period, the exemption shall continue in effect for the balance of the five-year period, so long as all other qualifications are maintained.

710:10-7-4. Qualifying manufacturing concerns exempt; forms

Qualifying manufacturing concerns as defined by law shall be exempt from the levy of any ad valorem taxes upon new, expanded or acquired manufacturing facilities for a period of five (5) years. Exemptions will be allowed only upon approved application filed with the county assessor on forms prescribed by the Oklahoma Tax Commission. The application shall be fully completed, sworn to and signed by the applicant, if an individual, or by a duly authorized officer or general partner or authorized agent. Any additional information requested in writing by the county assessor, the County Board of Equalization, or the Oklahoma Tax Commission shall be furnished in a sworn and signed statement.

710:10-7-6. Beginning date of exemption; failure to claim

The five-year period of allowable ad valorem manufacturing exemption for any qualifying manufacturing facility property shall begin on January 1 following the initial qualifying use of the property in the manufacturing process as provided by law. Failure to claim an exemption for which a qualifying manufacturing concern may be eligible shall not toll or extend the five-year period of allowable exemption. Any remaining eligibility for previously acquired assets may be claimed for the following year based on the initial year of acquisition. ~~Any qualifying manufacturing facility that fails to file or fails to file timely, may file an application for one additional year within two (2) years of the end of the original five-year period. Qualifying manufacturing concerns filing for the additional year must document the request and circumstances by an attached addendum to the application at time of filing.~~

710:10-7-8. Property used in a manufacturing facility

Real and personal property exempted from ad valorem taxation pursuant to this Subchapter must be used directly and exclusively in the manufacturing process. **[See:** 68 O.S. § ~~2902(B)(3)~~ 2902(B)(2)]

[OAR Docket #07-1028; filed 5-15-07]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 22. BOATS AND MOTORS

[OAR Docket #07-1030]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1 General Provisions
710:22-1-6 [AMENDED]
710:22-1-7 [AMENDED]
710:22-1-8 [AMENDED]
710:22-1-10 [AMENDED]
710:22-1-11 [REVOKED]
710:22-1-18 [REVOKED]
710:22-1-19 [REVOKED]
710:22-1-20 [AMENDED]
710:22-1-21 [AMENDED]
Subchapter 5. Procedures for Registration
710:22-5-1 [AMENDED AND RENUMBERED TO 710:22-7-4]
710:22-5-2 [AMENDED AND RENUMBERED TO 710:22-7-5]
710:22-5-3 [AMENDED AND RENUMBERED TO 710:22-7-6]
710:22-5-4 [AMENDED AND RENUMBERED TO 710:22-7-7]
710:22-5-5 [AMENDED AND RENUMBERED TO 710:22-7-8]
710:22-5-6 [AMENDED AND RENUMBERED TO 710:22-7-10]
710:22-5-7 [REVOKED]
710:22-5-8 [AMENDED]
710:22-5-9 [AMENDED]
Subchapter 7. Titles
710:22-7-1 [AMENDED AND RENUMBERED TO 710:22-7-11]
710:22-7-2 [AMENDED AND RENUMBERED TO 710:22-7-12]
710:22-7-3 [RENUMBERED TO 710:22-7-13]
710:22-7-4 through 710:22-7-13 [NEW]
Subchapter 9. Excise Tax
710:22-9-1 [AMENDED]
Subchapter 13. Affidavits and Forms [REVOKED]
710:22-13-1 [REVOKED]
AUTHORITY:
68 O.S. § 203; 63 O.S. § 4004; Oklahoma Tax Commission
DATES:
Comment Period:
February 1, 2007 to March 5, 2007
Public hearing:
March 6, 2007
Adoption:
March 13, 2007 (Commission Order No. 2007-03-13-40)
Gubernatorial approval:
April 2, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 10, 2007

Final adoption:
May 10, 2007
Effective:
June 25, 2007
SUBMITTED TO GOVERNOR:
March 15, 2007
SUBMITTED TO HOUSE:
March 15, 2007
SUBMITTED TO SENATE:
March 15, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:

Section **710:22-1-6** has been amended to conform the administrative provision with current statutory requirement that boat and outboard motor owners must carry current registrations in the vessel when in operation.

Section **710:22-1-7** has been amended to simplify language of the administrative provision by removing overly specific statutory language.

Section **710:22-1-8** has been amended to establish criteria for the display by vessels of the permanent boat number and annual registration decal issued by the Tax Commission. **[63:4030]**

Section **710:22-1-10** has been amended to delete obsolete reference to twenty (20) day time limitation for title transfers and clarify delinquent penalty application. **[63:4103]**

Sections **710:22-1-11, 710:22-1-18, 710:22-1-19** and **710:22-13-1** have been revoked as obsolete or unnecessary. **[63:4005/4009/4016/4017/4020/4021]**

Section **710:22-1-20** has been amended to clarify policy regarding the stolen or defective boat or outboard motor credit procedure. **[63:4014/4103]**

Section **710:22-1-21** has been amended to clarify the lien entry procedure on certain Oklahoma titles and to delete obsolete reference. **[63:4013]**

Subchapter 5, *Procedures for Registration,* has been amended. Sections **710:22-5-1, 710:22-5-2, 710:22-5-3, 710:22-5-4, 710:22-5-5, 710:22-5-6, 710:22-5-7** have been moved (revoked and renumbered) to Subchapter 7, *Titles.* Sections **710:22-5-8** and **710:22-5-9** dealing with registration fees and registration decals have been amended to clarify delinquent registration fee collection and to set forth the appropriate application to replace a lost, stolen or mutilated boat or motor registration decal. Sections **710:22-5-1, 710:22-5-2, 710:22-5-3, 710:22-5-4, 710:22-5-5, 710:22-5-6, 710:22-5-7** have become **710:22-7-4, 710:22-7-5, 710:22-7-6, 710:22-7-7, 710:22-7-8, 710:22-7-9, 710:22-7-10.** Sections **710:22-7-4, 710:22-7-5, 710:22-7-6, 710:22-7-7, 710:22-7-8, 710:22-7-9, 710:22-7-10** have been amended to update and clarify information regarding various aspects of titling boats and outboard motors. Additionally, in order to organize certain provisions contained in Subchapter 7 in a more effective, informative and appropriate manner, Sections **710:22-7-1, 710:22-7-2, 710:22-7-3** have been moved and renumbered as **710:22-7-11, 710:22-7-12, 710:22-7-13. [63:4008/4009/4016/4017]**

Section **710:22-9-1** has been amended to clarify the determination of taxable value for calculation of excise taxes on boat and outboard motor transfers. **[63:4103/4105]**

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 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

710:22-1-6. Registration and title

(a) Each boat and outboard motor will ~~have~~ be issued ~~both~~ a certificate of title and a registration form.

(b) A boat owner must carry the current boat and outboard motor (if applicable) registration in the boat when in operation.

710:22-1-7. Fee for certificate of title

The charge for each boat or outboard motor certificate of title ~~shall be Two Dollars and Twenty-five Cents ($2.25).~~ is established by statute. [63 O.S. § 4014]. The ~~purchaser~~ applicant will receive a certificate of title and a separate registration. The title will be generated and mailed from a central location established by the Oklahoma Tax Commission.

710:22-1-8. Display of permanent number and registration decal

~~A boat owner must carry the current Boat/Motor registration in the boat when in operation.~~ Unless otherwise provided by statute, every vessel on the waters of this state is to display the permanent number and annual registration decal as assigned by the Oklahoma Tax Commission. The permanent number and registration decal are to be displayed as follows:

(1) The permanent number must be painted, applied as a decal, or otherwise affixed to both sides of the bow as high above the water line as possible.

(2) The permanent number must read from left to right on both sides of the bow.

(3) The permanent number must be in at least three (3) inch high block letters.

(4) The permanent number must be maintained in legible condition.

(5) The color of the permanent number must be in contrast to its background.

(6) Within the permanent number, letters are to be separated from numbers by either a space or a hyphen.

(7) No other numbers, other than the annual registration decal, may be displayed on either side of the bow.

(8) The current annual registration decals are to be affixed on both sides of the bow, behind (towards the stern) and in line with the permanent number.

710:22-1-10. Title transfers; time limitation

The ~~purchaser~~ new owner of a new or used boat or outboard motor shall ~~have thirty (30) days, rather than twenty (20) to~~ transfer title into his or her name within thirty (30) days of purchase, or otherwise acquiring ownership. Failure to do so within that time period will result in the assessment of delinquent excise tax and registration penalties, as provided by statute.

710:22-1-11. Annual renewal of registration [REVOKED]

~~Mailout renewal for boats and motors will go into effect in June 1990.~~

710:22-1-18. Boy Scouts, Girl Scouts, and Campfire Girls [REVOKED]

~~Boats or motors owned by Boy Scouts, Girl Scouts, and the Campfire Girls shall be titled and registered free of charge.~~

710:22-1-19. Out-of-state and foreign registered boats and motors [REVOKED]

~~A boat or motor currently registered in another state or country may visit Oklahoma for a maximum of sixty (60) days, rather than ninety (90), in the course of one calendar year before having to register and title in the State.~~

710:22-1-20. Theft of boat or outboard motor; defective boat or outboard motor

If a new boat or outboard motor is stolen within ninety (90) days from date of purchase or found defective within six (6) months from date of purchase, ~~credit~~ excise tax and registration fee credit in the amounts paid on the stolen or defective boat or outboard motor, excluding any delinquent penalties paid, shall be applied to the excise tax and registration fee due on a new replacement boat or outboard motor. To verify the theft, a copy of the police report of the theft shall be surrendered. ~~A letter~~ To verify the defect, correspondence from the manufacturer ~~and selling dealer~~ acknowledging the defect will be required.

710:22-1-21. Liens

(a) Liens on boats and outboard motors are perfected and released under the same general guidelines and utilizing the same lien entry ~~form~~ forms as utilized for filing and releasing liens on ~~for a~~ motor ~~vehicle~~ vehicles. ~~The fee is~~ Fees are set forth by statute.

(b) ~~Effective July 1, 1990, the tag agent or the Tax Commission must complete a~~ A lien entry form on an out-of-state vessel ~~registering~~ or outboard motor being registered for the first time in Oklahoma~~,~~ must be prepared and the lien filed if the out-of-state document contains the name of a secured party on its face, or the applicant acknowledges the presence of an active lien. Should documentation be presented which will result in the Oklahoma title being placed on document hold, the applicant is to be asked whether an active lien exists on the boat or outboard motor. ~~The~~ If so, the applicant shall also complete an affidavit for out-of-state lien verification.

~~(c) Similarly, as of July 1, 1996, a lien entry form must also be completed on an out-of-state outboard motor registered for the first time in Oklahoma, if the documentation reflects a secured party on its face. The affidavit for out-of-state lien verification must also be completed in this instance.~~

SUBCHAPTER 5. PROCEDURES FOR REGISTRATION

710:22-5-1. General provisions [AMENDED AND RENUMBERED TO 710:22-7-4]

~~All supporting documents for original registrations should be attached to the application form. After the motor license agent has all supporting documents, he will assign proper vessel number or registration number and record them on the application form.~~

710:22-5-2. New boats and/or motors bought in Oklahoma or out-of-state [AMENDED AND RENUMBERED TO 710:22-7-5]

~~New boats and/or motors bought in Oklahoma or out-of-state must have all the following supporting documents:~~

~~(1) Notarized Manufacturers Certificate of Origin.~~

~~(2) Bill of Sale listing attached accessories.~~

~~(3) Completed title application (OTC Form BM-26) with a tax stamp attached if purchased new in Oklahoma. Boats and outboard motors require separate application forms.~~

~~(4) Verification of hull identification or serial number of the vessel/motor (OTC Form BM-10)~~

710:22-5-3. Used boats and/or motors bought in Oklahoma [AMENDED AND RENUMBERED TO 710:22-7-6]

~~Used boats and/or motors bought in Oklahoma and not previously registered must have the following supporting documents:~~

~~(1) OTC approved FL753 and notarized Bill of Sale.~~

~~(2) Completed application form by agent.~~

~~(3) Verification of hull identification or serial number of the vessel/motor (OTC form BM-10)~~

710:22-5-4. Used boats and/or motors bought out-of-state [AMENDED AND RENUMBERED TO 710:22-7-7]

~~Used boats and/or motors bought out-of-state must have the following supporting documents.~~

~~(1) Out-of-state title or registration, if state requires, and a notarized bill of sale with registrations.~~

~~(2) Application for Title (OTC Form BM-26).~~

~~(3) Verification of hull identification or serial number of the vessel/motor (OTC Form BM-10).~~

710:22-5-5. Boats and/or motors brought in from out-of-state [AMENDED AND RENUMBERED TO 710:22-7-8]

~~Boats and/or motors brought in from out-of-state but not changing owners must have the following supporting documents.~~

~~(1) Out-of-state title or registration if state requires.~~

~~(2) Completed application form.~~

710:22-5-6. Homemade boats and boats or motors without HIN or serial numbers [AMENDED AND RENUMBERED TO 710:22-7-10]

~~(a) Only the Department of Public Safety, Lake Patrol Division of the Highway Patrol, is authorized to assign and affix Oklahoma assigned hull identification numbers (HIN) for boats and serial numbers for outboard motors.~~

~~(b) To obtain an assigned HIN or serial number, the owner must submit the items set out in (1) through (3) of this subsection to the Motor Vehicle Division of the Tax Commission:~~

~~(1) Proof of ownership, evidenced by either:~~

~~(A) A notarized bill of sale; or~~

~~(B) An assigned certificate of title; or~~

~~(C) An out-of-state registration; or~~

~~(D) In the case of a homemade boat, a statement listing the costs of materials purchased for use in construction of the boat, and an estimate of labor costs.~~

~~(2) An application for Title (OTC Form BM 26); and~~

~~(3) An ownership affidavit (OTC Form 753).~~

~~(c) Upon review and approval of the documents submitted, the Motor Vehicle Division will complete OTC Form 717, which must be provided to the Department of Public Safety (DPS) by the applicant, in order to have the boat inspected.~~

~~(d) The DPS officer will confirm the absence of an HIN or Serial number and conduct an inspection to insure that the boat or motor is "lake ready". Thereafter, if appropriate, the officer will assign and affix an OKZ number to the boat or an OKM number to the outboard motor, accordingly.~~

~~(e) The officer will complete DPS Form TRW 112496REV2, giving the original and a copy to the applicant.~~

~~(f) The applicant must then submit all documents, from both the Motor Vehicle Division of the Commission and from DPS, to a Motor License Agent or to the Commission for issuance of a title and registration.~~

~~(g) A copy of DPS Form TRW 112496REV2 and a copy of the Oklahoma Registration must be carried with the boat and/or motor when in operation on the water.~~

710:22-5-7. Renewal of registration [REVOKED]

~~(a) **Procedure for current registration.** If the applicant has the previous year's registration or mail out renewal card, a renewal will be issued. Attach the previous year's registration to the OTC copy of the current registration. If the registration being submitted for renewal is NOT for the previous year, additional tax and penalty will be due.~~

~~(b) **Procedure for lapsed registration.** If a boat or motor has not been registered for several years, only the current year and one previous year plus penalty is to be assessed.~~

710:22-5-8. Registration fees

(a) ~~Fees for original and renewal~~ Boat and outboard motor registration fees are based on the number of years registered and the factory delivered price (not selling price). A selling Oklahoma dealer is to list the manufacturer's original retail factory delivered price of the boat or outboard motor on the application documentation.

(b) A boat or outboard motor registrant ~~will have an~~ has the option at the time of registration of selecting either a one (1) or three (3) year registration period.

(c) In the event a boat or outboard motor has not been registered for several years, only the current registration year and one back registration year, plus applicable delinquent registration penalties, are to be collected.

710:22-5-9. Registration decals

(a) Upon payment of the registration fee, the applicable registration decal will be issued to each boat and outboard motor registered.

(b) Antique boats may display the registration decal on the left portion of the windshield. In the absence of a windshield, the registration decal may be attached to the certificate of registration, such registration shall be available for inspection when the boat is operated on public waters.

(c) For the purposes of subsection (b), "**antique boat**" is defined as a boat that:

(1) Is used primarily for recreational purposes; and

(2) Was manufactured before 1968.

(d) An Affidavit for Replacement License Plate/Decal/Annual Boat/Outboard Motor Decal (OTC Form 797-D) is used to apply for a boat or outboard motor registration decal that has been lost, stolen, or mutilated.

SUBCHAPTER 7. TITLES

710:22-7-1. Application for transfers [AMENDED AND RENUMBERED TO 710:22-7-11]

~~(a) **Documents required.** Before transferring a certificate of title, the applicant **must** submit the following supporting documents:~~

~~(1) An assigned title (notarized, if issued after January, 1990) or,~~

~~(2) Verification of hull identification or serial number of the vessel/motor (OTC Form BM 10) if the Oklahoma title does not have the verification on the back.~~

~~(b) **Assigned title current.** If the applicant has a current assigned title with the owner's name, address and city shown under assignment of title, the transaction will be completed.~~

~~(c) **Assigned title lost.** If the assigned title has been lost, OTC Form 777 shall be completed and submitted accordingly.~~

~~(d) **Assigned title with lapsed registration.** If the applicant has an assigned title on a boat or motor with expired registration, the previous year's registration fee, with corresponding penalty, will be collected.~~

~~(e) **Deceased owner.** If the recorded owner is deceased, a copy of the death certificate and OTC Form 798 deceased affidavit is required. If any person other than a member of the immediate family is selling the boat and/or motor, a copy of the will or court order naming an individual as executrix or administrator of the estate is to be submitted, along with the death certificate.~~

710:22-7-2. Application for duplicate title [AMENDED AND RENUMBERED TO 710:22-7-12]

~~Before issuing a duplicate the applicant must have submitted an OTC Form 701-7 for approval. If the registration is current, a duplicate will be issued.~~

710:22-7-3. Repossessions [AMENDED AND RENUMBERED TO 710:22-7-13]

~~Each vessel or outboard motor repossessed by a mortgagee is assessed a standard repossession fee, in addition to the title processing fee. This repossession fee is in lieu of all applicable vessel or outboard motor excise taxes and registration fees. Upon payment of the repossession fee and title processing fee a repossession title will be issued, and any non-current registration will be brought current for no additional fee. The repossession registration will reflect an expiration corresponding with the current vessel/outboard motor registration year period.~~

710:22-7-4. General provisions

OAC 710:22-7-5 through 710:22-7-10 describe the documentation required to apply for an original Oklahoma title to a boat or outboard motor. Upon review and approval of the titling documentation, the motor license agent is to assign the applicable registration number and record on the application form.

710:22-7-5. New boats or outboard motors purchased in Oklahoma or out-of-state

The following documentation is required to issue an original Oklahoma title to a new boat and/or outboard motor bought in Oklahoma or out-of-state:

(1) Notarized Manufacturers Statement of Origin.

(2) Completed Application for Certificate of Title for a Boat or Outboard Motor (OTC Form BM-26), with a tax stamp attached if purchased new in Oklahoma. Boats and outboard motors require separate application forms.

(3) Verification of hull identification or serial number of the vessel/motor (OTC Form BM-10).

710:22-7-6. Used (previously unregistered) boats or outboard motors purchased in Oklahoma

A boat or outboard motor used only on private waters is exempt from titling and registration. The following documentation is required when application is made for an original Oklahoma title to such a boat and/or outboard motor:

(1) Completed Application for Certificate of Title for a Boat or Outboard Motor (OTC Form BM-26).

(2) Notarized statement from owner (previous owner if ownership change), stating the boat/ outboard motor was previously operated only on private waters.

(3) Verification of hull identification or serial number of the vessel/motor (OTC Form BM-10).

710:22-7-7. Used boats and/or outboard motors entering from another titling and/or registering state

The following documentation is required to issue an original Oklahoma title to a used boat and/or outboard motor entering from another titling and/or registering state:

(1) If same owner: The out-of-state title or, if registration-only state, the out-of-state registration.

(2) If new owner: The assigned out-of-state title, or, if registration-only state, the out-of-state registration and a notarized bill of sale from the registered owner, identifying the boat/ outboard motor by hull identification/serial number.

(3) Completed Application for Certificate of Title for a Boat or Outboard Motor (OTC Form BM-26).

(4) Verification of hull identification or serial number of the vessel/motor (OTC Form BM-10).

710:22-7-8. Used outboard motors entering from a non-titling and non-registering state

(a) The following documentation is required to issue an original Oklahoma title to a used outboard motor entering from a state that does not title or register outboard motors:

(1) If new owner: A notarized bill of sale identifying the outboard motor by serial number.

(2) Completed Application for Certificate of Title for a Boat or Outboard Motor (OTC Form BM-26).

(b) Upon receipt of the above, the motor license agent shall contact the Oklahoma Tax Commission Motor Vehicle Division for review and title issuance approval.

710:22-7-9. Ownership Affidavit

The Affidavit of Boat/Outboard Motor Ownership (Form 753-BM) may be utilized in applying for an Oklahoma title to a boat or outboard motor when the boat/outboard motor has been previously registered in a titling and/or registering state (including Oklahoma) and the applicant has an ownership assignment document (i.e., bill of sale) identifying the boat/outboard motor by hull identification number (HIN)/serial number, but is unable to contact seller for proper and complete documentation.

(1) Applicant is to submit a completed Vehicle Information Request (OTC Form 769), including a notation of the last state in which the boat/outboard motor was registered, and the applicable fee to a motor license agent or the Motor Vehicle Division.

(2) The motor license agent and the Motor Vehicle Division will conduct a records search. If contradictory ownership information is discovered in Oklahoma or another state, the Ownership Affidavit application will be rejected and returned to the taxpayer with a notation of the source state of the contradictory ownership information. If no contradictory ownership record is found, title issuance may be approved.

710:22-7-10. Homemade boats and boats or outboard motors without hull identification or serial numbers

(a) Only the Oklahoma Department of Public Safety is authorized to assign and affix Oklahoma assigned hull identification numbers (HIN) to boats and serial numbers to outboard motors.

(b) To obtain an assigned HIN or serial number, the owner must submit the items set out in (1) and (2) of this subsection to the Motor Vehicle Division of the Tax Commission:

(1) Proof of ownership, evidenced by:

(A) A notarized bill of sale;

(B) An assigned certificate of title;

(C) An out-of-state registration; or

(D) In the case of a homemade boat, a statement listing the cost of materials purchased for use in construction of the boat, and an estimate of labor costs.

(2) A completed Application for Certificate of Title for a Boat or Outboard Motor (OTC Form BM-26).

(c) Upon review and approval of the documents submitted, the Motor Vehicle Division will complete OTC Form 717, which must be provided to the Department of Public Safety (DPS) by the applicant, in order to have the boat inspected.

(d) The DPS officer will perform an inspection and, if approved, will assign and affix an OKZ number to the boat or an OKM number to the outboard motor.

(e) The DPS officer will complete DPS Form TRW 112496REV2, giving the original and a copy to the applicant.

(f) The applicant must then submit all documents, from both the Motor Vehicle Division of the Tax Commission and from DPS, to a motor license agent or to the Tax Commission for issuance of a title and registration.

(g) A copy of DPS Form TRW 112496REV2 and a copy of the Oklahoma Registration must be carried with the boat and/or outboard motor when in operation on the water.

710:22-7-11. Application for transfers of title

(a) **Documents required.** The following documentation is required to transfer ownership of a boat or outboard motor currently titled in Oklahoma:

(1) An assigned and notarized Oklahoma certificate of title, and

(2) Verification of hull identification or serial number of the vessel/motor (OTC Form BM-10) if the Oklahoma title does not have the verification on the back.

(b) **Current registration required to transfer.** Current registration is required before a transfer of ownership may be completed.

(c) **Assigned title lost.** If the assigned title is lost, application for a transfer title may be made by completing an Application for Transfer When Assigned Title Is Lost (OTC Form 777). The applicant is to complete the form, reflecting the same information as shown on the reverse side of the lost assigned title. The completed form must be accompanied by proof of ownership, such as a notarized Bill of Sale, Sales Contract and lien filing, or cancelled check to the former owner, showing the HIN or serial number of the boat or outboard motor.

(d) **Deceased owner.** When the record owner is deceased, the documentary guidelines applicable to vehicles, as outlined under *OAC* 710:60-5-77, are to be applied.

710:22-7-12. Application for replacement title

(a) **Procedure for obtaining a replacement certificate of title.** An Application for Replacement Certificate of Title for Vehicle/Boat/Motor (OTC Form 701-7) is to be used when a boat or outboard motor owner has lost the certificate of title. Only the record owner may make such application. The applicant shall produce proper identification at the time of application.

(b) **Changes in replacement certificate of title limited to address correction.** No information, other than the address, may be changed when issuing a replacement title.

(c) **Current registration required.** Registration must be current in Oklahoma before a replacement title may be issued. A replacement title may be issued without current Oklahoma registration to a former resident who has relocated to another state and the title is mailed to the out-of-state address.

710:22-7-13. Repossessions

Each vessel or outboard motor repossessed by a mortgagee is assessed a standard repossession fee in addition to the title processing fee. This repossession fee is in lieu of all applicable vessel or outboard motor excise taxes and registration fees. Upon payment of the repossession fee and title processing fee, a repossession title will be issued and any non-current registration will be brought current for no additional fee. The repossession registration will reflect an expiration corresponding with the current vessel/outboard motor registration year period.

SUBCHAPTER 9. EXCISE TAX

710:22-9-1. General provisions

(a) **Date due; penalty.** Excise tax, as levied by Section 4103 of Title 63, is due at the time of transfer of legal ownership or possession of a boat or ~~a~~ an outboard motor and must be paid within thirty (30) days of such date. After the thirtieth (30th) day, a penalty is to be collected in addition to the tax due. A daily penalty will accrue until the tax is paid. However, the penalty is not to exceed the amount of the tax due.

(b) **Determination of ~~total delivered price~~ taxable value.** ~~Total Delivered Price~~ The taxable value, for excise tax purposes, of a new boat or outboard motor is the ~~Factory Delivered Price or Port of Entry Price, plus the value of any extra or optional equipment and accessories physically attached to~~ manufacturer=s original retail delivered price of the ~~Boat~~ boat or ~~Motor~~ outboard motor ~~at the time of sale~~. The taxable value for used boats or outboard motors is depreciated, based on the age of the boat or outboard motor, as provided by statute.

(c) **Rate on sale of new boat or outboard motor by dealer.** A new boat or outboard motor sold for the first time will always be assessed the first year rate, regardless of the model year. ~~Should the same boat or motor be~~ If resold during the same year, the second year rate ~~would apply~~ is assessed.

(d) **Rates generally; determination of model year.** In all other cases, the ~~correct~~ excise tax rate is based on the model year and the year in which the title is assigned. In determining the number of years, include the model year, year of assignment, and each year in between.

(e) **Exemptions.** Certain transactions and transfers of title, as enumerated in Section 4106 of Title 63, are exempt from the assessment of excise tax.

SUBCHAPTER 13. AFFIDAVITS AND FORMS [REVOKED]

710:22-13-1. Frequently used forms and procedures generally [REVOKED]

~~(a) **Proof of ownership (OTC Form 753).** The Ownership Affidavit may be used in conjunction with proof of purchase to convey ownership in lieu of an Oklahoma Certificate of Title when a buyer did not receive an Oklahoma Certificate of Title from the record owner. This form is also used if an applicant is bringing a boat and/or motor in from another state where title/registration is not required.~~

~~(1) An applicant using an Ownership Affidavit must present proof of purchase, including:~~

~~(A) Complete description of the boat/motor, to include the year, make, and the complete hull identification number/serial number;~~

~~(B) Seller's notarized signature;~~

~~(C) Buyer's name and address; and~~

~~(D) Date of sale (not the notary date).~~

~~(2) All ownership affidavits must be approved by the Motor Vehicle Division of the Oklahoma Tax Commission.~~

~~(b) **Lost/assigned title (OTC Form 777).** A lost/assigned form is used to transfer a title when the assigned title has been lost and the previous owner is unavailable to provide a duplicate title. It is to show the same information as shown on the reverse side of the lost assigned title. The completed form is acceptable only when accompanied by proof of ownership, such as a notarized Bill of Sale, Sales Contract and lien filing or cancelled check showing the HIN or Serial number of the Boat or Motor.~~

~~(c) **Duplicate title (OTC Form 701-7).** When the owner of record has lost a title, an application for a duplicate certificate of title (OTC Form 701-7) should be completed and submitted to a Motor License Agent or to the Commission.~~

~~(d) **Duplicate decal (OTC Form 797-D).** A duplicate decal form is used to replace a lost, stolen, or mutilated boat or outboard motor decal.~~

[OAR Docket #07-1030; filed 5-15-07]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 50. INCOME

[OAR Docket #07-1029]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Returns and Reports
Part 7. Other Required Reporting
710:50-3-53 [AMENDED]
Subchapter 15. Oklahoma Taxable Income
Part 5. Other Adjustments to Income
710:50-15-48 [AMENDED]
710:50-15-49 [AMENDED]
710:50-15-50 [AMENDED]
710:50-15-55 [AMENDED]
710:50-15-66 [AMENDED]
Part 7. Credits Against Tax
710:50-15-76 [AMENDED]
710:50-15-86 [AMENDED]
710:50-15-86.1 [NEW]
710:50-15-87 [AMENDED]
710:50-15-87.1 [NEW]
710:50-15-92 [AMENDED]
710:50-15-101 [AMENDED]
710:50-15-103 [AMENDED]
710:50-15-104 [AMENDED]
710:50-15-108 [NEW]
Subchapter 17. Oklahoma Taxable Income for Corporations
Part 5. Determination of Taxable Corporate Income
710:50-17-51 [AMENDED]
Subchapter 19. Oklahoma Taxable Income for Partnerships
710:50-19-1 [AMENDED]

AUTHORITY:
68 O.S. §§ 203, 2357.11(H), 2357.25(F), 2357.46(F), 2357.47(C), 2357.66(F), 2357.67(F) and 2357.101; Oklahoma Tax Commission

DATES:
Comment Period:
February 1, 2007 to March 7, 2007
Public hearing:
March 8, 2007
Adoption:
March 13, 2007 (Commission Order No. 2007-03-13-41)
Gubernatorial approval:
April 2, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 10, 2007
Final adoption:
May 10, 2007
Effective:
June 25, 2007
SUBMITTED TO GOVERNOR:
March 15, 2007
SUBMITTED TO HOUSE:
March 15, 2007
SUBMITTED TO SENATE:
March 15, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
Section 710:50-3-53 has been amended to implement the provisions of Section 7 of Senate Bill 1947 which decreased to 5% the amount of income tax to be withheld on royalty payments made to non-resident royalty interest owners.

Section 710:50-15-48 has been amended to implement the provisions of Section 21 of House Bill 1174XX and Section 17 of Senate Bill 1084, which modifies the length of time a stock or ownership interest must be held by an

individual taxpayer prior to the date of the transaction that creates a capital gain.

Section 710:50-15-49 has been amended to implement the provisions of Section 21 of House Bill 1174XX which increased the amount of Oklahoma Adjusted Gross Income allowed to qualify for the deduction for retirement income for 2007 and subsequent years. Beginning with tax year 2007, the deduction for retirement income from the Armed Forces was increased to the greater of $10,000.00 or 75% of the amount included in the taxpayer's Federal Adjusted Gross Income. Also, beginning with tax year 2007, a percentage of Federal civil service retirement income may be excluded from Oklahoma Taxable income if the benefits are included in the taxpayer's Federal adjusted gross income.

Sections 710:50-15-50 has been amended to implement Section 5 of House Bill 1172XX which increases the standard deduction for 2007 to $5,500 for taxpayers filing as married joint or surviving spouse, $4,125, for head of household and $2,750 for single or married separate; increases the standard deduction for 2008 to $6,500 for taxpayers filing as married joint or surviving spouse, $4,875, for head of household and $3,250 for single or married separate; increases the standard deduction for 2009 to $8,500 for taxpayers filing as married joint or surviving spouse, $6,375, for head of household and $4,250 for single or married separate; and for 2010 and subsequent tax years, taxpayers will have a standard deduction equal to the federal standard deduction.

Sections 710:50-15-55 and 710:50-17-51 have been amended to implement the provisions of Senate Bill 1084 which extends to December 31, 2011, the allowable time period for the Oklahoma depletion deduction from income for oil and gas produced in Oklahoma.

Section 710:50-15-66, dealing with the Oklahoma College Saving Plan Deduction, has been amended to conform to the provisions of Section 1 of Senate Bill 1086 which provides for a carryover for any contribution not deducted and extends the deadline for making tax deductible contributions.

Section 710:50-15-76 has been amended to conform to Section 13 of Senate Bill 1084 and Section 9 of House Bill 1174XX which amends the basic coal credit and creates an extended basic credit.

Section 710:50-15-86, dealing with Small Business Capital Companies and Oklahoma Small Business Venture credits, has been amended to implement the provisions of Senate Bill 1577 which modifies the requirements for an Oklahoma Small Business Venture. An Oklahoma Small Business Venture is now required to have, within one hundred and eighty (180) days after an investment is made, at least fifty percent (50%) of its employees or assets in Oklahoma. Also, the Oklahoma Small Business Venture must expend within eighteen (18) months after the qualified investment at least fifty percent (50%) of the proceeds of the qualified investment.

New Sections 710:50-15-86.1 and 710:50-15-87.1 have been adopted to reflect the provisions of Senate Bill 1577 which provides for letter rulings pursuant to the Small Business Capital Formation Incentive Act and the Rural Venture Capital Formation Incentive Act.

Section 710:50-15-87, dealing with Oklahoma Rural Small Business Capital Companies and Rural Small Business Venture credits, has been amended to implement the provisions of Senate Bill 1577 which modifies the requirements for an Oklahoma Rural Small Business Venture. A Rural Small Business Venture is now required to have, within one hundred and eighty (180) days after an investment is made, at least fifty percent (50%) of its employees or assets in Oklahoma. Also, the Rural Small Business Venture must expend within eighteen (18) months after the qualified investment at least fifty percent (50%) of the proceeds of the qualified investment

Section 710:50-15-92, dealing with the credit for manufacturers of advanced small wind turbines, has been amended to implement the provisions of Section 14 of Senate Bill 1084 which extends the credit to December 31, 2012.

Section 710:50-15-101 was amended to conform to the provisions of House Bill 2793 which defines "Oklahoma production cost", "qualified vendor" and "investment" and amends the definition of "profit".

Section 710:50-15-103 implements Section 24 of House Bill 1174XX which provides for an increase of $2,000 in the credit for qualified railroad reconstruction for tax years 2008 and beyond.

Section 710:50-15-104, dealing with income tax credits for the construction of qualifying energy efficient residential property, has been amended to implement the provisions of Section 16 of Senate Bill 1084, which allows unused credits to be freely transferable.

New Section 710:50-15-108 has been adopted to reflect the provisions of Senate Bill 1084 which provides a credit for qualified rehabilitation expenditures. Certified historic structure may be rehabilitated for any lawful use and may be eligible for the credit provided for in this section.

Section 710:50-19-1 has been amended to conform to the provisions of House Bill 1172XX which amends the standard deduction for an individual partner to the standard deduction outlined in 68 O.S. §2358.

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 25, 2007:

SUBCHAPTER 3. RETURNS AND REPORTS

PART 7. OTHER REQUIRED REPORTING

710:50-3-53. Income tax withholding - oil and gas royalties

(a) Effective for royalty payments made on or after October 1, 2000 and before July 1, 2006, any remitter who distributes revenue to a non-resident royalty interest owner is required to deduct and withhold Oklahoma income tax from each payment being made with respect to production of oil and gas in Oklahoma. The amount of income tax to be withheld is six and three-fourth's percent (6.75%) of the gross royalty amount paid. Effective for royalty payments made on or after July 1, 2006, the rate of withholding for any remitter who distributes revenue to a non-resident royalty interest owner is five percent (5%) with respect to production of oil and gas in Oklahoma

(b) For purposes of this Section, **"remitter"** means any person who distributes revenue to royalty interest owners; **"gross royalty"** means that amount which is reported for federal income tax purposes on IRS Form 1099; **"non-resident royalty interest owner"** means any person who is not a current or permanent resident of Oklahoma who retains a non-working interest in oil or gas production; and **"oil"** and **"gas"** shall have the meaning as the terms are defined in 68 O.S. § 1001.2.

(c) Remitters are required to file an Oklahoma Tax Commission Form OW-9B and pay the Oklahoma income tax withheld on a quarterly basis, pursuant to this subsection:

(1) For royalty payments made during January, February, and March, the amount withheld is due no later than April 30;

(2) For royalty payments made during April, May, and June, the amount withheld is due no later than July 30;

(3) For royalty payments made during July, August, and September, the amount withheld is due no later than October 30; and

(4) For royalty payments made during October, November, and December, the amount withheld is due no later than January 30 of the following year.

(d) The remitter is also required to provide non-resident individual royalty owners and the Oklahoma Tax Commission an annual written statement showing the name of the remitter, to whom the royalty was paid, the amount of the royalty payment

and the amount of Oklahoma income tax withheld. Further, the statement must also furnish the royalty owner's name, address, and social security number or Federal Employer Identification Number. This annual filing with the Oklahoma Tax Commission may be done separately, or in conjunction with the annual reporting requirement under 68 O.S. § 2369, if applicable to the remitter.

(e) Any non-resident royalty interest owner from whom an amount is withheld pursuant to the provisions of this Section, and who files an Oklahoma income tax return is entitled to a credit for the amount withheld. If the amount withheld is greater than the tax due, the non-resident royalty interest owner will be entitled to a refund of the amount of the overpayment.

SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME

PART 5. OTHER ADJUSTMENTS TO INCOME

710:50-15-48. Oklahoma source capital gain deduction

(a) **General provisions.** For tax years beginning on or after January 1, 2005, individual taxpayers can subtract from the Oklahoma adjusted gross income, gains reported on their Oklahoma income tax return and included in federal taxable income receiving capital treatment. The gain must be realized on or after January 1, 2005, in order to be eligible for the Oklahoma exclusion. Effective for tax years beginning on or after January 1, 2006 corporate taxpayers can subtract from the Oklahoma taxable income, gains reported on their Oklahoma income tax return and included in federal taxable income receiving capital treatment. For corporate taxpayers the gain must be realized on or after January 1, 2006 in order to be eligible for the Oklahoma exclusion.

(b) **Qualifying gains receiving capital treatment.** As used in this Section, **"qualifying gains receiving capital treatment"** means the amount of net capital gains, as defined under Internal Revenue Code Section 1222(11), [IRC §1222(11)]. The gain must be included in the federal income tax return of the taxpayer.

(1) **Sale of real or tangible personal property.** To qualify for the Oklahoma deduction, the gain must be earned as a result of the sale of real or tangible personal property located within Oklahoma. Taxpayers must have held the asset for not less than five (5) uninterrupted years prior to the date of the transaction that created the capital gain.

(2) **Sale of stock or ownership interest.** To qualify for the Oklahoma deduction, the gain must be earned as a result of the sale of stock or ownership interest in an Oklahoma company, limited liability company, or partnership and the stock or ownership interest must have been held by the taxpayer for at least three (3) uninterrupted years prior to the date of the transaction that created the capital gain. For tax year 2006 and subsequent tax years, the stock or ownership interest must have been held by the individual taxpayer for at least two (2) uninterrupted years prior to the date of the transaction that created the capital gain. Non individual taxpayer's stock or ownership interest must have been held for at least three (3) uninterrupted years prior to the date of the transaction that created the capital gain.

(3) **Sale of real or tangible personal property by pass-through entities.** Net capital gains earned by member, partner, or shareholder of a pass-through entity as a result of the sale of real or tangible personal property located within Oklahoma, and included in the a taxpayer's federal taxable income is excludable, provided that the taxpayer has been a member of the pass-through entity for an uninterrupted period of five (5) years and that the pass-through entity has held the asset for not less than five (5) uninterrupted years prior to the date of the transaction that created the capital gain.

(4) **Sale of stock or ownership interests by pass-through entities.** Net capital gains earned by a member, partner, or shareholder of a pass-through entity as a result of the sale of stock or an ownership interest in an Oklahoma company, limited liability company, or partnership, is excludable, provided that the taxpayer has been a member of the pass-through entity for an uninterrupted period of three (3) years and that the pass-through entity has held the asset for not less than three (3) uninterrupted years prior to the date of the transaction that created the capital gain. For tax year 2006 and subsequent tax years, the stock or ownership interest must have been held by the individual taxpayer for at least two (2) uninterrupted years prior to the date of the transaction that created the capital gain. Non individual taxpayer's stock or ownership interest must have been held for at least three (3) uninterrupted years prior to the date of the transaction that created the capital gain.

(5) **Installment sales.** Qualifying gains included in an individual taxpayer's federal taxable income for years after December 31, 2004, or a corporate taxpayer's federal taxable income for years after December 31, 2005, which are derived from installment sales are eligible for exclusion, provided the appropriate holding periods are met.

(c) **"Oklahoma company"**, **"limited liability company"**, **"partnership".** An Oklahoma company, limited liability company, or partnership is one whose primary headquarters has been located in Oklahoma for at least three (3) years prior to the capital gain transaction. The Oklahoma company, limited liability company, or partnership must meet the three (3) year rule for an uninterrupted period.

710:50-15-49. Deduction for retirement income

(a) **General provisions applicable to Oklahoma or federal government retirement income.** Each individual taxpayer may deduct up to Five Thousand Five Hundred Dollars ($5,500.00) of retirement benefits paid by the State of Oklahoma or by the federal government. Effective for tax years beginning on or after January 1, 2005, and ending before January 1, 2006, this deduction increases to Seven Thousand Five Hundred Dollars ($7,500.00). Effective for tax year 2006 and subsequent tax years the deduction increases to

Ten Thousand Dollars ($10,000.00). This deduction cannot exceed the amount included in the taxpayer's Federal Adjusted Gross Income. The total exclusion from all government retirement benefit plans may not exceed Five Thousand Five Hundred Dollars ($5,500.00), or for tax years beginning on or after January 1, 2005, Seven Thousand Five Hundred Dollars ($7,500.00); or for tax years beginning on or after January 1, 2006, Ten Thousand Dollars ($10,000.00), per individual.

(b) **Qualifying Oklahoma or federal government retirement income defined.** For purposes of this Section, "**Oklahoma or federal government retirement income**" means retirement income received from the following sources:

(1) The Civil Service of the United States;

(2) Any Component of the Armed Forces of the United States; [See special rule (g)]

(3) The Oklahoma Public Employees' Retirement System;

(4) The Oklahoma Teachers' Retirement System;

(5) Oklahoma Law Enforcement Retirement System;

(6) Oklahoma Firefighters' Pension and Retirement System;

(7) Oklahoma Police Pension and Retirement System;

(8) The Employee retirement systems created by counties pursuant to 19 O.S. §§951 et seq.

(9) The Uniform Retirement System for Justices and Judges;

(10) The Oklahoma Wildlife Conservation Department Retirement Fund;

(11) The Oklahoma Employment Security Commission Retirement Plan; or,

(12) The Employee retirement systems created by municipalities pursuant to 11 O.S. §§ 48-101 et seq.

(c) **Disability income; state and federal government retirees.** Disability retirement benefits received by an individual from sources listed in subsection (b) shall qualify for the retirement income deduction, without regard to the recipient's age.

(d) **General provisions for other retirement income.** Each individual taxpayer aged sixty-five (65) and over may deduct up to Five Thousand Five Hundred Dollars ($5,500.00) of other retirement benefits received and included in Federal Adjusted Gross Income through tax year 2004. Effective for tax years beginning on or after January 1, 2005, this deduction increases to Seven Thousand Five Hundred Dollars ($7,500.00) and the taxpayer is no longer required to be sixty-five (65) years of age. Effective for tax year 2006 and subsequent tax years the deduction increases to Ten Thousand Dollars ($10,000.00). This deduction cannot exceed the amount included in the taxpayer's Federal Adjusted Gross Income. The total exclusion from all retirement benefit plans may not exceed Five Thousand Five Hundred Dollars ($5,500.00) or, for tax years beginning on or after January 1, 2005, Seven Thousand Five Hundred Dollars ($7,500.00), or for tax years beginning on or after January 1, 2006, Ten Thousand Dollars ($10,000.00) per individual.

(1) **Income eligibility levels for tax years through 2004.** In order to qualify for this exclusion, Oklahoma Adjusted Gross Income cannot exceed Twenty Five Thousand Dollars ($25,000.00) for individuals using the filing status of "single", "married filing separately", or "head of household". For individuals using "married filing jointly" or ~~for~~ "qualifying ~~widows~~ widow(er)" filing status, Oklahoma Adjusted Gross Income cannot exceed Fifty Thousand Dollars ($50,000.00) in order to qualify for the exclusion.

(2) **Income eligibility levels for tax years 2005 and ~~subsequent years~~2006.** Effective for 89tax years beginning on or after January 1, 2005 and ending prior to January 1, 2007, Oklahoma Adjusted Gross Income cannot exceed Thirty Seven Thousand Five Hundred Dollars ($37,500.00) for individuals using the filing status of "single", "married filing separately", or "head of household". For individuals using "married filing jointly" or ~~for~~ "qualifying ~~widows~~ widow(er)" filing status, Oklahoma Adjusted Gross Income cannot exceed Seventy Five Thousand Dollars ($75,000.00) in order to qualify for the exclusion.

(3) **Income eligibility levels for tax year 2007.** Effective for tax years beginning on or after January 1, 2007 and ending before January 1, 2008, Oklahoma Adjusted Gross Income cannot exceed Fifty Thousand Dollars ($50,00.00) for individuals using the filing status of "single", "married filing separately", or "head of household". For individuals using "married filing jointly" or "qualifying widow(er)" filing status, Oklahoma Adjusted Gross Income cannot exceed One Hundred Thousand Dollars ($100,000.00) in order to qualify for the exclusion.

(4) **Income eligibility levels for tax year 2008.** Effective for tax years beginning on or after January 1, 2008 and ending before January 1, 2009, Oklahoma Adjusted Gross Income cannot exceed Sixty Two Thousand Five Hundred Dollars ($62,500.00) for individuals using the filing status of "single", "married filing separately", or "head of household". For individuals using "married filing jointly" or "qualifying widow(er)" filing status, Oklahoma Adjusted Gross Income cannot exceed One Hundred Twenty Five Thousand Dollars ($125,000.00) in order to qualify for the exclusion.

(5) **Income eligibility levels for tax year 2009.** Effective for tax years beginning on or after January 1, 2009 and ending before January 1, 2010, Oklahoma Adjusted Gross Income cannot exceed One Hundred Thousand Dollars ($100,000.00) for individuals using the filing status of "single", "married filing separately", or "head of household". For individuals using "married filing jointly" or "qualifying widow(er)" filing status, Oklahoma Adjusted Gross Income cannot exceed Two Hundred Thousand Dollars ($200,000.00) in order to qualify for the exclusion.

(6) **Income eligibility levels for tax year 2010 and subsequent years.** Effective for tax years beginning on or after January 1, 2010, there are no longer any income eligibility requirements to qualify for the exclusion.

(e) **"Qualifying other retirement income" defined.** For purposes of this Section "other retirement income" must be received from the following and satisfy the requirements of the Internal Revenue Code (IRC):

(1) An employee pension benefit plan under IRC Section 401;

(2) An eligible deferred compensation plan under IRC Section 457;

(3) An individual retirement account, annuity, or trust or simplified employee pension under IRC Section 408;

(4) An employee annuity under IRC Section 86; or,

(5) Lump-sum distributions from a retirement plan under IRC Section 402(e).

(f) **Disability income; private sector retirees.** Disability retirement benefits received by an individual shall qualify for the retirement income deduction, without regard to the recipient's age.

(g) **Special rule for certain retirement income from a component of the Armed Forces of the United States.** Effective for tax year 2006 ~~and subsequent tax years~~, the deduction for retirement income from any component of the Armed Forces of the United States is the greater of Ten Thousand Dollars ($10,000.00) or fifty percent (50%) of the amount included in the taxpayer's Federal Adjusted Gross Income. Effective for tax year 2007 and subsequent tax years, the deduction for retirement income from any component of the Armed Forces of the United States is the greater of Ten Thousand Dollars ($10,000.00) or seventy-five percent (75%) of the amount included in the taxpayer's Federal Adjusted Gross Income.

(h) **Special rule for Federal civil service retirement income.** Beginning with tax year 2007, retirement benefits received by Federal civil service retirees, including survivor annuities paid in lieu of Social Security benefits, are allowed to be excluded from Oklahoma taxable income to the extent such benefits are included in the taxpayer's Federal Adjusted Gross Income, pursuant to the provisions of Section 86 of the Internal Revenue Code. For tax year 2007, twenty percent (20%) of such taxable benefits will be excludable. For tax year 2008, forty percent (40%) of such taxable benefits will be excludable. For tax year 2009, sixty percent (60%) of such taxable benefits will be excludable. For tax year 2010, eighty percent (80%) of such taxable benefits will be excludable. For tax year 2011 and subsequent tax years, one hundred percent (100%) of such taxable benefits will be excludable.

710:50-15-50. Deductions

(a) Oklahoma itemized deductions to income will be the same as Federal itemized deductions. In the event the standard deduction is used on the Federal Return, the Oklahoma standard deduction must be used.

(b) For tax year 2005 and prior, the standard deduction for Oklahoma is the larger of $1,000.00 or 15% of Oklahoma Adjusted Gross Income not to exceed $2,000.00 (if married filing separately, the larger of $500.00 or 15% not to exceed $1,000.00).

(c) For tax year 2006, taxpayers filing as married joint, head of household or surviving spouse will have a standard deduction for Oklahoma of $3,000.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of ~~$2,000~~ $2,000.00.

(d) For tax year 2007 ~~and subsequent tax years~~, taxpayers filing as married joint~~, head of household~~ or surviving spouse will have a standard deduction for Oklahoma of ~~$4,000.00~~ $5,500.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of ~~$2,000.~~ $2,750.00. Taxpayers filing as head of household will have a standard deduction for Oklahoma of $4,125.00.

(e) For tax year 2008, taxpayers filing as married joint, or surviving spouse will have a standard deduction for Oklahoma of $6,500.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of $3,250.00. Taxpayers filing as head of household will have a standard deduction for Oklahoma of $4,875.00.

(f) For tax year 2009, taxpayers filing as married joint, or surviving spouse will have a standard deduction for Oklahoma of $8,500.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of $4,250.00. Taxpayers filing as head of household will have a standard deduction for Oklahoma of $6,375.00.

(g) For tax year 2010 and subsequent tax years, taxpayers will have a standard deduction for Oklahoma equal to the standard deduction allowed by the Internal Revenue Code of 1986 based upon the amount and filing status prescribed by the Code for purposes of filing federal individual income tax returns.

710:50-15-55. Depletion

(a) The Oklahoma depletion deduction from income for oil and gas produced in Oklahoma is twenty-two percent (22%) of the gross income from the property, provided that for tax years beginning on or after January 1, 1997, and ending on or before December 31, 1999, and for tax years beginning on or after January 1, 2001, and ending on or before December 31, ~~2006~~ 2011, in the case of major oil companies, as defined by 52 O.S.~~Supp.1996,~~ §288.2, the allowance may not exceed fifty percent (50%) of the net income from the property computed without the allowance for depletion. During years not specified herein, for all taxpayers, the allowance shall not exceed fifty percent (50%) of the net income from the property (computed without allowance for depletion). This allowance is allowable in the amount so computed minus the Federal depletion claimed. The applicable Federal schedule and a detailed depletion schedule must be enclosed.

(b) Lease bonus depletion of 22% is allowable; any such depletion claimed must be restored to income in the case of non-producing properties upon expiration of the lease. Individuals claiming lease bonus depletion may be required to furnish a copy of the lease and division order. [**See:** 68 O.S. §2353(10)]

710:50-15-66. Deduction for contributions to an Oklahoma College Savings Plan

(a) For tax years beginning after December 31, 2001 and ending before December 31, 2004, individuals may deduct up to Two Thousand Five Hundred Dollars ($2,500.00) of contributions made to an Oklahoma 529 College Savings Plan Account, established pursuant to the Oklahoma College Savings Act, in arriving at Oklahoma taxable income. If contributions are made to more than one account, the deduction for each contributor is limited to Two Thousand Five Hundred Dollars ($2,500.00) for each account.

(b) Effective for tax years beginning after December 31, 2004, for contributions made to an Oklahoma 529 College Savings Plan (established pursuant to the Oklahoma College Savings Act) a maximum of Ten Thousand Dollars ($10,000,00) may be deducted in arriving at Oklahoma Taxable income [Twenty Thousand Dollars ($20,000.00) if filing an income tax return using married filing joint filing status].

(c) Contributions made to other states' college savings plans, the Coverdell Education Savings Account, or transfers from one Oklahoma College Savings Plan Account to another may not be deducted.

(d) Any contribution, to the extent not deducted, may be carried over as a deduction from income for the succeeding five (5) years.

(e) For taxable years beginning after December 31, 2005, deductions may be taken for contributions and rollovers made during a taxable year and up to April 15th of the succeeding year, or the due date of a taxpayer's state income tax return excluding extensions, whichever is later. Provided a deduction for the same contribution may not be taken for two (2) different taxable years.

PART 7. CREDITS AGAINST TAX

710:50-15-76. Oklahoma coal credits

(a) **General provisions applicable to qualifying business entities purchasing Oklahoma-mined coal.** There shall be allowed a credit against the tax imposed by Sections 1803 and 2355 of Title 68 or Sections 624 and 628 of Title 36 of the Oklahoma Statutes for legal business entities purchasing Oklahoma-mined coal for qualifying purposes. In order to qualify for the Oklahoma Coal Credit, the business entity must either furnish water, heat, light, or power to the citizens or to the State of Oklahoma, or burn coal to generate heat, light, or power for use in manufacturing operations in Oklahoma. [**See:** 68 O.S. ~~Supp.2002,~~ § 2357.11; **Wyoming v. Oklahoma**, 112 S.Ct. 789 (1992)]

(1) **Basic credit.** For tax years beginning on or after January 1, 1993, and ending on or before December 31, ~~2007~~ 2005 and for the period beginning January 1, 2006 through June 30, 2006, the credit shall be Two Dollars ($2.00) per ton of Oklahoma-mined coal purchased. For the period July 1, 2006 through December 31, 2006 and for tax years beginning on or after January 1, 2007 and ending on or before December 31, 2012, the credit shall be Two Dollars and eighty-five cents ($2.85) per ton of Oklahoma-mined coal purchased.

(2) **Extended basic credit.** For the period July 1, 2006 through December 31, 2006 and for tax years beginning on or after January 1, 2007 and ending on or before December 31, 2012, the credit shall be Two Dollars and fifteen cents ($2.15) per ton of Oklahoma-mined coal purchased. The extended basic credit may not be claimed or transferred prior to January 1, 2008.

(3) **Additional credit for large quantity purchasers.** For tax years beginning on or after January 1, 1995, and ending on or before December 31, ~~2007~~ 2005 and for the period beginning January 1, 2006 through June 30, 2006, there shall be allowed, in addition to the credit described in (1) of this subsection, a **supplemental** credit of Three Dollars ($3.00) per ton of Oklahoma-mined coal purchased. However, to obtain the credit described in this paragraph, purchases must total at least Seven Hundred Fifty Thousand (750,000) tons of Oklahoma-mined coal in the tax year for which credit is sought.

(b) **General provisions applicable to qualifying business entities that mine, produce, or extract coal.** There shall be allowed a credit against the tax imposed by Sections 1803 and 2355 of Title 68 or Sections 624 and 628 of Title 36 of the Oklahoma Statutes for every business entity in this state primarily engaged in mining, production, or extraction of coal, and holding a valid permit issued by the Oklahoma Department of Mines, **so long as** the average price of coal mined, produced, or extracted in any month for which credits are claimed is less than ~~Forty-five Dollars ($45.00)~~ Sixty-eight Dollars ($68.00) per ton.

(1) **Basic credit.** For tax years beginning on or after January 1, 2001 and ending on or before December 31, 2005, and for the period beginning January 1, 2006 through June 30, 2006, the credit shall be Ninety-five Cents ($0.95) per ton and for the period of July 1, 2006 through December 31, 2006, and for tax years beginning on or after January 1, 2007, the credit shall be Five Dollars ($5.00) for each ton of coal mined, produced, or extracted in, on, under, or through a permit in this state.~~, on or after January 1, 2001.~~

(2) **Additional credit for thin seam coal.** For tax years beginning on or after January 1, 2001 and ending on or before December 31, 2005, and for the period of January 1, 2006 through June 30, 2006, there shall be allowed, in addition to that described in (1) of this subsection, a **supplemental** credit in the amount of Ninety-five Cents ($0.95) per ton of coal mined, produced, or extracted from **thin seams** in this state, **so long as** the purchaser of the thin seam coal purchases less than Seven Hundred Fifty Thousand (750,000) tons of Oklahoma coal per year.

(3) **Extended credit for thin seam coal.** For tax years beginning on or after January 1, 2005 and ending on or before December 31, 2005, for the period of January 1, 2006, through June 30, 2006, there shall be allowed, in addition to that described in (1) and (2) of this subsection, a **supplemental** credit in the amount of Ninety-five Cents ($0.95) per ton of coal mined, produced, or extracted from **thin seams** in this state on or after July 1, 2005.

(c) **Transferability.** The coal credits allowed, but not used, shall be freely transferable by written agreement to subsequent transferees, at any time during the five (5) years following the year of qualification.

(1) **"Eligible transferee" defined.** For purposes of this subsection, an **"eligible transferee"** means *any taxpayer subject to the tax imposed by Section 1803 or 2355 of Title 68 or Section 624 or 628 of Title 36 of the Oklahoma Statutes.* [**See:** 68 O.S.~~Supp.2002,~~ § 2357.11(G)]

Pursuant to the statutory definition, an "eligible transferee" taxpayer may be an individual, as well as a legal business entity.

(2) **Written transfer agreement requirements.** The business entity which originally earned the credit and the subsequent transferee must jointly file a copy of the written transfer agreement with the Commission, within thirty (30) days of the transfer. The written agreement must contain the name, address, and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferring entity, and the tax year or years for which the credit may be claimed.

(3) **Claiming transferred credit.** A copy of OTC Form 572 must be attached to any tax return on which a taxpayer claims a transferred credit.

(d) **Application of credit election.** Any coal credit may, upon the election of the taxpayer, be claimed as a payment of tax, a prepayment of tax, or a payment of estimated tax for purposes of Section 1803 or 2355 of Title 68 or Section 624 or 628 of Title 36. In no event shall the credit reduce the tax below zero, and as such, this credit is non-refundable. Coal credits shall not be used to lower the price of any Oklahoma-mined coal sold that is produced by a subsidiary of the person receiving a tax credit under this section to other buyers of the Oklahoma-mined coal.

(e) **Carryover provisions.** Any coal credit, to the extent not used, may be carried over in order to each of the five (5) years following the year of qualification. However, at no time may the credit claimed exceed the tax liability.

710:50-15-86. Small Business Capital Company / Oklahoma Small Business Venture credits

(a) **Qualified Small Business Capital Company.** A qualified Small Business Capital Company can be a C or Subchapter S corporation, as defined in the Internal Revenue Code, incorporated pursuant to the laws of Oklahoma. It may also be a limited liability company or registered business partnership, with a certificate of partnership filed as required by law. The qualified Small Business Capital Company must be organized to provide the direct investment of equity or near equity funds to companies in this state. The principal place of business of the qualified Small Business Capital Company must be located within Oklahoma. The capitalization of the qualified Small Business Capital Company must be at least One Million Dollars ($1,000,000.00). [**See:** 68 O.S. § 2357.61 for further details on capitalization] The qualified Small Business Capital Company cannot invest more than twenty percent (20%) of its funds in any one company.

(1) **Credit available.** For taxable years beginning after December 31, 1997, and before January 1, 2012, there is a credit available against Oklahoma Income Tax (68 O.S. § 2355) and the tax levied on state and national banking associations and credit unions (68 O.S. §2370) for investments in a qualified Small Business Capital Company. The credit is also available against the insurance premiums tax. [**See:** 36 O.S. §§624, 628]

(2) **General provisions.** The credit shall be equal to twenty percent (20%) of the cash amount invested in a qualified Small Business Capital Company, and may only be claimed in the tax year in which the qualified Small Business Capital Company invests funds in an Oklahoma Small Business Venture. The credit is limited to the amount of funds so invested.

(3) **Credit non-refundable, nontransferable; carryover provision.** This credit may not be taken as a refund; nor may it be transferred. If the credit exceeds the amount of tax due, any excess credit may be carried forward for a period not to exceed ten (10) taxable years.

(4) **Limitations on eligible claimants.** The credit is not available if the capital provided by a qualified Small Business Capital Company is used by an Oklahoma Small Business Venture for the acquisition of any other legal entity. Financial lending institutions are not eligible to claim this credit, except with respect to amounts invested in a qualified small business capital company. Further, the credit is not available for investments in which the Rural Small Business Capital Credit has been claimed.

(b) **Oklahoma Small Business Ventures.** An Oklahoma Small Business Venture can be any business, incorporated or unincorporated, which has, or will have, within one hundred eighty (180) days after a loan or investment by the qualified Small Business Capital Company, fifty percent (50%) of its employees or assets in Oklahoma. Further, the business must need financial assistance to start or expand, or must intend to provide goods and services. The business venture must qualify as a small business as defined by the federal Small Business Administration. Further, the Oklahoma Small Business Venture must expend within eighteen (18) months after the qualified investment at least fifty percent (50%) of the proceeds of the qualified investment for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business. The Small Business Venture cannot be engaged in oil and gas exploration; real estate development, sales or rentals; wholesale or retail sales; farming; ranching; banking; or lending or investing funds in other businesses. However, businesses that provide or intend to provide goods or services to the aforementioned businesses shall not be considered primarily engaged in those activities.

(c) **Credit for investments made in conjunction with Qualified Small Business Capital Company Investment.** Investors in a Qualified Small Business Capital Company may also make an investment in an Oklahoma Small Business Venture, in conjunction with the investment by the Qualified Small Business Capital Company.

(1) **General provisions.** The credit shall be equal to twenty percent (20%) of the cash amount invested in an Oklahoma Small Business Venture and may only be claimed in the tax year the investment is made in the Oklahoma Small Business Venture.

(2) **Credit non-refundable, nontransferable; carryover provision.** This is a non-refundable credit and may not be transferred. If the credit exceeds the amount of tax due, any excess credit is eligible for carry forward for a period not to exceed ten (10) taxable years.

(3) **Qualification.** To qualify for the credit made in conjunction with an investment made by the qualified small business:

(A) The investment must be made by a shareholder or a partner of the qualified Small Business Capital Company that has invested funds in an Oklahoma Small Business Venture.

(B) Funds must be invested to purchase equity or near equity in an Oklahoma Small Business Venture.

(C) The investment must be made under the same terms and conditions as the investment made by the qualified Small Business Capital Company. The same terms and conditions do not apply to the dollar amount invested.

(D) The investment made in conjunction with Qualified Small Business Capital Companies is limited to the lesser of Two Hundred percent (200%) of the taxpayer investment in the qualified Small Business Capital Company or Two Hundred percent (200%) of the investment made by the qualified Small Business Capital Company in the Oklahoma Small Business Venture.

(d) **Reporting requirements.** Each qualified Small Business Capital Company shall file an annual report to the Oklahoma Tax Commission by April 30 of each year. This report is to contain a list of all funds invested in, or in conjunction with, the company which may qualify for the tax credit. The report is also to contain the amount of funds invested in, or in conjunction with, the qualified Small Business Capital Company, during the tax year, along with the names of the entity making the investment and appropriate federal identification numbers. This report is also to contain information regarding the type and amount of investments made by the qualified Small Business Capital Company in Oklahoma Small Business Ventures.

(e) **Recordkeeping.** Each qualified Small Business Capital Company shall also make a written information report available to all investors in the qualified Small Business Capital Company. This information report shall show the name of the qualified Small Business Capital Company, the name of the investor, and the total amount of the investments made. This report shall be attached to the filed Oklahoma income tax return of the taxpayer claiming the credit.

(f) **Recapture.** *The Tax Commission shall be authorized to recapture the credits otherwise authorized by the provisions of Sections 2357.62 and 2357.63 of Title 68 of the Oklahoma Statutes if it finds that the transaction does not meet the requirements of the Small Business Capital Formation Incentive Act.* [68 O.S. § 2357.63A]

710:50-15-86.1. Letter rulings pursuant to the Small Business Capital Formation Incentive Act

The Oklahoma Tax Commission will issue letter rulings pursuant to the Small Business Capital Formation Incentive Act (68 O.S. §§2357.61 et seq.) as provided herein:

(1) A person or entity may request a ruling to determine whether a company meets the definition of a qualified small business capital company. The requesting party must provide sufficient information to demonstrate that the company meets the following requirements for a qualified small business capital company:

(A) *A C Corporation or a subchapter S corporation, as defined by the Internal Revenue Code of 1986, as amended, incorporated pursuant to the laws of Oklahoma, limited liability company or a registered business partnership with a certificate of partnership filed as required by law;*

(B) The capital company is organized to provide the direct investment of equity and near-equity funds to companies within the state of Oklahoma as outlined in its organizational instrument, bylaws, articles of incorporation, or other agreement responsible for the governance of the capital company;

(C) The principal place of business of the capital company is located within this state;

(D) The capitalization of the capital company is not less than One Million Dollars ($1,000,000.00); and

(E) No more than twenty percent (20%) of the capital company's capitalization is invested in any one company at any time during the calendar year of the capital company. [68 O.S. Supp 2006, §2357.61(7)(a)-(d)]

(2) A qualified small business capital company may request a letter ruling from the Oklahoma Tax Commission that a business in which it intends to invest is an Oklahoma small business venture. The capital company must give sufficient information to show the small business venture meets the following requirements:

(A) Within one hundred eighty (180) days after a qualified investment is made by a qualified small business capital company, at least fifty percent (50%) of the business's employees or assets are in the state of Oklahoma;

(B) *Needs financial assistance in order to commence or expand such business which provides or intends to provide goods or services;*

(C) *Is engaged in a lawful business activity under any Industry Number appearing under any Major Group Number of Divisions A, C, D, E, F or I of the Standard Industrial Classification Manual, 1987 revision with the following exceptions:*

(i) *Major Group 1 of Division A, and*

(ii) *Major Group 2 of Division A;*

(D) *Qualifies as a small business as defined by the federal Small Business Administration; and*

(E) Intends to expend within eighteen (18) months of the qualified investment at least fifty percent (50%) of the proceeds of the investment for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business for which the determination of the small business qualification pursuant to subparagraph (D) of paragraph 2 was made. [68 O.S. Supp 2006, §2357.61(5)(a)-(e)]

(3) A person or entity may request whether a transfer of funds qualifies for the credit and is determined to be a qualified investment under the Small Business Capital

Formation Incentive Act. The requesting party must provide sufficient information to establish that the transfer of funds meets the definition of qualified investment under the statute and all other requirements under the Small Business Capital Formation Incentive Act.

710:50-15-87. Oklahoma Rural Small Business Capital Company / Rural Small Business Venture credits

(a) **Qualified Rural Small Business Capital Company.** A Qualified Rural Small Business Capital Company can be a C or Subchapter S corporation, as defined in the Internal Revenue Code, incorporated pursuant to the laws of Oklahoma. It may also be a limited liability company or registered business partnership, with a certificate of partnership filed as required by law. The qualified Rural Small Business Capital Company must be organized to provide the direct investment of equity or near equity funds to rural small business entities in this state. The principal place of business of the qualified Rural Small Business Capital Company must be located within Oklahoma and the capitalization must be at least Five Hundred Thousand Dollars ($500,000.00). The qualified Rural Small Business Capital Company cannot invest more than twenty-five percent (25%) of its funds in any one rural small business entity.

(1) **Credit available.** For taxable years beginning after December 31, 2000, and before January 1, 2008, there is a credit available against the Oklahoma Income Tax levied by 68 O.S. § 2355, and the tax levied on state and national banking associations and credit unions by 68 O.S. § 2370, for investments in a qualified Rural Small Business Capital Company. The credit is also available against the insurance premiums tax. [**See:** 36 O.S. §§624, 628]

(2) **General provisions.** The credit shall be equal to thirty percent (30%) of the cash amount invested in a qualified Rural Small Business Capital Company, and may only be claimed in the tax year in which the capital company invests funds in an Oklahoma Rural Small Business Venture. The credit is limited to the amount of funds so invested, and is unavailable for investments made in qualified Rural Small Business Capital Companies made **prior** to January 1, 2001.

(3) **Credit non-refundable, nontransferable; carry-over provision.** This credit may not be taken as a refund; nor may it be transferred. If the credit exceeds the amount of tax due, any excess credit may be carried forward for a period not to exceed ten (10) taxable years.

(4) **Limitations on eligible claimants.** The credit is not available if the capital provided by a qualified Rural Small Business Capital Company is used by an Oklahoma Rural Small Business Venture for the acquisition of any other legal entity. Financial lending institutions are not eligible to claim this credit, except with respect to amounts invested in a qualified Rural Small Business Capital Company. Further, the credit is not available for investments in which the Small Business Capital Credit has been claimed.

(b) **Oklahoma Rural Small Business Ventures.** An Oklahoma Rural Small Business Venture can be any business, incorporated or unincorporated, which has, or will have, within one hundred eighty (180) days after a loan or investment by the qualified Rural Small Business Capital Company, fifty percent (50%) of its employees or assets in Oklahoma. Further, the business must need financial assistance to start or expand, and must provide or intend to provide goods and services. The business venture must qualify as a small business as defined by the federal Small Business Administration. Further the Rural Small Business Venture must expend within eighteen (18) months after the qualified investment at least fifty percent (50%) of the proceeds of the qualified investment for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business. The Rural Small Business Venture cannot be engaged in oil and gas exploration; real estate development, sales or rentals; wholesale or retail sales; farming; ranching; banking; or lending or investing funds in other businesses. However, businesses that provide or intend to provide goods or services to the aforementioned businesses shall not be considered primarily engaged in those activities.

(c) **Credit for investments made in Oklahoma Rural Small Business Ventures in conjunction with investment by qualified Rural Small Business Capital Company.** Shareholders or partners in a qualified Rural Small Business Capital Company may also make an investment in an Oklahoma Rural Small Business Venture, in conjunction with the investment by the qualified Rural Small Business Capital Company.

(1) **General provisions.** The credit shall be equal to thirty percent (30%) of the cash amount invested in an Oklahoma Rural Small Business Venture and may only be claimed in the tax year the investment is made in the Oklahoma Rural Small Business Venture.

(2) **Credit non-refundable, nontransferable; carry-over provision.** This is a non-refundable credit and may not be transferred. If the credit exceeds the amount of tax due, any excess credit is eligible for carry forward for a period not to exceed ten (10) taxable years.

(3) **Qualification.** To qualify for the credit made in conjunction with an investment made by the qualified Rural Small Business Capital Company:

(A) The investment must be made by a shareholder or a partner of the qualified Rural Small Business Capital Company that has invested funds in an Oklahoma Rural Small Business Venture.

(B) Funds must be invested to purchase equity or near equity in ~~an~~ the Rural Small Business Venture.

(C) The investment must be made under the same terms and conditions as the investment made by the qualified Rural Small Business Capital Company. The same terms and conditions do not apply to the dollar amount invested.

(D) The investment made in conjunction with qualified Rural Small Business Capital Companies is limited to the lesser of Two Hundred percent (200%) of the taxpayer investment in the qualified Rural Small Business Capital Company, or Two Hundred

percent (200%) of the investment made by the qualified Rural Small Business Capital Company in the Rural Small Business Venture.

(d) **Reporting requirements.** Each qualified Rural Small Business Capital Company shall file an annual report to the Oklahoma Tax Commission by April 30 of each year. This report is to contain a list of all funds invested in, or in conjunction with, the company which may qualify for the tax credit. The report is also to contain the amount of funds invested in, or in conjunction with, the qualified Rural Small Business Capital Company, during the tax year, along with the names of the entity making the investment and appropriate federal identification numbers. This report is also to contain information regarding the type and amount of investments made by the qualified Rural Small Business Capital Company in Oklahoma Rural Small Business Ventures.

(e) **Recordkeeping.** Each qualified Rural ~~venture~~ Venture Capital Company shall also make a written information report available to all investors in the qualified Rural ~~venture~~ Venture Capital Company. This information report shall show the name of the qualified Rural ~~venture~~ Venture Capital Company, the name of the investor, and the total amount of the investments made. This report shall be attached to the filed Oklahoma income tax return of the taxpayer claiming the credit.

(f) **Recapture.** *The Tax Commission shall be authorized to recapture the credits otherwise authorized by the provisions of Sections 2357.73 and 2357.74 of Title 68 of the Oklahoma Statutes if it finds that the transaction does not meet the requirements of the Rural Venture Capital Formation Incentive Act.* [68 O.S. § 2357.74A]

710:50-15-87.1. Letter rulings pursuant to the Rural Venture Capital Formation Incentive Act

The Oklahoma Tax Commission will issue letter rulings pursuant to the Rural Venture Capital Formation Incentive Act (68 O.S. §§ 2357.71 et seq.) as provided herein:

(1) A person or entity may request a ruling to determine whether a company meets the definition of a qualified rural small business capital company. The requesting party must provide sufficient information to demonstrate that the company meets the following requirements for a qualified rural small business capital company:

(A) *A C Corporation or a subchapter S corporation, as defined by the Internal Revenue Code of 1986, as amended, incorporated pursuant to the laws of Oklahoma, limited liability company or a registered business partnership with a certificate of partnership filed as required by law*;

(B) The capital company is organized to provide the direct investment of equity and near-equity funds to companies within the state of Oklahoma as outlined in its organizational instrument, bylaws, articles of incorporation, or other agreement responsible for the governance of the capital company;

(C) The principal place of business of the capital company is located within this state;

(D) The capitalization of the capital company is not less than Five Hundred Thousand Dollars ($500,000.00); and

(E) No more than twenty-five percent (25%) of the capital company's capitalization is invested in any one company at any time during the calendar year of the capital company. [68 O.S. Supp 2006, §2357.72(8)(a)-(d)]

(2) A qualified rural small business capital company may request a letter ruling from the Oklahoma Tax Commission that a business in which it intends to invest is an Oklahoma rural small business venture. The capital company must give sufficient information to show the rural small business venture meets the following requirements:

(A) *Has or will have within one hundred eighty (180) days after a qualified investment is made by a qualified small business capital company, at least fifty percent (50%) of its employees or assets in Oklahoma*;

(B) *Needs financial assistance in order to commence or expand such business which provides or intends to provide goods or services;*

(C) *Is engaged in a lawful business activity under any Industry Number appearing under any Major Group Number of Divisions A, C, D, E, F or I of the Standard Industrial Classification Manual, 1987 revision with the following exceptions:*

(i) *Major Group 1 of Division A, and*

(ii) *Major Group 2 of Division A;*

(D) *Qualifies as a small business as defined by the federal Small Business Administration;*

(E) Intends to expend within eighteen (18) months of the qualified investment at least fifty percent (50%) of the proceeds of the investment for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business for which the determination of the small business qualification pursuant to subparagraph (D) of this paragraph 2 was made, and

(F) *Has its principal place of business within a nonmetropolitan area of the state and conducts the activity resulting in at least seventy-five percent (75%) of its gross annual revenue from a nonmetropolitan area of the state.* [68 O.S. Supp 2006, §2357.72(6)(a)-(f)]

(3) A person or entity may request whether a transfer of funds qualifies for the credit and is determined to be a qualified investment under the Rural Venture Capital Formation Incentive Act. The requesting party must provide sufficient information to establish that the transfer of funds meets the definition of qualified investment under the statute and all other requirements under the Rural Venture Capital Formation Incentive Act.

710:50-15-92. Credit for manufacturers of advanced small wind turbines

(a) **General provisions.** Oklahoma manufacturers of advanced small wind turbines may claim an Oklahoma income

tax credit for manufacturing advanced small wind turbines in this state. This credit is available for advanced small wind turbines manufactured between January 1, 2003 and December 31, ~~2007~~2012.

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

(1) **"Advanced small wind turbines (ASWT)"** are upwind, furling wind turbines that have a rated capacity of at least one kilowatt (1kw) but no more than fifty kilowatts (50kw). The wind turbine must also incorporate advanced technologies such as new airfoils, new generators, new power electronics, and variable speed. In order to qualify as an advanced small wind turbine, at least one unit of each model must have undergone testing at the United States Department of Energy National Wind Technology Center and must comply with appropriate interconnection safety standards of the Institute of Electrical and Electronics Engineers as are applicable to small wind turbines.

(2) **"Rotor Swept Area"** means an area calculated by using the formula pi times D^2 divided by 4, (D being the rotor diameter in feet, pi = 3.1416).

(3) **"Oklahoma manufacturer"** means, for purposes of this Section, a manufacturer who operates facilities that have the capability of manufacturing small wind turbine products in this state.

(4) **"Small wind turbine products"** means and includes rotor blades and alternator fabrication.

(c) **Computation of the credit.** The credit is based on the square footage of the rotor swept area of the advanced small wind turbine manufactured in Oklahoma. For ASWT manufactured between January 1, 2003, and December 31, 2003, the credit is Twenty-five Dollars ($25.00) per square foot of the rotor swept area. For ASWT manufactured between January 1, 2004, and December 31, 2004, the credit is Twelve Dollars and Fifty Cents ($12.50) per square foot of the rotor swept area. For ASWT manufactured between January 1, 2005, and December 31, 2007, the credit is Twenty-five Dollars ($25.00) per square foot of the rotor swept area.

(d) **Transfer of the credit.** Effective for tax year 2004, the credit for manufacturers of advanced small wind turbines may be transferred.

710:50-15-101. Twenty-five percent (25%) Film and Music Profit Reinvestment Credit

(a) **General provisions.** There shall be allowed against the tax imposed by 68 O.S. § 2355, a credit equal to twenty-five percent (25%) of the profit from the investment in an existing Oklahoma film or music project with a production company to pay for production costs that is reinvested by the taxpayer with a production company for a new Oklahoma film or music project.

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

(1) **"Film"** means *a professional single media, multimedia program or feature, which is not child pornography as defined in subsection A of Section 1024.1 of Title 21 of the Oklahoma Statutes or obscene material as defined in paragraph 1 of subsection B of Section 1024.1 of Title 21 of the Oklahoma Statutes including, but not limited to, national advertising messages that are broadcast on a national affiliate or cable network, fixed on film or digital video, which can be viewed or reproduced and which is exhibited in theaters, licensed for exhibition by individual television stations, groups of stations, networks, cable television stations or other means or licensed for home viewing markets;* **[**68 O.S. § 2357.101 (D)(1)**]**

(2) **"Music project"** means *a professional recording released on a national or international level, whether via traditional manufacturing or distributing or electronic distribution, using technology currently in use or future technology including, but not limited to, music CDs, radio commercials, jingles, cues, or electronic device recordings;* **[**68 O.S. § 2357.101 (D)(2)**]**

(3) **"Production company"** means *a person who produces a film or music project for exhibition in theaters, on television or elsewhere;* **[**68 O.S. § 2357.101(D)(3)**]**

(4) **"Total ~~Production~~ production cost"** *includes, but is not limited to:*

(A) *wages or salaries of persons who have earned income from working on a film or music project in this state, including payments to personal services corporations with respect to the services of qualified performing artists, as determined under Section 62(a)(A) of the Internal Revenue Code,*

(B) *the cost of construction and operations, wardrobe, accessories and related services,*

(C) *the cost of photography, sound synchronization, lighting and related services,*

(D) the cost of *editing and related services,*

(E) *rental of facilities and equipment, and*

(F) *other direct costs of producing of a film or music project.* **[**68 O.S. **§** 2357.101(D)(4)**]**

(5) **"Profit"**, when used in reference to an eligible investment, means ~~the actual profit received by the investor from the investor's investment in an existing Oklahoma film or music project.~~ the amount made by the taxpayer to be determined as follows:

(A) *the gross revenues less gross expenses, including direct production, distribution and marketing costs and an allocation of indirect overhead costs, of the film or music project shall be multiplied by,*

(B) *a ratio, the numerator of which is Oklahoma production costs as defined in paragraph 6 of this subsection, and the denominator of which is total production costs, as defined in paragraph 4 of this subsection, which shall be multiplied by,*

(C) *the percent of the taxpayer's taxable income allocated to Oklahoma in a taxable year, and*

(D) *subtract from the result of the formula calculated pursuant to subparagraphs A through C of this paragraph the profit made by a taxpayer from investment in an existing Oklahoma film or music project in previous taxable years. Profit shall include either a net profit or net loss.*

(6) **"Oklahoma production cost"** *means that portion of total production costs which are incurred with any qualified vendor.*

(7) **"Qualified vendor"** means an Oklahoma entity which provides goods or services to a production company and:

(A) fifty percent (50%) of more of the vendor's employees are Oklahoma residents, and

(B) fifty percent (50%) or more of gross wages, as reported on IRS Form W-2 or Form 1099, are paid to Oklahoma residents.

(C) For purposes of paragraph 7, an employee shall include a self-employed individual reporting income from a qualified vendor on IRS Form 1040.

(8) **"Investment"** means costs associated with the original production company. Film or music projects acquired from an original production company do not qualify as investment under subsection (a) of this section.

(~~6~~9) **"Reinvestment"** means the taxpayer invests twenty-five percent (25%) of the profit received from an existing Oklahoma film to pay for the production cost of the production company for a new Oklahoma film or music project.

(~~7~~10) **"Existing Oklahoma film or music production"** means an existing Oklahoma Film or Music Project as determined by the Oklahoma Film or Music Office.

(~~8~~11) **"New Oklahoma film or music project"** is a film or music project that has commenced production in Oklahoma after June 6, 2005 as certified by the Oklahoma Film or Music Office.

(c) **Eligibility requirements.** In order to qualify for the film and music production twenty-five percent (25%) profit reinvestment tax credit, a film or music production company must first be approved by the Oklahoma Film and Music Office. After approval, the company may apply for the credit by submitting a completed Oklahoma Tax Commission Form 562 to the Oklahoma Tax Commission with their income tax return. Supporting documentation listed below must be provided to the Oklahoma Tax Commission upon request.

(1) A copy of the approval from the Film and Music Office.

(2) A copy of the final cost-accounting summary for the project with a breakout of Oklahoma costs for each line item.

(3) The name, address, social security number and amount paid to every resident of Oklahoma for whom the company wishes to claim credit for wages/salaries.

(4) Other documents that the Tax Commission may require ascertaining the validity of the credit.

(d) **Transferability.** The credit provided is not transferable.

710:50-15-103. Credit for qualified railroad reconstruction or replacement expenditures

(a) **General provisions.** For tax years beginning after 12/31/05 there is a credit allowed against the tax imposed by Section 2355 of Title 68 equal to 50% of an eligible taxpayer's qualified railroad reconstruction or replacement expenditures.

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

(1) **"Eligible taxpayer"** means any railroad that is classified by the United States Surface Transportation Board as a Class II or Class III railroad.

(2) **"Qualified railroad reconstruction or replacement expenditures"** means expenditures for reconstruction or replacement of railroad infrastructure. This includes track, roadbed, bridges, industrial leads and track-related structures owned or leased by a Class II or Class III railroad as of January 1, 2006. Qualified railroad reconstruction or replacement expenditures can also include new construction of industrial leads, switches, spurs and sidings and extensions of existing sidings by a Class II or Class III railroad.

(c) **Limitations.** The amount of the credit may not exceed the product of Five Hundred Dollars ($500.00) for tax year 2007 and Two Thousand Dollars ($2,000.00) for tax years 2008 and beyond and the number of miles of railroad track owned or leased within this state by the eligible taxpayer as of the close of the taxable year.

(d) **Transferability.** The credits allowed pursuant to this Section that are not used are freely transferable by written agreement, to subsequent transferees, at any time during the five (5) years following the year of qualification.

(1) **"Eligible transferee" defined.** For purposes of this subsection, an **"eligible transferee"** shall be any taxpayer subject to the tax imposed by Section 2355 of Title 68.

(2) **Written transfer agreement requirements.** The person originally allowed the credit and the subsequent transferee must jointly file a copy of the written transfer agreement with the Commission, within thirty (30) days of the transfer. The written agreement must contain the name, address, and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferring person, and the tax year or years for which the credit may be claimed.

(e) **Carryover provisions.** Any credit allowed pursuant to the provisions of this Section, to the extent not used, may be carried over in order to each of the five (5) years following the year of qualification.

710:50-15-104. Credit for construction of energy efficient residential property

(a) **General provisions.** Effective for tax year 2006, a credit is available for contractors who construct either energy efficient residential property or energy efficient manufactured homes. The credit is dollar for dollar based on the cost of certain eligible expenditures.

(b) **Definitions.** For purposes of this Section, the following words and terms, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Contractor"** is the taxpayer who actually constructed the residential property or manufactured home.

In cases if more than one person qualifies as the contractor, the primary contractor.

(2) **"Eligible energy efficient residential property"** means a newly constructed residential property or manufactured home property located in the State of Oklahoma. Further the home cannot exceed two thousand (2,000) square feet in order to be eligible for the credit. The eligible energy efficient residential property must be substantially complete after December 31, 2005.

(3) **"Eligible expenditure"** includes the cost of energy efficient heating or cooling systems, insulation material specifically designed to reduce the heat gain or loss of a residential property, exterior windows, exterior doors or metal roofs with appropriate pigmented coatings designed to reduce the heat gain which meets Energy Star program requirements.

(4) **"Home energy ratings"** means a confirmed rating involving an on-site inspection of a home by a residential energy efficiency professional trained and certified by a Residential Energy Services Network accredited home energy rater.

(5) **"Residential energy services network provider"** means an accredited home energy inspector certified by Residential Energy Services Network.

(6) **"Residential property"** means a single dwelling unit, duplex, or townhouse with three stories or less, that provides independent living and could be sold or leased as separate property. The term does not include Group R-2 and R-4 residential buildings as defined in the International Energy Conservation Code.

(7) **"Substantially complete"** means the residential property or manufactured home has a certificate of occupancy issued if located in a municipality. For residential property or manufactured home in non-metropolitan area, the property will be substantially complete after passing the appropriate inspections required under the applicable County Building Codes permitted under 19 O.S. § 863.44.

(c) **Amount of credit.**

(1) The credit is capped at Four Thousand Dollars ($4,000) for those residential properties that are certified at forty percent (40%) or above of the International Energy Conservation Code 2003 and any supplement in effect at the time of completion. If the residential property is certified between twenty percent (20%) and thirty-nine (39%) of the International Energy Conservation Code of 2003 and any supplement in effect at the time of completion, the credit is limited to Two Thousand Dollars ($2,000.00).

(2) The credit is not available if the residential property is in excess of Two Thousand (2,000) square feet.

(d) **Carryover provisions.** Any credit allowed pursuant to the Section, to the extent not used, may be carried over in order to each of the four (4) years following the year of qualification. However, at no time may the credit claimed exceed the tax liability.

(e) **Transfer of the credit.** Effective for credits earned on or after August 25, 2006, the credit for construction of energy efficient residential property may be transferred.

710:50-15-108. Credit for qualified rehabilitation expenditures

(a) **General Provisions.** The Credit for Qualified Rehabilitation Expenditures is one hundred percent (100%) of the allowable federal rehabilitation credit provided for in Section 47 of Title 26 of the United States Code. All rehabilitation work to which the Credit for Qualified Rehabilitation Expenditures may be applied must be reviewed by the State Historic Preservation Office. The State Historic Preservation Office will forward the information to the National Park Service for certification in accordance with 36 C.F.R., Part 67. A certified historic structure may be rehabilitated for any lawful use or uses, including without limitation mixed uses and still retain eligibility for the credit provided for in this section.

(b) **Definitions.**

(1) ***"Certified historic hotel or historic newspaper plant building"*** *means a hotel or newspaper plant building that is listed on the National Register of Historic Places within thirty (30) months of taking the credit pursuant to 68 O.S. § 2357.41.*

(2) ***"Certified historic structure"*** *means a building that is listed on the National Register of Historic Places within thirty (30) months of taking the credit pursuant to this section or a building located in Oklahoma which is certified by the State Historic Preservation Office as contributing to the historic significance of a certified historic district listed on the National Register of Historic Places, or a local district that has been certified by the State Historic Preservation Office as eligible for listing in the National Register of Historic Places.*

(3) ***"Qualified rehabilitation expenditures"*** *means capital expenditures that qualify for the federal rehabilitation credit provided in Section 47 of Title 26 of the United States Code and that were paid after December 31, 2000. Qualified rehabilitation expenditures do not include capital expenditures for nonhistoric additions except an addition that is required by state or federal regulations that relate to safety or accessibility. In addition, qualified rehabilitation expenditures do not include expenditures related to the cost of acquisition of the property.*

(c) **Provisions for tax years beginning after December 31, 2000 and ending before January 1, 2006.** Only certified historic hotel or historic newspaper plant buildings located in an increment or incentive district created pursuant to the Local Development Act (62 O.S. §§ 850 et. seq.) are eligible for the Credit for Qualified Rehabilitation Expenditures.

(d) **Provisions for tax years beginning on or after before January 1, 2006.** The Credit for Qualified Rehabilitation Expenditures is available for qualified rehabilitation expenditures incurred after January 1, 2006 in connection with any certified historic structure.

(e) **Provisions for claiming the credit.** Generally, the first year the Credit for Qualified Rehabilitation Expenditures is eligible to be claimed is the first tax year that the federal rehabilitation credit, provided for in Section 47 of Title 26 of the United States Code, is eligible to be claimed. For carryover of the credit, see carryover provisions below. Further the Credit for Qualified Rehabilitation Expenditures may only be claimed

after the relevant local governmental body responsible for doing so issues a certificate of occupancy or other document that is a precondition for the applicable use of the building or structure that is the basis upon which the credit is claimed. All requirements with respect to qualification for the credit authorized by Section 47 of Title 26 of the United States Code shall be applicable to the Credit for Qualified Rehabilitation Expenditures.

(f) **Carryover.** If the Credit for Qualified Rehabilitation Expenditures exceeds the amount of income taxes due or if there are no state income taxes due, the amount of the credit allowed but not used in any taxable year may be carried forward as a credit against subsequent income tax liability for a period not exceeding ten (10) years following the qualified expenditures.

(g) **Transferability.** The Credit for Qualified Rehabilitation Expenditures allowed, but not used, shall be freely transferable by written agreement to subsequent transferees, at any time during the five (5) years following the year of qualification.

(h) **Written transfer agreement requirements.** The entity which originally earned the credit and the subsequent transferee must jointly file a copy of the written transfer agreement with the Commission, within thirty (30) days of the transfer. The written agreement must contain the name, address, and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferring entity, and the tax year or years for which the credit may be claimed.

(i) **Claiming transferred credit.** A copy of OTC Form 572 must be attached to any tax return on which a taxpayer claims a transferred credit.

SUBCHAPTER 17. OKLAHOMA TAXABLE INCOME FOR CORPORATIONS

PART 5. DETERMINATION OF TAXABLE CORPORATE INCOME

710:50-17-51. Adjustments to arrive at Oklahoma taxable income for corporations

The following is a partial list and not inclusive of all the allowable and unallowable adjustments that may be made to Federal taxable income to arrive at Oklahoma taxable income for corporations: [**See:** 68 O.S. § 2358]

(1) **Taxes based on income.** [**See:** 68 O.S. § 2358(A)(5)]

(A) Taxes based on or measured by income shall not be allowed as a deduction.

(B) Type of taxes that are based on or measured by income are:

(i) State and Local Income Taxes,

(ii) Foreign Income Taxes, and

(iii) some Franchise Taxes that are based on or measured by income.

(2) **Federal income taxes.** Federal Income Taxes are not deductible.

(3) **Federal loss carryback/carryforward.** A Federal net operating loss carryover or carryback will not be utilized in determining Oklahoma taxable income. For the allowance of Oklahoma Net Operating Loss deduction refer to (4) of this Section.

(4) **Oklahoma net operating loss carryback/carryover.** An election may be made to forego the Net Operating Loss (NOL) carryback period. A written statement of the election must be part of the timely filed Oklahoma loss year return.

(A) **Oklahoma net operating loss.** [**See:** 68 O.S. § 2358(A)(3)]

(i) An Oklahoma Net Operating Loss (NOL) may be carried back or over in accordance with 26 U.S.C.A. § 172 until December 31, 1992. However, no Oklahoma NOL can be carried back to years beginning before January 1, 1981 unless there is a Federal NOL carryback from the same loss year to the same carryback year.

(I) For net operating losses incurred for the years beginning after December 31, 1992, and before December 31, 1993, the loss **carryback** shall be for a period of three (3) years;

(II) For net operating losses incurred for tax years beginning after December 31, 1993, and before December 31, 1994, the loss **carryback** shall be for a period of two (2) years;

(III) For net operating losses incurred for tax years beginning after December 31, 1994, and before December 31, 1995, the loss **carryback** shall be for a period of one (1) year;

(IV) For net operating losses incurred for tax years beginning after December 31, 1995, and before January 1, 2001, no loss **carryback** shall be allowed; and

(V) For net operating losses incurred for tax years beginning on or after January 1, 2001, the loss **carryback** shall be for a period as allowed in the Internal Revenue Code.

(ii) Any Oklahoma Net Operating Loss (NOL) carryback not allowed, due to no Federal loss carryback to the same year, may still be carried back to the years beginning after December 31, 1980, or carried over until utilized, without regard to a Federal loss.

(B) **Oklahoma net operating loss computation for carryback to years beginning before January 1, 1981.** The following shall apply to Oklahoma net operating loss before January 1, 1981:

(i) Consolidated federal filing: In the loss year, the percentage of the Oklahoma loss to all loss companies in the consolidation. (If no consolidated loss, there is no NOL allowable.)

(ii) Separate company federal filing: In the loss year, the percentage of the Oklahoma loss to Federal loss. (If no Federal loss, there is no NOL allowable.) This percentage is then applied to the Federal NOL (each loss year separately) when it is

taken (absorbed) on the filed Federal Return. The Oklahoma NOL can be used in the same Oklahoma year it is used on the filed Federal Return year.

(5) **Oklahoma accrued income tax.** Oklahoma will allow a deduction for Oklahoma Accrued Income Tax. The Oklahoma Accrued Income Tax is computed by dividing Oklahoma Net Income by the number 21 (twenty-one) for tax years beginning after December 31, 1984, and the number 26 (twenty-six) for tax years beginning before January 1, 1985. For tax years beginning after December 31, 1989, the number 17.6667 shall be used. There is no deduction for Oklahoma Accrued Income Tax when Oklahoma Net Income is a loss. [**See:** 68 O.S. § 2358(A)(5)] When credits are allowed, the accrual of Oklahoma tax will not be allowed on the amount of Oklahoma taxable income that is covered by the credit. Tax accrual is allowed on the amount of income for which tax is actually paid. The example in Appendix A of this Chapter shows how the accrual should be calculated. A schedule such as the example should be attached and submitted with Form 512.

(6) **Expenses allocated to nontaxable income.** 68 O.S. § 2358(A)(4) provides that deductions should be allocated to assets that may produce nontaxable income. When a corporation has an investment in subsidiaries, other corporation's bonds, U.S. Obligations or other types of securities that produce income which is excluded from Oklahoma income, an adjustment is required. The expense adjustment is used to more clearly reflect true income. The manner in which this adjustment is made is as follows: A fraction, or percentage, is computed by dividing the average of investment in assets, the income from which is nontaxable by the average of total assets. This result is then applied to certain expenses claimed on the return. Generally, interest expense is the only expense against which this result is applied. However, facts and circumstances may indicate that other expenses should be considered in this allocation. This adjustment will be considered in all cases where deemed appropriate. [**See:** 68 O.S. § 2358(A)(4)]

(7) **Interest income.**

(A) **U. S. obligations.** Interest income from U.S. obligations ~~are~~ is excluded from Federal taxable income to arrive at Oklahoma taxable income. Interest income received from FNMA, GNMA, or the Internal Revenue Service is not income from an obligation of the U.S. government and cannot be excluded to arrive at Oklahoma taxable income.

(B) **Other interest income.**

(i) Interest income is to be directly allocated to the domiciliary situs of the taxpayer; except that interest income received from accounts receivable income shall be included in apportionable income.

(ii) There shall be added to Oklahoma taxable income, interest income on obligations of any state or political subdivision thereof which is not otherwise exempted pursuant to Federal laws or laws of this State, to the extent said interest is not included in federal taxable income or adjusted gross income.

(8) **Dividends.** Dividends are to be allocated to the domiciliary situs of the taxpayer. [**See:** 68 O.S. § 2358(A)(4)(b)]

(9) **Domestic International Sales Corporation (DISC) and Foreign Sales Corporation (FSC) Commission Expense.** Expenses incurred in producing DISC and FSC Dividend income shall be allocated on the same basis as the DISC and FSC Dividend income. [**See:** 68 O.S. § 2358(A)(4)]

(10) **Net oil and gas income.** Income or loss from oil and mining production or royalties, and gains or losses from sales of such property, shall be allocated in accordance with the situs of such property. General and administrative expenses will be allocated on the basis of Oklahoma direct expense to total direct expense. [See: 68 O.S. § 2358(A)(4)(a)]

(11) **Oklahoma 22% depletion.** Oklahoma depletion on oil and gas may be computed at twenty-two percent (22%) of gross income derived from each Oklahoma property during the taxable year.

(A) For tax years beginning January 1, 1997, and prior to December 31, 1999, and for tax years beginning on or after January 1, 2001, and ending on or before December 31, ~~2006~~ 2011, major oil companies, as defined by 52 O.S. § 288.2(4), shall be limited to fifty (50%) of net income for such property (computed without allowance for depletion).

(B) During years not specified herein, the Oklahoma depletion allowance, for all taxpayers, shall not exceed fifty (50%) of the net income of the taxpayer (computed without allowance for depletion) from the property.

(C) The percentage depletion calculated shall not be a duplication of the depletion allowed on the Federal Income Tax Return. **[See:** 68 O.S. § 2353(10)]

(12) **Net rental income and safe harbor leasing.** The following provisions apply to the treatment of net rental income and safe harbor leasing:

(A) Net Rental Income is separately allocated. [**See:** 68 O.S. § 2358(A)(4)]

(B) A schedule of Net Rental Income is required to be filed with the return showing gross income and all expenses (depreciation, repairs, taxes, interest, general and administrative expense, etc.).

(13) **Royalties; patents; copyrights.** [**See:** 68 O.S. § 2358(A)(5)]

(A) Income from patent or copyright royalties is apportionable.

(B) Income from which expenses have been deducted in producing such patent or copyright royalties in arriving at apportionable income (including the purchase of such patent or copyright royalties) shall be apportionable.

(14) **Capital gains or loss - 4797 gains or loss.**

(A) Gains (losses) from the sale or other disposition of unitary assets or any other assets used in the unitary enterprise are apportionable. [**See:** 68 O.S. § 2358(A)(5)]

(B) Gains (losses) from sale of property, the income from which is separately allocated shall also be separately allocated.

(15) **Partnership income or loss from corporate partners.**

(A) Partnership income or loss shall be separately allocated. [**See:** 68 O.S. § 2358(A)(4)]

(B) The Oklahoma distributive share of partnership income as determined under 68 O.S. § 2358 and 68 O.S. § 2362 shall be allocated to Oklahoma.

(16) **Overhead allocation.** The Commission may adjust or allocate overhead expenses to or from a parent or subsidiary, or between divisions in order to more accurately reflect the overhead expenses. [**See:** 68 O.S. § 2366]

(17) **Federal new jobs credit deduction.** For tax years beginning after December 31, 1980, the Federal New Jobs deduction is disallowed due to Oklahoma's own Investment/New Jobs Credit.

(18) **Deductions related to directly allocated income/loss.** Deductions incurred in producing income of a nonunitary nature shall be allocated on the same basis as the income. (Examples: Liquidation of subsidiaries, worthless stock loss, bad debts due subsidiaries on sale of stock, etc.) [**See:** 68 O.S. § 2358(A)(4)]

(19) **Intercompany eliminations.** There are no provisions to allow intercompany eliminations in computing the income of each company filing an Oklahoma Consolidated Return.

(20) **Other income.** Generally, other income, unless it is separately allocable under 68 O.S. § 2358(A)(4) is apportionable. [**See:** 68 O.S. § 2358(A)(5)]

(21) **Add-back of federal bonus depreciation for Oklahoma Income Tax purposes.** Generally, corporations claiming the federal bonus depreciation (as allowed under provisions of the federal *Job Creation and Workers Assistance Act of 2002*) are required to add back a portion of the bonus depreciation and then claim it in later years for Oklahoma Income Tax purposes.

(A) Corporations filing Oklahoma Income Tax Returns will have to add back eighty percent (80%) of any bonus depreciation claimed under provisions of the federal *Job Creation and Workers Assistance Act of 2002*. Any amount added back can be claimed in later years. Twenty-five percent (25%) of the amount of bonus depreciation added back may be subtracted in the first taxable year beginning after the bonus depreciation was added back, and twenty-five percent (25%) of the bonus depreciation added back may be deducted in each of the next three succeeding taxable years.

(B) The provisions relating to the add-back of the federal bonus depreciation apply only to C-Corporations and are not applicable to corporations which have elected to be treated as Subchapter S Corporations pursuant to 26 U.S.C. § 1361 et seq. of the Internal Revenue Code, nor to Limited Liability Companies.

SUBCHAPTER 19. OKLAHOMA TAXABLE INCOME FOR PARTNERSHIPS

710:50-19-1. Partnership return

(a) **General provisions.** The Oklahoma distributive share of partnership income shall be the same portion of that reported for Federal Income Tax purposes. OTC Form 514 is used to report income. [**See:** 68 O.S. §§2358, 2362, 2363]

(1) **Oklahoma source income or loss.** When a partnership has source income or loss then that partnership must file a return showing the income or loss applicable to Oklahoma. The partnership shall also furnish a detailed schedule stating the amount of income distributable to each partner from Oklahoma sources.

(2) **Duty to file and report; determination of shares.** All resident partners must file individual income tax returns with Oklahoma if they are required to file individual Federal Income Tax Returns. All nonresident partners that have gross income of $1,000.00 must file an Oklahoma Return even though their net may actually be a loss. The partnership income for Oklahoma may be apportioned using the three factor formula unless its operations are from real and tangible personal property, such as rents, oil and mining production or royalties, and gains or losses from sales of such property; then the income or loss shall be allocated in accordance with the situs of such property. The partner's distributive share of Oklahoma income or loss shall be the same proportion to the partner's distributive share of income or loss shown on the Federal Partnership Return.

(3) **No credit for income taxes paid other jurisdictions.** Neither residents nor nonresidents are allowed a credit for income taxes paid to other jurisdictions on partnership income.

(4) **Composite returns.** Oklahoma will allow partnerships to file composite returns for nonresident partners as described in this paragraph. Any individual nonresident partner may be included in the composite return so long as the partner has no income from an Oklahoma source other than the partnership. Partners that are S-Corporations (or elect to be so treated) and partnerships, trusts, and C-Corporations generally may not be included in the composite return. However, partners that are ineligible to be included in the composite return as outlined herein *may* be included in the composite return upon approval from the Oklahoma Tax Commission Audit Division.

(A) **Individual partners and trust partners.** Compute each nonresident individual or trust partner's share of Oklahoma distributive income and income tax as follows:

(i) Calculate the Oklahoma distributive share of each nonresident individual and trust partner's

income as if all of the partnership income was earned in Oklahoma.

(ii) Deduct a standard deduction for each individual partner, to determine the taxable income for the partner. The standard deduction to be used is outlined in 68 O.S. § 2358. ~~is fifteen percent (15%) of the partner's share of Oklahoma distributive share of income determined in (i) of this subparagraph, not to exceed Two Thousand Dollars ($2,000.00). When a partner's federal income tax filing status is known, the maximum standard deduction cannot exceed One Thousand Dollars ($1,000.00) for any partner using "married, filing separately" filing status.~~

(I) In determining taxable income of partners filing a composite return, no deductions for personal exemptions, federal income tax paid, or dependents is permitted.

(II) For trust partners, taxable income is each partner's share of the Oklahoma distributive income in (i) of this subparagraph.

(iii) Using the Oklahoma individual income tax rates and the partner's federal income tax filing status, compute a **base tax** for each partner, based on the taxable income from (ii) of this subparagraph. If the partner's federal filing status is not known, use the individual tax rates for single taxpayers.

(iv) Calculate the **actual** Oklahoma distributive share of income of each partner.

(v) The **base tax** determined from (iii) of this subparagraph is to be prorated to determine the Oklahoma income tax of each partner. Divide ~~the~~ each ~~partners~~ partner's **actual** Oklahoma distributive share as determined in (iv) of this subparagraph, by each partner's distributive income from all sources as determined by (i) of this subparagraph. Multiply this percentage times the **base tax** to calculate the actual Oklahoma income tax of each partner. Nothing in this section shall be construed to allow for more than one hundred percent (100%) of a nonresident partner's income to be taxed.

(B) **Corporate partners.** Compute each nonresident corporate partner's share of Oklahoma distributive income, using the partner's share of Oklahoma distributive income and the Oklahoma corporate income tax rates, to compute each partner's Oklahoma tax.

(C) **Form.** The income and tax of all partners included in the composite return must be combined on Oklahoma Tax Commission Form 514.

(D) **Schedule to be provided.** Oklahoma Tax Commission Form 514 PT must be enclosed with the Form 514 to show the computation of each nonresident partner's Oklahoma distributive income and Oklahoma tax. The schedule of nonresident partner's information may be provided on magnetic media, electronically, or in another format which meets Tax Commission guidelines.

(b) **When electronic filing is required.** For tax years beginning on or after December 31, 2004, partnerships with more than one hundred (100) partners are required to electronically file their Schedule K-1's with the Oklahoma Tax Commission. The format for filing electronically will be in either a spreadsheet format, such as Lotus 1-2-3 or Excel); or a database format, such as DBF or Access. A partnership is deemed to have "**more than one hundred (100) partners**" if, over the course of the partnership's tax year, the partnership had more than one hundred (100) partners at any time.

(c) **When electronic filing is not permitted.** Partnerships filing the following types of returns are not required to file Schedule K-1's electronically:

(1) A non-calendar year return;

(2) Returns with a non-U.S. address; or,

(3) Amended returns.

(d) **Waiver of electronic filing requirement for hardship.** Partnerships may also obtain a waiver from the electronic filing requirement if the partnership demonstrates that a hardship would result if it were required to file electronically.

[OAR Docket #07-1029; filed 5-15-07]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 60. MOTOR VEHICLES

[OAR Docket #07-1027]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
710:60-1-3 [AMENDED]
Subchapter 3. Registration and Licensing
Part 1. General Provisions
710:60-3-14 [AMENDED]
710:60-3-17 [AMENDED]
Part 7. Noncommercial Vehicles
710:60-3-70 [AMENDED]
Part 9. Commercial Vehicles
710:60-3-93 [AMENDED]
710:60-3-96 [AMENDED]
Part 11. Other Vehicles
710:60-3-111 [AMENDED]
Part 14. All-Terrain Vehicles and Off-Road Motorcycles
710:60-3-140 [AMENDED]
710:60-3-141 [AMENDED]
710:60-3-142 [AMENDED]
Part 17. Special Permits
710:60-3-203 [AMENDED]
710:60-3-204 [AMENDED]
Subchapter 5. Motor Vehicle Titles
Part 1. General Provisions
710:60-5-2 [AMENDED]
710:60-5-3 [AMENDED]
710:60-5-4 [AMENDED]
Part 3. Application for Certificates of Title
710:60-5-30 [AMENDED]
Part 5. Certificates of Title
710:60-5-51 [AMENDED]
710:60-5-53 [AMENDED]
710:60-5-57 [AMENDED]

Part 7. Transfer of Title
710:60-5-71 [AMENDED]
710:60-5-73 [AMENDED]
710:60-5-77 [AMENDED]
Part 9. Affidavits for Use in Titles
710:60-5-91 [AMENDED]
710:60-5-92 [AMENDED]
710:60-5-96 [AMENDED]
Part 11. Liens
710:60-5-111 [AMENDED]
710:60-5-113 [AMENDED]
710:60-5-116 [AMENDED]
710:60-5-117 [NEW]
Part 13. Foreign Vehicles
710:60-5-130 [AMENDED]
Subchapter 7. Motor Vehicle Excise Tax
710:60-7-5 [AMENDED]
710:60-7-7 [AMENDED]
Subchapter 9. Motor Vehicle License Agents/Agencies
Part 5. Specific Recordkeeping Duties
710:60-9-53 [AMENDED]
710:60-9-54 [AMENDED]
710:60-9-56 [NEW]
Part 7. Specific Reporting Duties
710:60-9-73 [AMENDED]
Part 9. Specific Fiscal Duties
710:60-9-90 [AMENDED]
710:60-9-91 [AMENDED]
710:60-9-92 [AMENDED]
710:60-9-93 [AMENDED]
710:60-9-94 [AMENDED]
710:60-9-96 [AMENDED]
710:60-9-97 [AMENDED]
710:60-9-98 [AMENDED]
Part 11. Agency Operation
710:60-9-111 [AMENDED]
710:60-9-120 [AMENDED]
Part 13. Special Provisions for Application, Qualification, Appointment, and Agency Operation Applicable to Certain Motor License Agents and Agencies
710:60-9-137 [AMENDED]

AUTHORITY:
47 O.S. § 1149; 68 O.S. § 203; Oklahoma Tax Commission

DATES:
Comment Period:
February 1, 2007 to March 5, 2007
Public hearing:
March 6, 2007
Adoption:
March 13, 2007 (Commission Order No. 2007-03-13-38)
Gubernatorial approval:
April 2, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 10, 2007
Final adoption:
May 10, 2007
Effective:
June 25, 2007
SUBMITTED TO GOVERNOR:
March 15, 2007
SUBMITTED TO HOUSE:
March 15, 2007
SUBMITTED TO SENATE:
March 15, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:

Proposed amendments to **Section 710:60-1-3 of Subchapter 1,** *General Provisions*, have been made to clarify policy and procedure for requesting bulk data from the Motor Vehicle data files and to implement the provision of Senate Bill 1521 which allows Oklahoma wrecker services licensed through the Department of Public Safety to obtain insurance information when needed to establish responsibility for wrecker fees.

Proposed amendments to **Subchapter 3,** *Registration and Licensing*, have been made to implement the provision of Sections 2 and 8 of Senate Bill 1965 which provides for a definition of off-road motorcycles and provides for a minimum excise tax assessment for all-terrain vehicles and off-road motorcycles, respectively and to implement the provisions of Section 4 of House Bill 2895 which provides that an application for a special commercial license for specific types of hauling which previously was only available from the Tax Commission can now be obtained from the Oklahoma Corporation Commission. Sections in this Subchapter have been amended to clarify and outline policy and procedures regarding aspects of titling and registration of all-terrain vehicles, entities exempt from transfer of ownership of registration fee, ownership requirements for statutorily exempt entities, applicability of excise tax and registration fees on transfers from a car dealership to the owner(s) of the dealership, and persons subject to and exempt from liability insurance verification requirements. Other amendments have been made to deletes obsolete references, outdated requirements, and statutorily inconsistent language.

Proposed amendments to **Subchapter 5**, *Motor Vehicle Titles*, have been made to implement the provisions of Senate Bill 1965 which provides for the acceptance of ownership affidavits in certain situations and to clarify policy and procedure regarding approval of and titling by means of ownership affidavits. Other amendments have been made to implement the provisions of House Bill 1580 relating to liens and the process commonly known as "Title 42s" which provides that manufactured homes and all-terrain vehicles shall be subject to the entire possessory lien process and the current Process 1, [Senate Bill 835 (2005)], shall only be applicable when an active lien, not over fifteen (15) years old, is on file with the State of Oklahoma or a Native American Tribe in Oklahoma. Additional amendments have been made to clarify, outline, consolidate and update policy and procedures for obtaining title to foreign vehicles, various aspects of lien entry, lien release, refiling of liens and the reassignment of liens from a secured party to another secured party, glide kit taxable value determinations, registration exception applicable to licensed dealers, Odometer disclosure exemptions, multiple owner listings followed by transfer designations, affidavits of assembly and ownership, original certificates of title, title suffix designations, and transfer of title from estates valued at $20,000.00 or less. Sections have also been amended to provide additional information regarding, current model year release dates, insurance claims for flood damaged vehicles and flood damaged brand for salvage title purposes, issuance of duplicate titles to out-of-state residents, and flood damage disclosures concerning applications for certificates of title.

Proposed amendments to **Subchapter 7**, *"Motor Vehicle Excise Tax"*, have been made to implement Senate Bill 1120 [2004] which deleted the existing conditions regarding the exemption from excise tax on vehicles donated to charitable organizations licensed through the Oklahoma Secretary of State. Other amendments have been made to Subchapter 7 to update information to reflect accurately the introduction date of new vehicles and to add a cross reference to another administrative rule dealing with the applicability of excise tax on transfers from car dealerships to the owners of the dealership.

Proposed amendments to **Subchapter 9**, "Motor Vehicle License Agents/Agencies", have been made to implement the provisions of Sections 6 and 7 of Senate Bill 1965 which provides that any motor license agent collecting a dishonored check pursuant to 47 O.S. § 1121 must collect and retain a twenty-five dollars ($25.00) fee and that the Tax Commission and motor license agents may accept nationally recognized debit cards as payment for registration fees, license plates or decals or excise taxes. Other amendments have been made to Subchapter 9 dealing with various aspects of the Motor Vehicle License Agents operation including recordkeeping, reporting and fiscal duties and responsibilities, agency operational requirements, motor license agent appointment accountability and prohibitions. Additional amendments have been made to delete unnecessary information and statutorily inconsistent language.

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 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

710:60-1-3. Confidentiality of motor vehicle information

(a) **Procedure for release of vehicle and lien information.** Vehicle and lien information may be released only to qualified requestors upon completion of OTC Form 769 and remittance of the statutory fee~~, or to qualified~~. Qualified requestors of recurring data from the Motor Vehicle system database must complete ~~completing~~ the "Service Contract for Purchase of Oklahoma Motor Vehicle Registration (MVR) Database" with the Tax Commission. Upon acceptance of the contract, the requested data may be provided at the appropriate processing fee established by the Commission. Requests for unique (one time) large data files from the Motor Vehicle system database may be made by submitting the appropriate request for information to the Oklahoma Tax Commission, Motor Vehicle Division for review. Upon approval, the requested data may be provided at the appropriate processing fee established by the Commission.

(b) **Who may obtain vehicle and lien information.** Vehicle and lien information may be released to:

(1) The current owner;

(2) An individual, on behalf of the current owner, with written authorization;

(3) A licensed wrecker or towing service, for notification to owners;

(4) A legitimate business, for purposes of:

(A) Verifying the accuracy of personal information submitted to the business by the individual to whom the requested information pertains; or

(B) Obtaining correct information for purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual to whom the requested information pertains;

(5) A requestor who is to use the information in conjunction with a civil, criminal, administrative, or arbitral proceeding in a federal, state, or local court or agency, or before any self-regulatory body. Use may include service of process, investigation in anticipation of litigation, and the execution or enforcement of a judgment or order;

(6) A requestor, pursuant to an order of any court;

(7) An insurer or insurance support organization;

(8) A licensed private investigative agency or licensed security service, for purposes permitted by 47 O.S. § 1109(A);

(9) A governmental or law enforcement agency, or a court, for use in an official function;

(10) Any person compiling and publishing motor vehicle statistics, provided that names and addresses of individuals shall not be disclosed;

(11) Any motor vehicle manufacturer or an authorized representative thereof, in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls or advisories, performance monitoring of motor vehicles, motor vehicle parts and dealers, motor vehicle market research activities, including survey research, and removal of non-owner records from the original owner records of motor vehicle manufacturers; or,

(12) For use in connection with the operation of private toll transportation facilities.

(13) For furnishing the name and address of all commercial entities who have current registrations of any particular model of vehicle; provided, this exception shall not allow the release of personal information pursuant to the provisions of the Driver's Privacy Protection Act, 18 U.S.C. §§ 2721 through 2725.

(c) **Insurance information release.** Insurance information, including insurer and policy number, may be released to a law enforcement officer investigating an accident pursuant to 47 O.S. § 10-104, or to a licensed Oklahoma wrecker service, when that information is needed to establish responsibility for wrecker fees.

(d) **Penalties for the release of prohibited information.** The release of any information not specifically authorized by statute, as described in subsections (b) and (c) of this Section, is strictly prohibited, and may be subject to penalties enumerated in 47 O.S. § 1109(H).

(e) **Penalties pursuant to the Drivers Privacy Protection Act.** In addition to penalties provided under state law, certain provisions of federal law, under the Drivers Privacy Protection Act, may apply.

(1) Any person who violates the Drivers Privacy Protection Act (DPPA) is subject to criminal prosecution as provided in 18 U.S.C.A. § 2721, et seq.

(2) Any person who violates the Drivers Privacy Protection Act (DPPA) is subject to civil penalties of actual damages not less than $2,500.00; punitive damages, reasonable attorneys' fees, litigation costs, and such other relief the court determines to be appropriate.

(3) Any state agency violating the Drivers Privacy Protection Act (DPPA) is subject to a civil penalty of not more than $5,000.00 for each day of substantial noncompliance.

(f) **Types of information released.** The form, formats, media, and sources of information provided under this Section may be available for a statutorily provided fee:

(1) Current ownership or lienholder information may be provided to qualified requestors by the Oklahoma Tax Commission and ~~Motor License Agents~~ motor license agents.

(2) Computer-generated title history information may be provided by the Oklahoma Tax Commission.

(3) Microfilm title history information may be provided by the Oklahoma Tax Commission.

(4) Certified microfilm title history may be provided by the Oklahoma Tax Commission.

(g) **Certain information release to motor license agents.** When required in the performance of their duties, motor license

agents may request and receive from the Motor Vehicle Division copies of submitted documentation relating to a transaction performed at their agency at no charge. A motor license agent may not assess any fee to a taxpayer for acquiring and/or providing to the taxpayer any such documentation provided at no charge to the motor license agent by the Division. A motor license agent requesting copies of documentation from a transaction completed at another motor license agency is to be assessed the research fee provided for by 47 O.S. § 1109(B). In that event, the actual cost assessed the agent by the Division may be passed on to the requesting taxpayer. The agent may not assess any additional fee for that record research and/or retrieval service.

SUBCHAPTER 3. REGISTRATION AND LICENSING

PART 1. GENERAL PROVISIONS

710:60-3-14. Transfer of ownership registration

Fee generally due on transfer of title; exceptions. A transfer of ownership registration fee is due when transferring any Oklahoma title with the following exceptions:

(1) Name changes (same person only). This exemption would not apply to adding or dropping a name.

(2) Salvage vehicles - including going into salvage

(3) ~~Used~~ Licensed Oklahoma used dealers ~~(unless acting as repossessor)~~

(4) Manufactured homes

(5) Commercial Trailers

(6) Political Subdivision of the state ~~(city, county, public school or State)~~

(7) Repossessions

(8) Charitable organization licensed through the Oklahoma Secretary of State's Office

710:60-3-17. Liability insurance

(a) **Insurance verification form.** The owner of a motor vehicle to be registered or titled in this state must surrender a current insurance security verification form to the tag agent prior to the processing of his registration, unless otherwise provided. Photocopies or faxes of current, valid verification forms are acceptable for vehicle registration purposes. The security verification shall contain the following information:

(1) Name and address of the carrier.

(2) The name and address where security may be verified, if other than carrier.

(3) Name of insured.

(4) Notice that an owner's policy has been issued pursuant to Compulsory Insurance Law.

(5) Year, make, and at least the last three digits of the VIN of each insured vehicle. (Note: Not required if Owner's form states "Fleet Coverage.")

(6) Inclusive dates liability policy is in effect.

(7) A warning to the owner of state law requirements that one copy be surrendered on registration and one copy carried in the vehicle.

(b) **Registration in conformity with insurance period.** The registration should be issued only within the inclusive dates shown on the certification form.

(c) **~~Trailers; boats;~~ Applicable only to motor vehicles; vehicles not in use.** ~~Trailers or Boats are not included in the motor vehicle category and will not require a security verification form.~~ Only motor vehicles are subject to the liability insurance verification process described herein. Trailers or boats are not included in the motor vehicle category and will not require a security verification form. Owners of vehicles not in use at the time of registration may register their vehicle upon signing a Non-Use Affidavit (OTC Form 797).

(1) The yearly validation decal issued to the owner of a vehicle who has filed a Non-Use Affidavit (OTC Form 797) in lieu of liability insurance verification will be issued a decal of a separate and distinct color from all other yearly decals. It shall be the owner's responsibility to obtain insurance if such vehicles are put into service at a later time.

(2) The owner of the vehicle is not required, upon putting the vehicle back in service, to purchase another decal indicating the liability insurance coverage. If the owner chooses to purchase another decal, a valid insurance verification form will be required and payment of a replacement tag/decal fee, and the insurance verification fee.

(d) **Fleet vehicles.** On blanket coverage of fleet vehicles, the year, make and serial number are not required on the certification form. It shall bear the term "Fleet Coverage". This term shall be typed or written on the lower right hand portion of the registration certificate by the tag agent.

(e) **Exceptions to insurance verification requirements.** The following shall not be required to surrender a security verification form to the tag agent.

(1) Any vehicle owned or leased by the Federal or State Government or any agency or political subdivision thereof.

(2) A company owned vehicle bearing the symbol or logo which, according to the records of the Department of Public Safety, reflects a deposit, bond, self-insurance, or fleet policy. (These companies will be issued an equivalent form from the Department of Public Safety.)

(3) Any vehicle authorized for operation under a permit number from the Interstate Commerce Commission or the Oklahoma Corporation Commission.

(4) Any licensed taxicab.

(5) Any vehicle held for sale by a licensed Used Car Dealer.

(6) Applicant for a duplicate Oklahoma title, provided registration renewal is not required.

(7) Applicant for title (only) to a vehicle to be later registered under the International Registration Plan.

(8) All-terrain vehicles and off-road motorcycles.

(f) **Processing fee authorized.** The ~~Motor License Agent~~ motor license agent is authorized to charge a fee for processing

a security verification form or Non Use Affidavit upon registration of a motor vehicle.

(g) **Military personnel insurance verification.** Members of the United States Armed Forces may furnish a vehicle insurance policy or bond from an out-of-state insurance company indicating compliance with the liability insurance requirements of the Oklahoma Vehicle License and Registration Act. If the service person is an out-of-state resident who is stationed in Oklahoma, the form must be from Oklahoma or from the service person's state of residence, as indicated on the Armed Forces Affidavit (OTC Form 779). If the service person is a resident of Oklahoma, the form must be either an Oklahoma form, or a form from the state in which the service person is currently stationed.

PART 7. NONCOMMERCIAL VEHICLES

710:60-3-70. Noncommercial vehicles

Annual registration rates are based on the number of years the vehicle has been registered pursuant to a five-tiered registration scheme approved by popular vote on August 22, 2000. The following vehicles are registered using this method.

(1) **Automobiles. "Automobiles"** includes noncommercial trucks and vans and nonagricultural trucks.

(2) **Travel Trailers.** Travel trailers are any vehicular portable structure built on a chassis and used as a temporary dwelling for travel, recreational or vacation use. The dimensions of a travel trailer cannot exceed 40 feet in length (including hitch or coupling) or 8 feet in width.

(3) **Motorcycles.** Motorcycles are defined as those vehicles designed and constructed to travel on not more than three (3) wheels, having a saddle or a single seat for the use of the rider.

(4) **Recreational vehicles. "Recreational Vehicle"** means every vehicle which is built on or permanently attached to a self-propelled motor chassis or chassis cab which becomes an integral part of the completed vehicle and is capable of being operated on the highways. In order to qualify as a recreational vehicle pursuant to this subsection such vehicle shall be permanently constructed and equipped for human habitation, having its own sleeping and kitchen facilities, including permanently affixed cooking facilities, water tanks and holding tank with permanent toilet facilities. Recreational vehicle shall not include manufactured homes or any vehicle with portable sleeping, toilet and kitchen facilities which are designed to be removed from such vehicle.

(5) **Moped.** A moped is a motorized bicycle having pedals for aid in propulsion. Mopeds are banned from limited access and interstate highways. Motorized bicycles are subject to all the provisions of the Motor Vehicle License and Registration Act. No dealer's license is required to sell them. If sales tax was paid upon purchase, no excise tax should be assessed when titling.

(6) **Dirt bikes, minibikes, ~~all terrain~~ all-terrain vehicles (3 & 4 wheelers), and golf carts.** Dirt bikes, minibikes, ~~all terrain~~ all-terrain vehicles (3 & 4 wheelers), and golf carts are not street legal and are not to be titled and tagged for street or highway use in Oklahoma. All-terrain vehicles and off-road motorcycles meeting the criteria outlined in OAC 710:60-3-140 are subject to titling and registration, as therein specified. Golf carts owned by the Tourism and Recreation Department may be operated on streets and highways located within the boundaries of a state park by employees of the Department, or by employees of an independent management company on behalf of the Department.

(7) **Low speed electrical vehicles. "Low speed electrical vehicle"** means any four-wheeled electrical vehicle that is powered by an electrical motor that draws current from rechargeable storage batteries or other sources of electrical current and whose top speed is greater than twenty (20) miles per hour, but not greater than twenty-five (25) miles per hour, and is manufactured in compliance with the National Highway Traffic Safety Administration standards for low-speed vehicles in 49 C.F.R. 571.500. Such vehicles may be titled and registered, with the registrant paying excise tax, rather than sales tax.

PART 9. COMMERCIAL VEHICLES

710:60-3-93. Installment tag plan

(a) **Application.** Half year ~~Tags~~ tags may be purchased on commercial trucks and tractors by any one owner whose registration fees on such vehicles exceed One Thousand Dollars ($1,000.00) in any one year. The tags for half year registrations must be special ordered from the Motor Vehicle Division.

(b) **Qualification for installment tag plan.** Vehicles must be registered before January 15, of any year to qualify. A vehicle purchased during the year by an owner who wishes to register it on the installment plan must initially be registered to expire in December of that year. It may then be registered on the installment basis beginning the following year.

(c) **Procedure for registration and renewal under installment tag plan.** ~~A Half Year Affidavit, (OTC 733A furnished with tags), must be completed and attached to the Oklahoma Tax Commission copy of registration.~~ A vehicle so registered must be renewed for the last half of the year before June 30 without penalty. When the last half installment is paid, a last half tag and registration are to be issued as proof that the vehicle is properly registered for the full year. It should be remembered that the last installment is to be paid regardless of whether the vehicle is sold out-of-state, junked out, etc., as the installment purchase is designed only to relieve the owner from a large first-of-the-year lump sum payment. The last half fees must be paid before transferring title if the vehicle is to be sold before June 30. An installment fee will be collected for each half.

710:60-3-96. Trailer toter

A trailer toter is a vehicle specifically adapted and used for pulling ~~house trailers~~ manufactured homes. The trailer toter is registered as a commercial vehicle for the unladen weight of the toter. The weight of a trailer is not included in the

registration of the toter. The manufactured home is taxed in its own right either by registration or assessment.

PART 11. OTHER VEHICLES

710:60-3-111. Miscellaneous vehicles; definitions

(a) **Farm trucks. "Farm truck"** means pickup, truck, or truck tractor used primarily for agricultural purposes. There are no size limits for these vehicles. For purposes of farm truck registration eligibility **"pickup" means a small, light truck with an open back or box used for hauling and designed primarily for the carrying of property, rather than people and "truck" means a motor vehicle designed or converted primarily for carrying or hauling farm commodities, property, livestock, or equipment, rather than people.** To qualify for farm truck registration, the applicant must provide either a copy of Schedule F (or comparable form) of the previous year's Federal Income Tax Return, or an agricultural exemption permit (SMX number) assigned by the Oklahoma Tax Commission. Any person registering a farm truck, other than a pickup, must also complete and submit a "Declaration of Gross Vehicle Weight for Vehicle Registered with a Farm Tag" (OTC Form 786). If a laden weight of 54,001 pounds or more is listed, the owner must provide I.R.S. Form 2290 and a Schedule 1.

(b) **Farm trailers.** Farm trailers are not required to be registered ~~unless the total weight of the trailer and the towing vehicle is equal to or in excess of 80,000 lbs., in which case a commercial trailer tag would be required~~. An optional farm trailer tag is available. These tags are for registration purposes only and a title ~~shall~~ may not be issued for them. If a serial number is stamped on the trailer, it will be used for the VIN on the registration. Otherwise, the Social Security number of the owner will be used. A monthly and yearly decal will be issued to expire one year from date of registration.

(c) **Buses.** Buses are classified as either Inter-City or Intra-City. The Inter-City buses operate between different cities. The Intra-City buses operate within a given city. The rates for such vehicles are based on the seating capacity. All buses in these classifications must be licensed by the Oklahoma Corporation Commission.

(d) **Private school buses.** Private school buses are those privately owned buses used exclusively to transport school children.

(e) **Taxicabs.** Taxicabs are vehicles designed to carry not more than ten (10) people.

(f) **Rental vehicles.** Rental vehicles are vehicles acquired by rental companies not to be rented for more than ninety (90) days at a time. Such vehicles are entitled to special registration fees as set forth by statute.

PART 14. ALL-TERRAIN VEHICLES AND OFF-ROAD MOTORCYCLES

710:60-3-140. ~~All-terrain~~ All-terrain vehicles and off-road motorcycles

(a) **Title and registration requirement.** ~~All-terrain~~ All-terrain vehicles (ATV's) and off-road motorcycles (ORM's) purchased, or on which ownership is transferred, on or after July 1, 2005 are required to be titled and registered, unless statutorily exempted.

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

(1) **~~All-Terrain~~ All-Terrain Vehicles (ATV's).** A motorized vehicle manufactured and used exclusively for off-highway use which is sixty (60) inches or less in width, with an unladen dry weight of one thousand five hundred (1,500) pounds or less, traveling on two or more low-pressure tires.

(2) **Off-Road Motorcycles (ORM's).** A motorcycle manufactured for and used exclusively off roads, ~~or~~ highways, and any other paved surfaces ~~in this state~~. Small street or sidewalk mini-motorcycles or scooters are not included in this category.

710:60-3-141. Titling of ~~all terrain~~ all-terrain vehicles and off-road motorcycles

(a) **General.** Only standard type titles, as referenced under 710:60-5-2, will be issued to ATV's or ORM's.

(b) **Information or processes not required.** The following do not apply to ATV's or ORM's:

(1) Salvage, Rebuilt and Junk title issuance or procedures

(2) Odometer disclosure requirements

(3) Out-of-state vehicle V.I.N. / Odometer inspection & Declaration of Damage or Theft

(4) Liability insurance verification

(5) Submission by owner of ~~driver's~~ driver license number or federal employer's identification number

(6) Payment of waste tire fee at time of initial registration.

(7) Transfer of ownership registration fee.

(c) **New ATV's or ORM's. Titling documents required if purchased on or after July 1, 2005.**

(1) A properly assigned Manufacturer's Statement of Origin (MSO), or other acceptable ownership document as determined by the Oklahoma Tax Commission.

(2) Completed Application for Oklahoma Title (701-6).

(3) A dealer invoice or other acceptable purchase price documentation, as determined by the Oklahoma Tax Commission.

(d) **Used or new ATV's or ORM's purchased prior to July 1, 2005. Titling documents required.**

(1) Assigned title/MSO; or

(2) A completed ~~Ownership Affidavit (OTC form 753)~~ Application for Oklahoma Title (701-6) and a bill of sale listing the purchase price, or a completed Declaration of Vehicle Purchase Price (OTC Form 722-1). In this application, the bill of sale is not required to be notarized~~, nor is OTC approval required of the Ownership Affidavit~~.

(e) **Exemptions from titling.** Holders of agricultural exemption permits issued pursuant to 68 O.S. § 1358.1 are exempt from ATV and ORM titling requirements. Such permit holders may transfer ownership of ATV's or ORM's by bills of sale. Should a permit holder choose to obtain title to an ATV or ORM, no excise tax is to be assessed. Titling and registration fees will apply.

(f) **Chain of title ownership not required.** Since agricultural permit holders are exempt from ATV or ORM titling requirements, there may be breaks in the title chain of ownership. As a result, there is no requirement that an assigned Oklahoma title be presented to transfer ownership of an ATV or ORM, provided documentation outlined in (d) above is submitted, even when an Oklahoma title record for a previous owner exists.

(g) **Excise tax assessment and exemptions.**

(1) **Assessment.** As set forth by statute, excise tax is to be assessed on new and used ATV's and ORM's purchased on or after July 1, 2005. Excise tax will be assessed on the actual purchase price presented by the purchaser, excluding credit for any trade in, either from a bill of sale or a Declaration of Vehicle Purchase Price (OTC form 722-1). The minimum excise tax amount is set by statute. Failure to obtain title and pay the corresponding levy of excise tax within thirty (30) days of acquiring ownership will result in the assessment of a delinquent excise tax penalty in the amount of $.25 per day, accruing until paid or until equal to the tax amount due.

(2) **Exemptions.** Standard vehicle excise tax exemptions, outlined in OAC 710:60-7-3(b), apply to ATV's and ORM's. In addition, agricultural permit holders are exempt from excise tax, when choosing to title and register their ATV or ORM, upon presentation of a valid agricultural permit.

(h) **Lien filing.** Lien filing procedures on ATV's and ORM's are generally identical to vehicle lien filings referred to in Subchapter 5 Part 11 of the Oklahoma Tax Commission Rules Title 710, Chapter 60. Liens on ATV's or ORM's may be filed with only ~~an Ownership Affidavit~~ the previously outlined ~~as supporting~~ ownership documentation.

710:60-3-142. Registration of ~~all-terrain~~ all-terrain vehicles and off-road motorcycles

(a) **General.** A registration fee as set forth by statute is assessed upon issuance of every original or transfer title to an ATV or ORM. Upon payment of the registration fee, an ATV or ORM decal will be issued to be affixed in clear view to the front of the ATV or ORM, or to the front fork of the ORM. Renewal of the registration by the same owner is not required. The registration fee is assessed again only upon any transfer of ownership.

(b) **Exceptions to registration.** The following persons are excepted from the registration requirements of this Section.

(1) **Licensed dealers.** Effective November 1, 2005, new ATV and ORM retailers must be licensed as dealers through the Oklahoma Motor Vehicle Commission. Oklahoma dealer assignments of ATV's and ORM's must have a Motor Vehicle tax stamp affixed, as outlined in OAC 710:60-5-72.

(2) **Agricultural exemption permit holders.** Owners possessing a valid agricultural exemption permit issued pursuant to 68 O.S. § 1358.1.

(c) **Optional Registration.** The following owners shall have the option of purchasing a nonrecurring registration.

(1) Owners that possess valid agricultural permits issued pursuant to 68 O.S. § 1358.1

(2) Owners of ATV's and ORM's, purchased prior to July 1, 2005.

(d) **Registration penalties.** The following registration penalty assessments apply to those ATV's and ORM's purchased on or after July 1, 2005:

(1) New ATV/ORM: The maximum penalty allowed by statute applies on the 31st day following ownership assignment.

(2) Used ATV/ORM: A penalty of Twenty-five Cents ($.25) per day applies beginning the 31st day following ownership assignment and accruing to the maximum penalty allowed by statute.

PART 17. SPECIAL PERMITS

710:60-3-203. Driveaway-towing or temporary license receipt

(a) **Description and use.** Driveaway-towing or temporary license receipts are issued for trucks, truck-tractors, trailers and motor buses, owned by nonresidents, which are properly registered in their home state for the current year and are operating in Oklahoma on a temporary basis not to exceed 90 days. The owner's name, description of the vehicle and weight available from the out-of-state registration should be shown on the certificate issued. This permit is restricted to nonresidents from those states who afford a like privilege to Oklahoma residents.

(b) **Farm trucks used during grain harvest or in hauling road materials for rural roads.** Permits may be issued by the Oklahoma Tax Commission or Oklahoma Corporation Commission to Oklahoma owned trucks on which the farm registration has been paid for the current year and which are being used during grain harvest or for hauling shale or road material for rural roads. Such permits may be issued only by the Oklahoma Corporation Commission to those vehicles currently registered in another state.

(c) **Towed vehicles.** A towing permit is issued on this form to a person towing a vehicle intended to be resold into this state or through this state. A permit fee shall be charged for each, the vehicle towing and the vehicle being towed. Each vehicle must be currently registered in its home state.

(d) **Receipt must show days valid; dates of issuance, and expiration.** The number of days issued must be shown as well as the issue date and expiration date.

710:60-3-204. Harvest permits

Vehicles involved in harvesting are subject to the ~~30, 60, and 90 day~~ temporary license requirements described in OAC 710:60-3-203.

SUBCHAPTER 5. MOTOR VEHICLE TITLES

PART 1. GENERAL PROVISIONS

710:60-5-2. Types of certificates

(a) **Title Certificate Color Designation.** Oklahoma has utilized several different colors in classifying motor vehicle titles. The title types and corresponding colors are as follows:

(1) Standard Title (Green)
(2) Salvage Title (Red)
(3) Rebuilt Title (Orange)
(4) Junked Title (Blue)
(5) Classic Title (Green)
(6) Remanufactured Title (Purple)

(b) **Title Suffix Designation.** Letter suffixes are utilized to designate the sequence of Oklahoma certificates of title issued to a specific vehicle. The original Oklahoma title issued will have no suffix following the designated title number. All subsequent Oklahoma titles, regardless of type, issued to that vehicle will be designated by a letter suffix. The letter "a" will be assigned as a suffix to the first Oklahoma title issued following the original title, "b" to the next title issued, etc. Only the most recent Oklahoma certificate of title issued is considered valid.

710:60-5-3. General registration prerequisite for issuance of title

An Oklahoma Title will not be issued without a current Oklahoma registration except for purposes of recording a lien on a title or on an apportioned vehicle. A duplicate title may be issued without current Oklahoma registration to a former resident who has relocated to another state and the title is being mailed to an out-of-state address designated by the requestor.

710:60-5-4. Multiple owners

(a) When multiple owners are listed on vehicle ownership documentation, whether a title document or ownership assignment document, and there is no distinction as to whether ownership is to be joined by '**and**', '**and/or**', or '**or**', the resulting Oklahoma title is to be issued reflecting ownership joined by '**and**'.

(b) When transferring ownership from a title document which lists multiple (former) owners, the following assignment guidelines apply:

(1) When ownership is joined by '**or**' or '**and/or**', any one of the owners may assign ownership.
(2) When ownership is joined by '**and**', all owners are required to assign ownership.

(c) When multiple owners are listed, followed by "**WROS**" (With Rights of Survivorship), the rules under (a) and (b) above apply.

(d) When ownership is listed as two names, followed by "**TOD**" (Transfer Upon Death), the first name listed will be considered the primary (unconditional) owner and the second name listed as the secondary (conditional) owner. The secondary owner may obtain ownership only in the event of the primary person's death (upon presentation of the death certificate). The secondary owner has no other ownership claim to the vehicle. As long as the primary owner remains alive, he/she can assign ownership of the vehicle at any time, with no signature or documentary approval of the secondary owner required.

PART 3. APPLICATION FOR CERTIFICATES OF TITLE

710:60-5-30. Applications for certificates of title

An application for Oklahoma Certificate of Title for a Vehicle (OTC Form 701-6) must be completed as part of the supporting documentation for all original Oklahoma titles issued. Following are instructions for completing the application.

(1) **Model, year and make.** Enter the model and model year as indicated by the manufacturer~~'s~~, as well as the make of the vehicle.

(2) **Body type.** ~~Use only~~ List the basic vehicle body type. Do not use trade or model names ~~as advertised~~ designated by the manufacturer. ~~A 4-dr Country Sedan should be shown as 4-dr Station Wagon. The following~~ Following are examples of basic vehicle types ~~of vehicles~~:

(A) Automobile: 2Dr. Coupe; 4Dr. Sedan; 2Dr. Convertible; Funeral Coach
(B) Truck: Pickup; Truck; Truck-Tractor
(C) Travel Trailer
(D) ~~House Trailer~~ Manufactured Home
(E) Motor Home
(F) Motorcycle
(G) Bus~~: School Bus (Public or private) or Omnibus~~
(H) Straight Trailer or Semitrailer: Show as Straight Trailer or Semitrailer. A straight trailer is constructed so that no part of its weight rests upon the towing vehicle. A semitrailer is constructed so that a portion of its weight and load rests upon or is supported by another vehicle. ~~The majority of commercial trailers are semitrailers~~. In Model No. ~~show~~ list Flat-bed or Semi.
(I) Pole Trailer: Show as Pole Trailer. This type of trailer is used for hauling pipes or poles and is a frame only, having no bed.
(J) Sport Utility
(K) Van

(3) **Model.** Basic information is to be entered here that will insure proper and accurate identification of the vehicle. All automobiles have a model name and number. (Do not confuse the model number with the serial number.) The following information should be entered for each type of vehicle.

(A) Automobile: Model, name and number. Example: ~~1985~~ 2007 Chevrolet, 4Dr., ~~Station Wagon~~ Sport Utility.
(B) Manufactured Home: Model, name (if any), length, and width. Example: 1984 Hicks Manufactured Home, 14' x 60'.

(C) Travel Trailer: Model, name, length and width. Example: 1984 Nomad Travel trailer 8' x 40'.

(D) Motorcycle: Model, name, number and number of cylinders.

(E) Bus: Model, and number of passenger seats. Example: 1970 GM Omnibus PD-4101 39 psgr.

(F) Truck: Brief description of body, model number, manufacturer's rated capacity (if known) and number of rear axles. ~~Example: SA: Single Axle; TA: Tandem (2) Axles; Stake: F350 IT SA; Dump: WFT8164T 3T TA; Van: 3303, 2 1/2 T SA.~~

(G) Truck-Pickup: Model name, number and manufacturer's rated capacity (if known). Example: 1985 Ford Styleside F100 1/2T.

(H) Truck-Tractor: Model number and number of rear axles.

(I) Trailer-Large Trailers: Brief description of body, length and number of axles. Example: Grain, 35FT., 2A

(J) Small Trailers: Brief description of body length and number of wheels. Example: Tractor, 12FT, 4 (Wheels Rental, 6FT,4W)

(4) **Identification number ~~(Serial or Motor)~~.** The ~~serial~~ vehicle identification number, or serial number if not a vehicle, ~~will be shown the majority of the time~~ is to be listed. ~~The motor number will be shown only when the serial number is not available or when transferring title and the old title does not show the serial number.~~ Alternatives must be approved by the Oklahoma Tax Commission, Motor Vehicle Division.

(5) **"Actual sales price (value)" defined.** The "**actual sales price**", commonly referred to as "purchase price", means the actual sales price of a vehicle excluding any discounts or credits given for a trade-in. The actual sales price must be within twenty percent (20%) of the average retail price value of the vehicle, as listed in the automotive reference material prescribed by the Oklahoma Tax Commission. [**See**: 710:60-5-50]

(6) **Signature.** The owner or a properly designated agent must sign the application for title.

(7) **New vehicles sold by Oklahoma dealers.** ~~For domestic and foreign made vehicles, the selling dealer will complete the price information.~~ When the application is completed by the selling dealer, an ~~The dealer, or~~ authorized employee of the dealership ~~will~~ is to sign the statement and enter the actual sales price of the ~~basic~~ vehicle.

(8) **Declaration of damage or theft.**

(A) **Required for all vehicles not over ten model years old.** Owners of vehicles 10 model years old or less, with the exception of new vehicles or vehicles on out-of-state titles that are already branded (salvage, rebuilt, etc.) being registered for the first time in Oklahoma must complete this portion of the Application for Title.

(B) **Declaration to be executed by owner.** The owner must first answer, to the best of his or her knowledge, the first two (2) questions listed on the Declaration. If the answer is no to both, ~~the remainder of this section~~ question three (3) need not be completed. If the answer to either or both questions one (1) and two (2) is yes, the owner must then complete ~~the entire Declaration~~ question three (3), by entering the applicable damage percentage.

(C) **Recovered theft brand.** Should the owner indicate that the vehicle had been stolen, but the cost of repairing it to a roadworthy condition amounted to less than sixty percent (60%) of its fair market value at the time of loss, the Oklahoma Certificate of Title is to be branded "Recovered Theft".

(D) **No brand when damage unrelated to theft and repair less than sixty percent (60%) of value.** Should the owner indicate that the vehicle had been damaged by collision or other occurrence but the cost of repairing it to a roadworthy condition amounted to less than sixty percent (60%) of its fair market value, the Oklahoma Certificate of Title will not be branded.

(E) **Salvage title when damage is greater than sixty percent (60%) of value.** Should the owner indicate that the vehicle had been damaged and the cost of repairing it to a roadworthy condition amounted to more than sixty percent (60%) of its fair market value at the time of loss, the vehicle is to be treated as if it were entering Oklahoma with a salvage title. This applies regardless of whether the damage was due to theft, collision or other occurrence.

(F) **Flood damage disclosure.** In addition to the above, the owner of any vehicle that has suffered flood and/or water damage is to complete the Flood Damage Disclosure section. Should the owner indicate the vehicle meets the listed statutory criteria for a flood damaged vehicle, the Oklahoma title will be issued with the brand "Flood Damaged".

(9) **Vehicle inspection.**

(A) **Inspection required.** All previously registered vehicles entering Oklahoma from another state, with the exception of vehicles intending to prorate, must be physically inspected before an original Oklahoma certificate of title may be issued. The vehicle identification number (VIN) and odometer reading from the vehicle will be entered in this portion of the application. The VIN found on the vehicle will be compared to the number listed on the out-of-state documentation to ensure they match.

(B) **Persons authorized to perform inspection; non-release of title.** Except as noted herein, inspections are to be performed by motor license agents or authorized Oklahoma Tax Commission personnel only. If the vehicle is unavailable for inspection, a hold is to be placed on the Oklahoma title. The applicant will be informed that the title will not be released until the VIN inspection has been completed. The Oklahoma Tax Commission may allow the inspection to be performed at a location out-of-state by another state's department of motor vehicles or state law enforcement agency. For vehicles offered for sale at

salvage pools, salvage disposal sales, or classic or antique vehicle auctions, and on which the VIN does not match the number recorded on the ownership records, the required inspection may be conducted at the location, or place of business, of such sale or auction by any state, county, or city law enforcement officer.

PART 5. CERTIFICATES OF TITLE

710:60-5-51. Original certificate of title

(a) **Completed application required.** An application for Oklahoma Certificate of Title (form ~~7016R90~~ 701-6), must be completed and forwarded to the Commission ~~with each original title receipt~~ upon application for an original Oklahoma title.

(b) **Manufacturer's statement of origin.** A Manufacturer's Statement of Origin (MSO) must accompany the title to a vehicle which has never been titled or registered.

(c) **Out-of-state titles; negotiable titles; memorandum titles.** When issuing an original title from an out-of-state title to the individual whose name appears on the face, all information must be correctly transcribed from the out-of-state title. ~~Many states issue nonnegotiable or memorandum titles.~~ When presented with ~~such a~~ any document other than a negotiable out-of-state title, ~~it will be necessary to hold~~ the Oklahoma Title will be placed on document hold and not be released until the negotiable out-of-state title is surrendered. When the Oklahoma title is to be placed on document hold, the applicant is to be asked whether the vehicle is subject to any lien and, if so, is to complete an affidavit outlining the lienholder information. When ~~a~~ an out-of-state title is submitted reflecting ~~vehicle is titled in another state and the title contains the name of~~ a secured party, ~~on the face of the other state certificate of title, or~~ the lien will be carried forward to the Oklahoma record, as outlined in OAC 710:60-5-113. If the negotiable out-of-state title ~~state certificate~~ is being held by the secured party ~~in that state or any other state~~, the owner of the vehicle shall file an affidavit with the Commission or the motor license agent stating that title to the vehicle is being held by a secured party and has not been issued pursuant to the laws of the state where titled, and that there is an existing lien or encumbrance on the vehicle. The current name and address of the secured party or lienholder shall also be stated in the affidavit. The form of the affidavit shall be prescribed by the Oklahoma Tax Commission. ~~The simplest way to determine if the title is negotiable is to determine if there are assignment spaces on the certificate. If no assignments are evident, then the title could not be considered a negotiable instrument.~~ In most instances, negotiable titles are those containing ownership assignment sections. Lack of assignments ordinarily indicates the title is non-negotiable.

(d) **Assigned or reassigned out-of-state titles.** An out-of-state title which has been assigned or reassigned on the reverse with an out-of-state notary is acceptable and an original title will be issued.

(e) **Title issued only to assignee.** Under no circumstances shall an Oklahoma Certificate of Title be issued to an individual other than to whom the assignment is made.

(f) **Actual sales price.** The actual sales price, commonly referred to as "purchase price", is required for any vehicle on which an Oklahoma title is to be issued and excise tax collected. The documentation described in this subsection is required to establish the actual sales price:

(1) For new vehicles, a purchase contract or bill of sale from the selling dealer will be required.

(2) For used vehicles, a purchase price reflected in the ownership assignment area of those title certificates which provide an area for that information, or a purchase contract, or bill of sale will be required~~, or if neither is obtainable,~~. If none of those documents are available, a "Declaration of Vehicle Purchase Price" (OTC Form 722-1) must be completed by the purchaser.

(3) A purchase contract or bill of sale offered only to establish the actual sales price pursuant to this subsection, and not to convey ownership, need not be notarized.

710:60-5-53. Salvage titles

(a) **Salvage vehicle defined.** A salvage vehicle is a vehicle ten (10) model years and newer which has been damaged by collision or other occurrence to the extent that the cost of repairing the vehicle for safe operation on the highway exceeds sixty percent (60%) of its fair market value at the time of loss.

(b) **Determining classification as a salvage vehicle.** To determine the 10 year model age limit for this purpose, subtract 9 from the current latest manufacturers model on sale. ~~September~~ July 1 is the generally accepted date that new model vehicles go on sale. For example, prior to ~~September~~ July 1, ~~1991~~ 2006, the latest manufacturers model on sale ~~are~~ were ~~1991~~ 2006 models. Therefore, during the one (1) year period ending June 30, 2006 (7/1/05 through 6/30/06), a ten year old vehicle would ~~be~~ have been a ~~1982~~ 1997 (~~1991~~ 2006-9) model. During that period, ~~1981~~ 1996 and older models ~~would be~~ were exempt from the salvage requirements. Beginning ~~September~~ July 1, ~~1991~~ 2006, ~~1992~~ 2007 model vehicles officially (per this guideline) ~~go~~ went on sale, resulting in ~~1982~~ 1997 models becoming exempt from the salvage requirements. This formula for determining the age of a model year will apply to all such determinations regarding salvage and rebuilt vehicles.

(c) **Change of classification.** Vehicles over 10 model years old may go in to, or come out of, salvage at any time. No inspection is required to bring such vehicles out of salvage.

(d) **Out-of-state salvage titles.** Vehicles over 10 model years old entering Oklahoma with an out-of-state salvage title may receive either a salvage title or standard (green) title with a salvage date listed.

(e) **Notification by insurance companies.** An insurance company paying a loss on a vehicle ~~7 model years old or newer~~ where the cost of repairing the vehicle ~~to a roadworthy condition~~ for safe operation on the highway exceeds 60% of its ~~fair~~ market value, or pays a claim for a flood-damaged vehicle as defined in 47 O.S. § 1105, is required to notify the vehicle owner to surrender the title to the Oklahoma Tax Commission or a motor license agent so that it may be replaced by a salvage

title. The Motor Vehicle Division will also be notified by the insurance company. The notice shall include the estimated total damage percentage determination of the actual cash value made by the insurance company to repair the vehicle for safe operation on the highway.

(f) **Transfer salvage title to insurance company on payment of total loss due to theft; removal of salvage notation.** Any vehicle 7 model years old or newer on which an insurance company has paid a total loss due to theft must be transferred to the insurer by a salvage title. However, the statutes provide that the salvage notation may be removed if the vehicle is recovered and has suffered damage amounting to less than 60% of the value of the vehicle. Certification to that effect, in the form of a letter on the insurance companies letterhead, will be required.

(g) **License plate not affected by salvage classification; current registration generally required.** The license plate from a vehicle entering salvage status need not be surrendered. However, registration must be current on a vehicle entering salvage status, unless it is being titled by a salvage dealer.

(h) **~~Damage by flooding~~ Flood damaged brand.** A salvage or rebuilt vehicle which was damaged by flooding, or a vehicle which was submerged at a level to or above the dashboard of the vehicle and on which an amount of loss was paid by the insurer, shall have the notation "~~Damage by Flooding~~ Flood Damaged" listed on the face of the Oklahoma title.

(i) **Multi-state motor vehicle salvage processing centers.** Insurance companies licensed by the Oklahoma Insurance Department and which maintain a multi-state motor vehicle salvage processing center in this state may be issued an Oklahoma original salvage title on an unrecovered stolen vehicle without a visual inspection of the vehicle identification number (VIN) or odometer. For a vehicle to qualify, the following conditions must be met:

(1) The vehicle has been stolen and not yet recovered;

(2) An out-of-state title, assigned to the qualifying insurance company, must be submitted. An Oklahoma title may not be issued if an existing Oklahoma title record is on file reflecting a VIN inspection "hold"; and,

(3) One of the following documents, verifying the theft of the vehicle, must be submitted:

(A) Stolen vehicle report;

(B) Insurer's proof of loss; or,

(C) A statement from the insurer verifying that the vehicle was stolen and has not yet been recovered.

710:60-5-57. Duplicate certificate of title

(a) **Procedure for obtaining a duplicate certificate of title.** An Application for Duplicate Certificate of Title of Vehicle (form 701-7) is to be used when a vehicle owner has lost the title to a vehicle. Only the record owner may make such application. The applicant shall produce proper identification at the time of application.

(b) **Minimum information required for issuance of duplicate certificate of title.** In some instances, the applicant may not have all the information necessary to complete the application. Upon identification, the applicant is to sign the application, enter his name, address, ID number and current tag number, or, if not currently registered, the last tag number, decal and month of expiration. (Without this basic information no application can be accepted.)

(c) **Changes in duplicate certificate of title limited to address correction.** No information, other than the address, may be changed when issuing a duplicate title.

(d) **Current registration required.** Registration must be current in Oklahoma ~~or another state~~ before a duplicate title may be issued. ~~If the owner can provide proof that they moved to another state prior to Oklahoma expiration, a current registration is not required.~~ A duplicate title may be issued without current Oklahoma registration to a former resident who has relocated to another state and the title is being mailed to an out-of-state address designated by the requestor.

PART 7. TRANSFER OF TITLE

710:60-5-71. General provisions; assignments; liens; registration; notice of transfer

(a) **Transfer of title.** In most instances, an Oklahoma transfer title is issued upon receipt of a properly assigned and notarized Oklahoma title and proof of liability insurance. Other instances where a transfer title may be issued are covered in the following subsections.

(b) **Use of assignment space provided on title document.** The first assignment space on the reverse side of an Oklahoma title is to be used by the owner on the face of the title to assign ownership. The subsequent reassignment spaces may be used by licensed Oklahoma used motor vehicle dealers only.

(c) **Liens transfer.** Any active liens indicated on the face of an assigned Oklahoma title will be carried forward to the transfer title being issued unless a lien release is presented.

(d) **Current registration required; exceptions.** Registration must be current on a vehicle before a transfer title may be issued, unless the vehicle is in a salvage or junked status. Licensed used motor vehicle dealers are exempt from this requirement when transferring to other licensed dealers, provided the vehicle was currently registered, or in the registration expiration grace month, when it was assigned to the first dealer. Salvage dealers are exempt from registration requirements when obtaining salvage or junked titles.

(e) **Actual sales price documentation.** The actual sales price is required for any vehicle on which an Oklahoma title is to be issued and excise tax collected. The actual sales price is commonly referred to as the "purchase price". One of the following documents is required to establish the actual sales price:

(1) A purchase contract;

(2) A bill of sale;

(3) A "Declaration of Vehicle Purchase Price" (OTC Form 722-1); or

(4) Oklahoma title certificate, with a purchase price entry listing ~~on the reverse side~~ where indicated;

(5) A purchase contract or bill of sale offered only to establish purchase price pursuant to this subsection, and not to convey ownership, need not be notarized.

(f) **Notice of Transfer of Ownership of a Vehicle.** The seller or buyer of a motor vehicle may file a Notice of Transfer of Ownership of a Vehicle (OTC Form 773) to record the assignment of ownership in the Oklahoma Tax Commission Motor Vehicle Division computer system. The filing of Notices of Transfer is optional. The filing of the Notice of Transfer does not constitute a transfer of ownership and does not alleviate the buyer/new owner of the responsibility of properly and timely transferring title and paying all applicable taxes and fees. To be acceptable, notices must be submitted containing all required information. Incomplete forms will not be filed. There are two (2) acceptable types of notice:

(1) Seller or buyers may submit a **Notice of Transfer of Ownership of a Vehicle (OTC form 733)** and the appropriate statutory filing fee to the Oklahoma Tax Commission or a ~~Motor License Agent~~ motor license agent .

(2) Effective January 2006, a removable tear-off tab, **Oklahoma Certificate of Title Tear-Off Notice of Transfer Tab,** was incorporated on Oklahoma vehicle title certificates. This tab, properly completed, is to be accepted and processed in the same manner as the Notice of Transfer of Ownership of a Vehicle Form (OTC form 733).

710:60-5-73. Odometer disclosure

(a) **Federal Truth in Mileage Act.** Effective on all transfers of ownership of motor vehicles (see exceptions below) dated on or after April 29, 1989, specific odometer disclosure information is required. All transfers must contain the following:

(1) Odometer reading at time of transfer (no tenths of mile).

(2) The date of transfer.

(3) The seller's printed name (must be individual - no company name), signature and address.

(4) The buyer's printed name (must be individual - no company name), signature and address.

(5) Vehicle information including make, model year, body type and VIN.

(6) The seller shall also certify to the best of his/her knowledge whether the odometer reading:

(A) Reflects the actual mileage.

(B) Does not reflect the actual mileage.

(C) ~~Seller shows the odometer is~~ Is in excess of the mechanical limits of the odometer.

(b) **Exemptions.** Vehicles and situations which are exempt from the odometer disclosure requirements are:

(1) Vehicles which are not self-propelled, such as trailers.

(2) Transfers of new vehicles from dealer to dealer on the MSO.

(3) Vehicles which are ten (10) years old or older. To make this determination, subtract ten (10) from the current calendar year. ~~For example, 1998 - 10 = 1988. Vehicles which are 1988 models or older are exempt during 1998.~~

(4) Vehicles with a gross vehicle weight rating over 16,000 lbs. Any truck over 2 tons ~~would be~~ is exempt.

(5) Vehicles purchased in another country.

(6) Transfers resulting from involuntary divestitures, such as court orders and repossessions.

(7) Transfers to record a name change (same individual), only.

(8) Transfers between a revocable trust and a trustee of that trust.

710:60-5-77. Transfer of title upon death

(a) **Intestacy; transfer to surviving spouse.** If a person dies intestate leaving an automobile, that auto shall become the property of the surviving spouse. If title was held by the deceased to more than one vehicle, the surviving spouse may choose one automobile. The others are to be distributed by the law of descent.

(b) **Transfer by third party; required authorization.** An assigned title which has been assigned by some person other than the person shown on the face of the title must be accompanied by some form of authorization for assignment. This may be a Power of Attorney, Court Order or authorization by an Executor or an Administrator of an estate.

(1) **Transfer by power of attorney.** When transferring a title where assignment has been made by Power of Attorney, the Power of Attorney must be stapled to the assigned title.

(2) **Transfer by court order.** When transferring a title when assignment is completed by the administrator or executrix of an estate, a Court Order must be presented authorizing the sale of the motor vehicle being transferred.

(c) **Estate valued at no more than $20,000. 00.** When a decedent has left a will, but the value of the estate does not exceed Twenty Thousand Dollars ($20,000.00), no probate is required before transferring ownership of any vehicle(s) bequeathed in the decedent's will. Ownership may be transferred to the successor of interest by completing a Small Estate Affidavit. In addition to the Affidavit, the following must be submitted:

(1) A copy of the decedent's death certificate.

(2) A copy of the decedent's unprobated will, naming the applicant as beneficiary of the vehicle.

(3) Either the title certificate in the decedent's name, or evidence from the Tax Commission vehicle title files that such a title record exists.

PART 9. AFFIDAVITS FOR USE IN TITLES

710:60-5-91. Affidavit of assembly and ownership

(a) **When Affidavit of Assembly and Ownership is required.** An Affidavit of Assembly and Ownership is required ~~when~~:

(1) When major components from two or more vehicles or motorcycles are being incorporated into a single unit. ~~and~~

(2) In applying for an Oklahoma title for a kit car that comes with a Manufacturer's Statement of Origin and an invoice~~, or when major components are taken from two or more motorcycles to title as a single unit. It is also used when~~.

(3) When a combination of new components with original (notarized) Manufacturer's Statements of Origin and used components with bills of sale, invoices or receipts are used to make one vehicle or motorcycle. ~~For purposes of this Section, "**major component**" means a body or cab, frame, and front end or rear end clip, if the public VIN is changed.~~

(b) **Documentation required.** Documentation required to support application for Oklahoma title using an Affidavit of Assembly and Ownership includes:

(1) **A completed Affidavit of Assembly and Ownership (OTC Form 761 or 761MC).** The applicant must complete the Affidavit of Assembly and Ownership (OTC Form 761 or 761MC) and supporting documentation. Title or notarized bills of sale for all major components included on the Affidavit must be submitted, ~~including:~~ listing

~~(A)~~ ~~The~~ the vehicle identification number (VIN) of the vehicle from which the part was removed~~;~~. ~~and~~

~~(B) An original bill of sale or receipts for other components used to build the vehicle. Examples of other components may include: frame, engine, transmission, doors, hood, sheet metal, bed, tire and wheels, interior components.~~

~~(C) Supporting documentation for motorcycle/trike assembly are titles or notarized bills of sale for all major components and,~~

~~(D) Original bills of sale or receipts for all other components used to build the motorcycle/trike. Examples of other components may include: mirrors, headlights, tail lights, brakes, exhausts, seats, gas tanks, tires/wheels, fenders, handlebars, odometers/speedometers and, when assembling a trike, the transaxle/rear end and body.~~

(2) **A completed Application for Oklahoma Certificate of Title (OTC Form 701-6).** The applicant must complete the Application for Oklahoma Certificate of Title (OTC Form 701-6), as follows:

(A) The **year** to be listed on the certificate of title will be the year of the body or cab of the vehicle which is reconstructed.

(B) The **make** of the vehicle will be noted as: "AV", followed by a two (2) character year designation and two (2) character make designation.

(C) The **model** of the vehicle will be the three (3) or (4)-letter code reflected on the Oklahoma Certificate of Title of the appropriate component vehicle.

(D) The **body type** of the vehicle will reflect the current body type of the vehicle. Example: 2DR

(E) The ~~Actual~~ Total Purchase Price will be the combined purchase price for all components, less those parts on which sales tax was paid.

(F) Excise **taxes due** on the ~~rebuilt~~ assembled vehicle will be determined as follows:

(i) Excise tax will not be collected if the title was in the registrant's name on each of the major components used to build the current vehicle.

(ii) Excise tax will be due upon transfer if the title was not in the registrant's name on each of the major components used to build the current vehicle.

(G) The **year** of an assembled motorcycle is the current year (completion date).

(H) The **make** of the Assembled Motorcycle will be "ASVE".

(I) The **model** will be "O".

(J) The **body** type will reflect "MC".

(c) **Approval required.** Any application for title using the Affidavit of Assembly and Ownership must be approved by the Motor Vehicle Division.

(d) **Inspection required.** Following approval of the application for title by the Motor Vehicle Division, the assembled vehicle or motorcycle must be inspected by a motor license agent to confirm the vehicle identification number (VIN).

(e) **Oklahoma assigned number.** An Oklahoma Assigned Number, when required and assigned by the Motor Vehicle Division, will be the valid vehicle identification number (VIN) for the assembled vehicle or motorcycle.

(f) **Active liens.** If a lien is active on any vehicle identification number (VIN) used to build a vehicle~~,~~ or motorcycle on which an Oklahoma Assigned Identification Number has been assigned and is now displayed, the paperwork must be returned to the Motor Vehicle Division, and the following procedure will apply:

(1) The Lien Department of the Motor Vehicle Division will issue a corrected Lien Entry Form, reflecting the new Oklahoma assigned number.

(2) The Lien Department of the Motor Vehicle Division will then notify any lienholder of the new vehicle identification number (VIN).

(g) **No active liens.** If no liens are active on any vehicle identification number (VIN) used to build the vehicle~~,~~ or motorcycle, the approved Oklahoma Tax Commission Application for Title (OTC Form 701-6), Assembly and Ownership Affidavit (OTC Form 761 or 761 MC), all original receipts and notarized bills of sale associated with the transaction~~,~~ may be submitted to an Oklahoma Motor License Agency for processing.

(h) **Issuance of title; tag and decal, if applicable.** At the time the Oklahoma Certificate of Title is issued, a current tag and decal will be issued also, if applicable. All plates and/or registration decals issued to any original vehicle or motorcycle used as a component for the rebuilt vehicle become invalid.

(i) **Major component.** For purposes of this Section, "**major component**" means a body or cab, frame, and front end or rear end clip, if the public VIN is changed.

710:60-5-92. Obtaining title for front end section or glider kit

(a) **Documentation required.** Documentation required to support application to acquire title for a front end section / glider kit includes:

(1) **A Manufacturer's Statement of Origin.** The applicant must present a Manufacturer's Statement of Origin for the front end section or glider kit, showing the new

serial number and a complete description of the vehicle, including the model year.

(2) **Itemized invoice.** The applicant must also present an itemized invoice listing the front end section or glider kit, all new parts, labor, and the actual purchase price of all the new parts used, excluding federal excise tax. The invoice must show a completion date and set out a statement of facts describing the rebuilding of the vehicle, including, if applicable, reference to the old vehicle (and its serial number) from which "power train" components were obtained.

(3) **Application for Oklahoma Certificate of Title.** The applicant must submit a completed application for Oklahoma Certificate of Title (OTC Form 701-6).

(b) **Determination of taxable value.** Excise tax will be assessed against the combined purchase price of the glider kit components and any purchased vehicle to which the components were affixed, less the cost of any components on which sales tax was paid.

(c) **Issuance of new title; cancellation of prior title.** A new original title will be issued using the serial number of the glider kit as the Vehicle Identification Number (VIN). The model year shown on the new title will be the model year of the glider kit. The title and license plate of the old vehicle must be surrendered for cancellation at the time of registration of the rebuilt vehicle

710:60-5-96. Ownership affidavit (OTC Form 753)

(a) **When Ownership Affidavit is used.** The Ownership Affidavit may be used upon Oklahoma Tax Commission approval, in situations where a title applicant is lacking normally required titling documentation, such as an assigned certificate of title, and no other party or lienholder can be identified as to ownership or claim.

(b) **Documentation required.** Unless otherwise authorized by the Oklahoma Tax Commission, an applicant using an Ownership Affidavit must present proof of purchase, not to exclude the Federal Odometer Disclosure Statement, if applicable. The proof of purchase must include the following:

(1) Complete description of the vehicle, to include the year, make, and the complete vehicle identification number;

(2) Seller's notarized signature;

(3) Buyer's name and address; and

(4) Date of sale (not the notary date).

(c) **Approval required.** Except for those specific procedural instances where pre-approval is not required, utilization of ownership affidavits must be approved by the Motor Vehicle Division of the Oklahoma Tax Commission. Upon receipt of a completed Affidavit and supporting documentation, the Motor Vehicle Division will confirm the absence of an ownership and/or lienholder record. If such a record is located, titling by Ownership Affidavit alone will not be approved. If no record is located and the Affidavit approved, a physical inspection and confirmation of the vehicle's identification number must be performed by the Division, or a motor license agent, before an Oklahoma title will be issued.

PART 11. LIENS

710:60-5-111. Perfecting liens

(a) **Documents required for perfecting lien.** ~~Before perfecting~~ To perfect a lien, either an Oklahoma title, ~~boat or motor title,~~ or an Application for Oklahoma Title accompanying a Manufacturer's Statement of Origin or out-of-state ~~title~~ ownership document, must be presented, along with a completed Lien Entry Form.

(b) **Lien form must be legible.** To be acceptable, all lien entry forms must be clearly legible, as determined by the Tax Commission.

(c) **Secured party information.** The secured party must have completed his part of the form, particularly the signature and date of execution. Strikeovers and off line printing are not acceptable.

(d) **Title to conform to lien entry form.** The name of the secured party will be entered on the face of the secured title exactly as it appears on the lien entry form.

(e) **Title receipt reflecting lien to be issued; fees.** When recording a lien on a registered vehicle, boat or motor~~,~~ used as collateral, a title ~~receipt~~ must be issued to reflect the lien. A title fee, in addition to the lien fee, will be ~~charged~~ assessed.

(f) ~~**Procedure for removal of lien entry from title**~~ **Reassignment of lien.** ~~An owner may secure a new title omitting reference to a security interest by presenting the lien release and tendering payment for the new title.~~ A secured party may file a reassignment of a lien to another secured party by submitting to the Oklahoma Tax Commission Motor Vehicle Division a release of the initial lien, as well as a lien entry form and filing fees for the lien reassignment. The lien entry form is to state it is a reassignment of an existing lien. Upon receipt of proper documentation and payment, the Motor Vehicle Division will enter the new lien information to the vehicle record, reflecting the same effective date and time as the initial lien.

(g) **Certain liens not perfectible under Motor Vehicle Code.** Lien ~~Entry Forms~~ entry forms cannot be accepted on any vehicle that cannot be issued an Oklahoma Certificate of Title. As an example, farm tractors or mobilized farm machinery cannot be issued a title. A lien cannot be perfected under the Motor Vehicle Code because a title will never be issued.

710:60-5-113. Lienholder notification

(a) **Procedures for entry of lien on Oklahoma title documents.** A tag agent or the Tax Commission must complete a lien entry form on any vehicle registering for the first time in Oklahoma, if the submitted documentation contains the name of a secured party, or if the title certificate is being held by the secured party in another state, or if the Oklahoma title is to be placed on document hold and the applicant has confirmed the existence of an active lien. The owner of a vehicle on which there is an existing lien or encumbrance and whose title is being held by a secured party in another state, or an owner who has confirmed the existence of an active lien on a vehicle for which the Oklahoma title is to be placed on document hold, shall file an affidavit to that effect with the Commission or the ~~Motor License Agent~~ motor license agent. The current

name and address of the secured party or lienholder shall also be stated in the affidavit. The lien will be shown on the face of the original Oklahoma title.

(b) **Notification procedure.** The lien entry form and releases will be mailed to the creditor, along with an explanatory letter. When an out-of-state lienholder is holding the out-of-state certificate of title, the lienholder will be requested to send the title to the Commission, so that an Oklahoma title with the lien noted thereon may be delivered to the debtor.

(c) **Fees.** The total charge for completing and recording the lien as set forth by statute will be paid by the person registering the vehicle (owner).

~~(d) **Releasing liens.** When releasing the lien, the lienholder shall return one lien release form, signed and dated, to the Tax Commission, and one lien release form, signed and dated, to the debtor. If the lien release forms are unavailable, a notarized lien satisfied statement may be utilized. If the owner presents an out-of-state title with the release portion signed and dated, a release lien Oklahoma title can be issued.~~

710:60-5-116. Possessory liens under Title 42 of the Oklahoma Statutes

(a) **Prior approval required.** Any person who wishes to claim a possessory lien and sell a vehicle for storage fees or work done for which they have not been compensated must comply with the applicable lien filing provisions of Title 42 of the Oklahoma Statutes and submit proper documentation to the Tax Commission for approval.

(b) **Forms and instructions available.** A packet of instructions and required forms may be obtained from the Motor Vehicle Division of the Tax Commission or online at www.oktax.state.ok.us. There are two (2) types of possessory lien filings applicable to vehicles under Title 42 of the Oklahoma Statutes:

(1) One process applies to vehicles, all-terrain vehicles, off-road motorcycles, manufactured homes, commercial trailers, boats and outboard motors titled in the State of Oklahoma, or with a federally recognized Indian tribe, and on which an active lien is recorded and for which the lien filers are not either licensed Class AA Wrecker Services or Salvage Pools, as defined in 47 O.S. § 591.2. Excepting manufactured homes, if an active lien is present, but is over fifteen (15) years old, the provisions of #2 below apply.

(2) One process applies to vehicles, all-terrain vehicles, off-road motorcycles, manufactured homes, commercial trailers, boats and outboard motors titled in another state, or which do not have a certificate of title or have a certificate of title on which an active lien is not recorded, or are excluded from the process described under #1 above by 42 O.S. § 91(D), or ~~to any vehicle~~ on which the lien is filed by either a licensed Class AA Wrecker Service or a Salvage Pool, as defined in 47 O.S. § 591.2.

(c) **Procedure for completion and submission of forms.** Incomplete or altered forms will not be accepted. The forms will provide the applicant with a designated area in which to enter any desired identifying information.

(d) **Persons qualified to file possessory liens.** Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof by furnishing material, labor or skill for the protection, improvement, safekeeping, towing, storage or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due such person from the owner for such service.

(e) **Manner of foreclosure.** Said lien may be foreclosed by a sale of such personal property, following proper notification to the record owner and all interested parties.

(f) **Notice requirements.**

(1) **General requirements.** The type and extent of the notices are outlined by statute and depend upon the status of the vehicle and the lien claimant. All require notification of the record owner and all interested parties. All require the completion and proper posting of a Notice of Sale (OTC ~~752A~~ 752-A), although some specific information on the Notice is not required under all lien filing situations. Certain situations also require the filing of a Notice of Possessory Lien (OTC 752-D).

(2) **Ownership/Lienholder determination for notification purposes.** Record ownership and the existence of any lienholders on file with the Oklahoma Tax Commission/Motor Vehicle Division, or the equivalent office in another state, may be established as follows:

(A) If the property has an Oklahoma tag number, any Oklahoma tag agency may be contacted for ownership/lienholder information. Provided the information is available in the computer file, the filer will be asked to complete a Vehicle Information Request (OTC Form 769) and pay the applicable fee.

(B) If there is no current ownership record on file, a Vehicle Information Request (Form OTC 769), requesting a title search for the last record owner is to be completed and submitted to the Oklahoma Tax Commission/Motor Vehicle Division Title Research Section, along with the applicable fee.

(C) If the Research Section has no record on file, interested party notice may be accomplished by publication. Refer to **Notice when owner is unknown.**

(D) If the property is from another state or an Indian Tribe, the Motor Vehicle Department of that state must be contacted for ownership/lienholder information. Letters or computer file printouts from other states' Motor Vehicle Departments providing that information are acceptable. Teletype printouts from law enforcement agencies are not acceptable.

(E) When the jurisdiction of titling is unknown and the property, unless a manufactured home, is five (5) model years or newer, or, if a manufactured home, is fifteen (15) model years or newer, the claimant or their agent shall request, in writing, that the Oklahoma Tax Commission Motor Vehicle Division ascertain the jurisdiction of titling. Within fourteen (14) days of receipt of the request, the Division will provide either the titling jurisdiction, or notice that no determination was made. If a titling jurisdiction is determined, the claimant must contact that state's Motor

Vehicle Division, or equivalent, for information. If no titling jurisdiction determination is made, as confirmed by the Division, notice by publication is required.

(F) When the jurisdiction of titling is unknown and the vehicle/ATV/commercial trailer boat or motor is over five (5) model years old, or manufactured home is over fifteen (15) model years old, notice by publication is required.

(3) **Notice when owner is unknown.** ~~If a vehicle owner is unknown~~ In the event all applicable ownership/lienholder determination procedures have been followed and resulted in no record found, ~~Section 2004 et. seq. of Title 12 of the Oklahoma Statutes makes provision for a~~ notice by publication in an authorized newspaper~~.~~ must be performed as follows:

(A) The newspaper must be authorized to publish legal notices pursuant to the provisions of 25 O.S. § 106 and must be published in the county in which the vehicle is located. If no newspaper authorized by law to publish legal notices is published in that county, the notice is to be published in some such newspaper of general circulation which is published in an adjoining county. Eligible newspapers may be verified by contacting the Oklahoma Tax Commission Motor Vehicle Division ~~Title 42 Section~~.

(B) The newspaper notice must identify the vehicle by identification number, year, and make ~~and model and any other identifying numbers~~.

(C) The notice must include ~~the public sale date, where the sale will be held,~~ the name of an individual who may be contacted in reference to the sale, including their telephone number~~, and the amount of money owed on the filer's lien~~ or the address where the property is located.

(D) The notice must run at least (1) day per week for (3) consecutive weeks. The first date available for public sale of the property is the day following publication of the final notice.

(E) Upon completion of the newspaper notification process, an Affidavit of Publication (OTC Form ~~752-D~~ 752-E) must be completed and included with the Title 42 documentation submitted to the Oklahoma Tax Commission / Motor Vehicle Division.

(g) **Sale and distribution of proceeds of sale.** When the vehicle is sold, the special (possessory) lien holder, upon satisfying the amounts due to him/her must make arrangements for the payment in excess of the amounts due to him to be paid to the secured party or parties and to the owner of the vehicle.

(h) **Effect of foreclosure on purchaser's title.** The purchaser of the vehicle will receive a Certificate of Title without any liens indicated. [**See:**42 O.S. § 91 et seq.]

(i) **Abandoned vehicle auction.** Any vehicle offered at an abandoned vehicle auction performed by a Class AA wrecker service or lien claimant is exempt from all prior year registration fees, title fees, stop flag fees, and any other fees imposed by the state resulting from the prior ownership of the vehicle. However, if the purchaser is the registered owner of the vehicle prior to towing, any outstanding prior years' fees will be due.

710:60-5-117. Releasing liens

(a) Perfected liens may ordinarily be released by submission of one (1) of the following to the Oklahoma Tax Commission Motor Vehicle Division or a motor license agent:

(1) Copy #4 (if unavailable, a **certified duplicate** copy of Copy #3 or #4, or an **original** or **certified** copy of Copy #1 is acceptable) of the six (6) part lien entry Form 21, with the release signed and dated.

(2) Any of the four (4) lien release receipts, original or certified copy, generated when the lien was perfected by the Oklahoma Tax Commission or a motor license agent, signed and dated.

(3) Should a standard lien release as outlined above be unavailable, the lien may be released by submission of a typed, notarized release statement from the secured party. The statement must include the notarized signature of a representative of the secured party, the name of the secured party, name of the debtor, and vehicle identification number/serial number of the vehicle.

(b) If the lender is out of business and no longer available, their lien may be released by the following procedure:

(1) A certified letter, restricted delivery, requesting a lien release and listing the year, make, and vehicle identification number is to be sent to the lender's address listed on the Motor Vehicle Division file.

(2) The administering agency of the lienholder (i.e., Oklahoma Used Motor Vehicle and Parts Commission if an Oklahoma used dealer; State Banking Department if a bank, savings and loan or credit union; Department of Consumer Credit if a finance company) is to be contacted and written confirmation requested that the lienholder is no longer in business at the address requested. If an out-of-state lienholder, that state's equivalent agency is to be contacted. If the response from the administering agency is that the lender was taken over by another business entity, that entity will have to be contacted for a release.

(3) The returned certified letter and post office receipts, the written confirmation from the administering agency, the Oklahoma certificate of title and applicable titling fee is to be submitted to the Oklahoma Tax Commission Motor Vehicle Division for review. If approved, a confirming affidavit will be returned to the vehicle owner for his/her review and signature. Upon return of that affidavit to the Division, a new Oklahoma certificate of title, without the lien reflected, will be issued.

PART 13. FOREIGN VEHICLES

710:60-5-130. Foreign vehicles

(a) **Documents required.** When an owner obtains a foreign vehicle originally manufactured for sale outside of the United States, or a vehicle that is currently titled in a foreign country, the following documents must be presented to obtain a certificate of title:

(1) Manufacturer's Certificate of Origin ~~and the Internal Revenue Service's Custom Form~~; **or** ~~The~~ the existing foreign Certificate of Title ~~and the Internal Revenue Service's Custom Form~~; **and**

(2) A notarized letter of translation for all foreign (non-English language) documents, containing the translator's name, address, and phone number, so the letter of translation can be verified; **and**

(3) Documentation verifying U.S. Customs clearance. If entering from a country other than Canada, documentation verifying compliance with ~~Release of the bond by the~~ U.S. Environmental Protection Agency and ~~the~~ U.S. Department of Transportation requirements.

(b) **Titling documentation.** All required documentation must be submitted in order to issue an Oklahoma title. No document hold title will be processed.

SUBCHAPTER 7. MOTOR VEHICLE EXCISE TAX

710:60-7-5. Licensed dealer exemptions

(a) **Determination of latest manufactured model vehicle.** For the purpose of determining an exemption for licensed dealers, the latest manufactured model vehicle is the newest year of vehicle ~~on the market~~ available at the retail level. For this purpose, ~~September 1~~ July 1 is the date that most vehicles for the next year go on sale. If a certain model comes out before that date, that model becomes the latest manufactured model for that specific line.

(b) **New dealers.** Any vehicle of the latest manufacturers model purchased by a franchised Oklahoma motor vehicle dealer which holds a franchise of the same line or make as the vehicle being registered is exempt from excise tax. This exemption does not apply if the vehicle is of a different make than the dealer's franchise. In that situation, "new vehicle" excise tax would be assessed. New dealers may register a vehicle for a period of four (4) months for personal use by an individual. A photocopy of the MSO should be surrendered at the tag agency and a title record will be created showing a hold status of "DM" with no excise tax due.

(c) **Used dealers.** Any vehicle owned and being offered for sale by a person currently licensed as a dealer in used vehicles is exempt from excise tax except on the latest manufactured model. If the vehicle is being titled from an MSO or is the latest manufactured model and has not been previously titled and excise tax paid in Oklahoma, excise tax is due and the "new vehicle" rate will be charged. The assignment must be made to the dealership's name only. However, a title with an assignment showing an individuals name "DBA" a dealership name will be accepted if the dealership is a partnership or is individually owned and the name on the assignment is a partner or the owner. Excise tax is ordinarily not exempt when transferring ownership from a licensed dealership to the individual owner of the dealership. Refer to OAC 710:60-3-57.

710:60-7-7. Charitable organization exemption

Charitable organizations ~~which are~~ licensed through the Oklahoma Secretary of State's Office are exempt from excise tax on vehicles donated to them, ~~in the following situations:~~

~~(1) The charitable organization is reassigning ownership of the vehicle to a current or potential recipient of Temporary Assistance to Needy Families (TANF) funds.~~

~~(2) The vehicle being donated to the charitable organization is over one (1) year delinquent in excise taxes or registration fees, or both.~~ as provided by statute.

SUBCHAPTER 9. MOTOR VEHICLE LICENSE AGENTS/AGENCIES

PART 5. SPECIFIC RECORDKEEPING DUTIES

710:60-9-53. Accountable items

~~(a)~~ All numbered items consigned to the motor license agent from the Oklahoma Tax Commission must be accounted for by the motor license agent. Once received, such items must be properly accounted for by the agent as either issued, reconsigned to another agent, or returned unissued to the Motor Vehicle Division. Agents should never destroy or dispose of unissued accountable items. ~~It is suggested that the agent make all employees aware of the importance of properly accounting for all numbered items. The following information should be reviewed by the motor license agent and all employees who will be dealing with numbered items for which the motor license agent will be held responsible.~~

~~(b) The computer inventory control system will not allow the issuance of any numbered item that is not reflected as an available item for that particular agent. The Motor Vehicle Division Supply Section must be immediately notified of any discrepancies in numbered item shipments received or of any reconsignments made to other agents.~~

710:60-9-54. Ordering supplies and inventory control of accountable items

Supplies should be ordered at least two weeks in advance. ~~Always~~ Agents are to check ~~the~~ their ~~inventory~~ inventories before ordering and include all items needed. When ordering by mail, ~~use~~ OTC Form 701-27 is to be utilized and ~~send~~ sent under separate cover directly to the Motor Vehicle Division Supply Section ~~supply section~~. If the order is to be picked up, the agent is to call at least ~~two (2) days~~ twenty-four (24) hours in advance and specify that the supplies will be picked up. ~~Following these steps will facilitate proper and timely processing of all supply orders.~~

(1) **Verification of consignment order.** Upon receipt of consigned numbered items from the Commission, the agent is to check to insure all items listed on the consignment sheet have been received. ~~Sign the~~ The original copy of the consignment sheet is to be signed by the agent and ~~return~~ returned to the Motor Vehicle Division. ~~Retain the~~ The second copy of the receipt is to be retained ~~for your file~~ by the agent. ~~(~~If received items do not correspond

with the list, the agent is to notify the Commission immediately.)

(2) **Verification of contents of all boxes, containers, packages.** If the manufacturer's seal on the box and/or package has been broken, the receiving agent is to open it and physically verify all items. If the manufacturer's seal has not been broken, the numbered items in each box/package may be verified as each container is opened prior to issuance. As individual boxes and/or packages of numbered items are opened prior to issuance, all numbered items should be checked to make sure all were received in the individual package or box.

(3) **Procedure for reporting discrepancies, missing items.** If discovered upon opening the individual boxes/packages that numbered items are missing, a notarized affidavit of fact from the motor license agent should be completed and sent into the Motor Vehicle Division within ten (10) days of discovering the item/items missing.

(4) **Procedure for mutilated items.**

(A) **License plates.** Occasionally, a license plate containing an error (mutilated) will be received from the tag plant. These plates are not to be issued, but returned to the Commission for inventory credit and cancellation. Send the mutilated tag to the Motor Vehicle Division with your fifteen (15) day report. Attach a statement of fact with the plate to insure that you receive proper credit.

(B) **Other items.** The remains of any registration decal or boat sticker that is mutilated must be returned to the Oklahoma Tax Commission for inventory credit and cancellation, accompanied by a statement of fact from the motor license agent.

(5) **Procedure for transferring accountable items to another agent.** When releasing numbered items to another agent, the releasing agent is to immediately notify Motor Vehicle Supply by telephone. The agent originally consigned numbered items is responsible for numbered items transferred to another agent until such time as the Motor Vehicle Supply Office is notified of the transfer.

(6) **Agent liability for missing items.** Following an inventory audit, normally conducted in conjunction with a field audit, agents will be notified of any unaccounted for items and will be given the opportunity to provide any information/documentation they may have relating to the items. Any numbered item for which the motor license agent is remains unable to account for will be charged to the Agent's agent's account as a missing item. The missing item rate is based upon the average amount received throughout the state for that type of item during the period of time in which it became unaccountable, except for tags and certain forms which have a fixed fee established. If a numbered item which a motor license agent is previously unable to account for is found by the Oklahoma Tax Commission to have been issued, the Agent agent will be charged the amount the taxpayer remitted to the Motor License Agent motor license agent.

(7) **Reconciliation of statements of missing items to inventories.** All statements submitted by the motor license agents concerning missing items to account for missing items must be signed by the agent and notarized by a notary public. All information submitted for consideration for credit is subject to approval by the Motor Vehicle Division. It is most important that the statement list sufficient information and/or documentation. Upon receipt in this office, the statements will may be filed by the Division and subsequently reviewed for credit at the time an inventory audit is completed on which the item/items addressed in statement of fact are carried as missing items. Always Agents are to keep a copy of all statements sent into this office for consideration of credit.

(8) **Preservation of accountable items.** Never Agents are to never destroy accountable items. They must be properly reported as issued, mutilated reconsigned to another agent, or returned to the Motor Vehicle Division for credit and deletion from the agent's inventory.

(9) **Procedure for void items.** Before receipts can be accepted as voids, either all copies (except the agent's file copy) must be received in the report or, in a situation where the taxpayer copies cannot be readily obtained, the receipt number of the correcting receipt must be listed on the voided receipt.

(10) **Unnumbered items.** Due to the large volume of unnumbered forms required for the collection of Motor Vehicle revenue, these forms are not to be used for scratch pads, notes etc. These forms

(9) **Forms.** Forms supplied to agents by the Motor Vehicle Division are to be used only for the purposes for which they have been provided.

710:60-9-56. Required OTC forms provided

Forms required in the application and processing of Oklahoma titles and registrations are provided to motor license agents by the Tax Commission. Agents may not create and/or require taxpayers to complete any additional form outside those approved and required by the Tax Commission.

PART 7. SPECIFIC REPORTING DUTIES

710:60-9-73. Waiver of penalty for failure to timely file semimonthly report

(a) **Criteria considered by the Commission.** The Oklahoma Tax Commission may waive the penalty for failing to file a semimonthly report in a timely manner if all the following criteria have been met:

(1) The funds to which the report applies have been properly deposited.

(2) The failure to timely file the report was due to emergency conditions beyond the control of the agent.

(3) The report has been filed within a week of the date on which it was required to be filed on.

(b) **Not applicable to penalties associated with late deposits.** These criteria in no way affect penalty assessments for

late deposits. ~~Assessments for late deposits cannot be abated by the Commission.~~

(c) **Penalties not a part of agency operating expenses.** Any motor license agent who pays a penalty in this situation may not allocate that payment as a part of operating expenses, but shall use personal funds for payment.

PART 9. SPECIFIC FISCAL DUTIES

710:60-9-90. Deposit of monies

A ~~Motor License Agent~~ motor license agent shall deposit all monies which the agent is required to account for and pay over to the Commission in an Oklahoma Tax Commission Motor License Agency Account (designated for each agency) within one (1) banking day of collection and prepare an advice of deposit which is to be ~~mailed~~ submitted to the Oklahoma Tax Commission ~~immediately after the deposit of such funds~~ in the manner prescribed by the Commission. The monies belonging to the Oklahoma Tax Commission are not to be deposited to any account except the Oklahoma Tax Commission Motor License Agent Account.

710:60-9-91. Advice of deposits and depositing procedure

(a) **Agent to establish Oklahoma Tax Commission Motor License Agency Account.** Every motor license agent shall establish an Oklahoma Tax Commission bank account in a bank or bank authorized to do a banking business in this state. At any time that collected receipts total One Hundred Dollars ($100.00) or more, all funds due the Oklahoma Tax Commission must be deposited into this account within one banking day of collection.

(b) **Agent to establish motor license agency operational account.** In addition, an operational account must be established in which all other funds received by a motor license agent in the performance of his or her duties shall be deposited and shall not be commingled with any other funds.

(c) **Advice of deposit slips to be typewritten.** Advice of Deposit slips, padded in duplicate, are consigned to agents by the Oklahoma Tax Commission to be used for making deposits into the Oklahoma Tax Commission account. All slips must be typed, with the agent's number and date of collection listed.

(d) **Distribution of copies; record retention; update of computer data.** One copy, after being stamped or initialed by the bank, is to be ~~mailed immediately~~ submitted to the Oklahoma Tax Commission, Motor Vehicle Division in the manner prescribed by the Commission. The ~~second copy is the agent's~~ agent is to retain a copy ~~and should be retained~~ as a permanent record. It is suggested that the agent's copies be filed with the agent's copy of the semimonthly report to which they pertain ~~to~~. Agents are required to enter ~~the~~ all Advice of Deposit information ~~on their terminals daily~~ to the Oklahoma Tax Commission MLA deposit entry system immediately following deposit of the described funds.

(e) **Reconciliation with semimonthly report.** All Advice of Deposits that apply to a particular semimonthly report should be listed on that report's remittance slip. If the total of the Advice of Deposit slips does not equal the semimonthly report amount, a supplemental deposit in the amount of the shortage must be made within one banking day of the close of the report period. The amount of any supplemental deposit will not be significant since the total of the daily deposits for a report period should be very close, if not equal to, the report total.

(f) **Checks.** All checks received must be made ~~out~~ payable to the Oklahoma Tax Commission and must include one of the following: ~~Driver's~~ Driver License Number, Social Security Number, or Department of Public Safety Identification Number~~, or Major Credit Card Number~~. The agent is not required to accept payment by check when late registration penalties are due.

(g) **Insufficient checks.** Should an agent's bank notify them of an insufficient check being deposited into the Oklahoma Tax Commission account, the agent must redeposit monies into the account to offset the debit. No Advice of Deposit is needed since the amount has already been included in a previous one.

(h) **Change of bank.** If changing banks, the agent must request new banking papers from the Oklahoma Tax Commission. The new banking papers must be completed and returned to the Oklahoma Tax Commission before making any deposit in the new bank.

(i) **Penalties for late deposits.** If funds due the Oklahoma Tax Commission are not deposited to the Oklahoma Tax Commission account within one banking day of collection, a penalty of 1% of the deposited amount will be assessed. If the deposit is not made within five days of collection, the penalty increases to 3% of the deposit amount.

(j) **Penalties incurred not a part of agency operating expenses.** Any motor license agent who pays a penalty for failure to make timely payments may not allocate that payment as a part of operating expenses, but must use personal funds for payment of the penalty.

710:60-9-92. Procedure for use of remittance slip in making deposits, corrections, adjustments, and reconciliations

(a) **Use of Oklahoma Tax Commission computer-generated remittance slip.** The remittance slip is a four purpose form. It serves as an overall reconciliation statement on an agent's individual report against deposits applied to that report.

(1) **Deposits.** All deposits and credit card remittances that apply to a specific report should be listed and totaled where indicated on the Remittance Slip. Should the total deposits purposely not equal the report total, the filing agent is to indicate the amount long or short and list the reason for the discrepancy in the section provided on the Remittance Slip.

(2) **Corrections.** A deposit correction entry may ~~be necessitated when~~ result from the depository account bank reconciliation ~~is made~~ performed by the Motor Vehicle Division. ~~at the end of each month. This could possibly erase a discrepancy in deposits versus reports in an earlier report.~~

(3) **Adjustments.** ~~Adjustments from notes~~ Monetary adjustments may be required in the Motor Vehicle Division audit process. Any audit adjustment will be explained in a ~~note~~ notice to the agent. ~~which will state the nature and amount of the adjustment and its location within the report. Such notes~~ Audit notices should be ~~checked~~ reviewed upon receipt by the agent ~~to determine either that the note is correct or is due to a misunderstanding~~ and questions or concerns directed to the Division. ~~Depending upon the type of adjustment note, the total amount will be indicated either in the "Audit Adjustments" column on the Remittance Slip, or in a separate document indicating that no charge or credit will be made until a later date.~~

(4) **Reconciliations.** The Division will complete a reconciliation of the remittance slip, ~~will summarize~~ summarizing total deposits versus total ~~remittances~~ taxes and fees due the Commission for the period, ~~include deposit adjustments on that period and adjustments from notes on that report~~ and incorporating any Division adjustments. ~~All deposits listed by the agent to apply to a particular report will be applied. The cumulative balances due agent or Commission will be totaled to one~~ An overall balance due agent or Commission for the report will be established and noted on the remittance slip. The balance due agent or Commission listed on a particular remittance slip is for that report only. It is not a cumulative fiscal year total. ~~The report balances must be combined with all other journal entries and special remittance adjustments to reflect an accurate fiscal year balance.~~

(b) **Procedures for common problem situations.**

(1) **Shortage resulting from failure to collect proper fees.** ~~In the event an agent is charged on a semimonthly report or debit journal entry for~~ Upon receiving notification of a failure to collect the proper ~~registration fees~~ tax and/or fee amount ~~(Shortage on Tax Collected)~~, ~~he~~ the agent should contact the taxpayer with an explanation and request for payment. Upon receipt of payment, the agent should deposit the money into the Oklahoma Tax Commission account, ~~and~~ issue the appropriate transaction receipt to the taxpayer ~~an Additional Tax Receipt~~ as proof of payment and notify the Division of the collection. ~~Attachment of a copy of the shortage note or journal entry to a copy of the additional tax receipt and mailing under separate cover to the Audit Section will ensure a proper adjustment to the agent's account.~~

(2) **Shortage resulting from inadequate documentation.** ~~If the agent is charged for shortage on tax and the agent failed~~ Upon receiving notification of failure to provide ~~the~~ proper supporting documentation for a reduced or special rate, ~~he~~ the agent must either collect and send in the documentation for review and cancellation of the notification by the Division, or contact the taxpayer for the additional amount due. Credit will be given if the documentation justifies withdrawal of the assessment.

(3) **Requests for credit resulting from encoding errors or failures.** If an agent requests credit for additional fees reflected in error on semimonthly reports as a result of failure to encode a special code or exemption, consideration will be made upon receipt of a statement of fact from the taxpayer denoting fees actually paid to the tag agent.

710:60-9-93. Dishonored checks

A ~~Motor License Agent~~ motor license agent shall ~~pay~~ reimburse the Oklahoma Tax Commission depository account for all dishonored checks which have been deposited to the account. The account is not to be charged. ~~If dishonored~~ Dishonored checks that cannot be collected by the agent within thirty (30) days of retrieval from the depository bank~~, they~~ are to be ~~sent~~ forwarded to the Oklahoma Tax Commission ~~immediately~~ for credit and appropriate collection efforts.

710:60-9-94. Procedures for reporting and collecting returned checks on OTC transactions

The following procedures should be followed in the event a check deposited by a motor license agent is returned unpaid.

(1) **Notice of returned check.** The bank should notify the agent that they are holding an unpaid item. ~~(The check must be run through twice).~~ The agent must make two (2) attempts to redeem the check through the depository bank. Should the bank refuse to accept the dishonored check a second (2nd) time, it shall be treated as if two (2) attempts had been made. The agent, in turn, has the option of picking up the check with cash or reducing the amount of his next deposit. The check should be picked up from the bank as soon as notification is received. Form 774-A is to be completed and immediately sent to the maker of the dishonored check.

(2) **Procedure for collection of returned check; applicable penalties; taxpayer liability.** ~~A charge as set forth by statute may~~ An initial returned check fee of $25.00 is to be charged to the maker of a returned check, after an attempt has been made to deposit the check twice. Should payment for the check be subsequently collected by any motor license agent, that agent may retain the $25.00 returned check fee. Any accrued penalty to date of collection is to be assessed. The taxpayer is notified to immediately remit payment to the tag office. The insufficient check, agent's file copies of documents on which the check was issued, and a copy of the notification to the taxpayer is to be sent to the Oklahoma Tax Commission if the ~~Agent~~ agent cannot collect the check. The security verification form is to be retained in the tag office along with photocopies of all documents issued. In the event the taxpayer returns all items issued by the motor license agent, the insufficient check is not to be returned to the taxpayer. Return of these items does not relieve the taxpayer of responsibility to remit the proper fees to the State of Oklahoma.

(3) **Procedure to obtain credit to agent's account; subsequent tender of payment.** The Tax Commission will then issue credit to the agent's account in the full amount of the ~~remittance for such instruments~~ transaction(s) for which the check was remitted. After documents

and the insufficient check have been sent in for credit, payment is not to be accepted from the registrant without calling the Motor Vehicle Division for instructions. The returned check and the copies of the documents on which the check was issued will be processed and forwarded to the Collections Division for collection. The statutes require that an agent accept a check one time. Statutes further stipulate that an agent is not required to take a check when the applicant is within a penalty period. Postdated checks are not to be accepted.

(4) **Tag or decal may be held.** The motor vehicle agent may hold a tag or decal until the taxpayer's check has cleared the bank.

(5) **Insufficient checks to be forwarded to the Oklahoma Tax Commission; time limits.** All insufficient checks for which payment is not received are to be sent into the Oklahoma Tax Commission no later than thirty (30) days after the date picked up from the bank. Further delays in processing may prevent collection.

710:60-9-96. Daily reports

~~Daily reports should be generated from the computer system on a daily basis~~ Agents are to generate daily reports from the Oklahoma Tax Commission computer system and ~~utilized~~ utilize the reports to verify all money totals and items issued. ~~Errors are much easier to locate and correct when isolated to one day's business.~~

710:60-9-97. Allowable fees and charges

(a) **Allowable fees and charges limited by statute.** The Oklahoma Statutes designate all fees which motor license agents are allowed to collect and retain from a taxpayer. No other fees may be charged to a taxpayer for any service rendered pertaining to the issuance of titles, registrations, permits or any other document required by the Motor Vehicle Division. All fees assessed a taxpayer must be documented in the agent's records so they may be identified as to type upon inquiry by the affected taxpayer or the Tax Commission. A general, non-specific category such as "Miscellaneous Fee" is not sufficient. The fee must be clearly identifiable.

(b) **Procedure for collection of costs of long-distance telephone charges.** The cost of a long distance phone call made to the Department of Public Safety or the Oklahoma Tax Commission Duplicate Title Approval (non-watts line), made at the request of a taxpayer, may be charged back to ~~him~~ the taxpayer, if agreed to in advance. Only the actual cost of the phone call may be charged.

(c) **Requiring mail delivery prohibited.** A motor license agent shall not require the taxpayer to accept mail delivery of any issued item or receipt.

(d) **Accountability for additional services fees.** When assessing a fee for an additional service that is not covered by statute, but is directly related to a motor license agency OTC or DPS transaction (i.e. providing a fax service for required documentation to complete a registration transaction), motor license agents are to:

(1) Explain to the taxpayer that the service being provided is an additional service (not a required service) offered by the agency, at an amount established by the MLA. The taxpayer is then free to accept or reject that additional service.

(2) Document each such fee in the agency records, so that it may be identified as to type upon inquiry by the affected taxpayer, or OTC. A general, non-specific category such as "Miscellaneous Fee" is not sufficient. The fee must be clearly identifiable.

710:60-9-98. Procedures for reporting and collecting returned checks on ~~driver's~~ driver license

The procedures in this Section should be followed by the ~~Motor License Agent~~ motor license agent in the event a check deposited in payment of a ~~driver's~~ driver license is returned unpaid:

(1) **Notice of returned check.** Upon receiving notification by the bank that a check which was written for a ~~driver's~~ driver license has been returned unpaid, the agent will pick up the check and complete a notice of returned check (OTC Form 774A) to be sent to the maker of the check. Deposit of the check must be attempted twice.

(2) **Penalties on ~~driver's~~ driver license returned checks.** The ~~Motor License Agent~~ motor license agent may charge the maker of the returned check a service charge fee of Twenty-five Dollars ($25.00), as set forth by statute, provided two attempts were made to deposit the check. Should the depositing bank refuse to accept the dishonored check a second (2nd) time, it shall be treated as if two (2) attempts had been made.

(3) **Procedures if returned check is uncollectible; obtaining credit to agent's account; subsequent payment.** If a ~~Motor License Agent~~ motor license agent is unable to collect a returned check written for a ~~driver's~~ driver license, the agent must send the returned check to the Oklahoma Tax Commission, along with the agent's file copy of the ~~driver's~~ driver license ~~receipt~~ report. The Oklahoma Tax Commission will credit the agent's ledger account in the full amount of ~~remittance due for~~ the ~~driver's~~ driver license transaction. The ~~Motor License Agent~~ motor license agent will forward directly to the Department of Public Safety (DPS) a copy of the returned check and a copy of the documents on the ~~driver's~~ driver license. DPS will send a letter advising the holder of the ~~driver's~~ driver license that the license is invalid, driving privileges are canceled, and payment for the returned check must be made to the ~~Motor License Agent~~ motor license agent. ~~The~~ When collecting for a driver license returned check, the motor license agent ~~Motor License Agent~~ will collect the amount of the returned check, plus the service charge and remit ~~both~~ the original check amount to the Oklahoma Tax Commission, while retaining the Twenty-five Dollar ($25.00) service charge. The Oklahoma Tax Commission will return the check to its maker. The ~~Motor License Agent~~ motor license agent will notify DPS when the returned check has been paid.

(4) ~~Driver's~~ Driver **license returned checks to be forwarded to the Oklahoma Tax Commission; time limits.** All insufficient checks for which payment is not received are to be sent to the Oklahoma Tax Commission ~~no later than~~ within thirty (30) days ~~after the date it is picked up~~ of retrieval from the depository bank.

PART 11. AGENCY OPERATION

710:60-9-111. Maintenance of notary by a motor license agent

A ~~Motor License Agent~~ motor license agent shall provide a notary for ~~all~~ those ~~motor vehicle~~ documents ~~as needed~~ required to be notarized by the Oklahoma Tax Commission. A motor license agent may not require notarization of any document that is not required to be notarized by the Commission or require additional notarized documents beyond those required by the Commission for the applicable transaction. Only the notary fee amount provided by statute may be assessed for each required notarization.

710:60-9-120. Summary of operational requirements

The following is a summary of operational requirements for agents and agencies:

(1) Agents are required to operate the agency forty (40) hours a week, of which at least four (4) hours are after normal business hours or on Saturday. The number of operating hours required of a specific agency may be reduced upon written approval from the Oklahoma Tax Commission.

(2) Agents are required to collect fees as outlined by state statute, and issue all documents (i.e. license plates, registration decals, title certificates) prescribed by the Oklahoma Tax Commission. Additionally, an agent must issue all titles and liens, boats and motors titles - registrations, etc., prescribed by the Oklahoma Tax Commission.

(3) Agents are required to deposit all monies required by the Commission into the designated Oklahoma Tax Commission bank account within one (1) banking day of collection, preparing an Advice of Deposit which is to be ~~mailed~~ submitted to the Oklahoma Tax Commission ~~immediately after the deposit of those funds~~ in the manner prescribed by the Commission.

(4) Agents are required to prepare semimonthly reports to be received by the Oklahoma Tax Commission no later than ten (10) working days after the cutoff day of the report.

(5) Agents must perform all necessary inspections required by the Oklahoma Tax Commission Motor License Agents manual.

(6) Agents are required to provide a notary within their agency.

(7) Agents are required to insure that all ~~items issued and the amounts of the daily deposits are entered into the computer terminal~~ transactions are processed and entered to the Oklahoma Tax Commission computer system on a daily basis.

(8) The Advice of Deposit shall be ~~mailed in daily~~ submitted to the Oklahoma Tax Commission, Motor Vehicle Division in the manner prescribed by the Commission. ~~One copy of the Lien Entry Form shall be mailed in daily to the Oklahoma Tax Commission.~~ Advice of Deposit information is to be entered to the Oklahoma Tax Commission MLA deposit entry system immediately following depositing of the funds.

(9) Agents are responsible for errors in tax computations and/or fee computations and collections as determined by the Commission.

(10) ~~Agents are required to make payment of all dishonored checks which have been deposited to the Oklahoma Tax Commission bank account so the Oklahoma Tax Commission account will not be charged. If dishonored checks cannot be collected by the agent, they are to be sent to the Oklahoma Tax Commission immediately if the Agent cannot collect the check.~~ A motor license agent shall reimburse the Oklahoma Tax Commission depository account for all dishonored checks which have been deposited to the account. The account is not to be charged. Dishonored checks that cannot be collected by the agent within thirty (30) days of retrieval from the depository bank are to be forwarded to the Oklahoma Tax Commission for credit and appropriate collection efforts.

(11) Agents are required to maintain files of all receipts and required reports issued by their office, including those of a former agent, if applicable, for at least two (2) years. Transaction receipts are to be maintained in ascending receipt number order.

(12) Agents must pay or account for all missing items identified by an inventory audit no later than thirty (30) days after billing.

(13) Agents shall not issue license plates, registration decals, receipts, or any type of document until payment of all applicable taxes and fees has been received in full. Payment may be made by cash, money order, personal or company check, cashier's check, or by a nationally recognized credit or debit card. The Tax Commission shall determine which nationally recognized credit or debit cards will be required to be accepted by motor license agents, ensuring no loss of state revenue results from their use. All checks and money orders are to be made payable to the Oklahoma Tax Commission.

(14) Agents are required to maintain strict compliance with the Motor Vehicle Licensing and Registration Act and with the rules, regulations, fee schedule, and procedures as set forth in the Motor License Agents Manual of Procedure and instructional material periodically issued by the Tax Commission.

(15) Agents are responsible for keeping abreast of, as well as implementing, statutory and procedural changes and instructions issued by the Tax Commission. Annual area schools conducted by the Commission are an important component in disseminating such instruction. Area school attendance is not mandatory, unless specifically mandated by the Commission, but is strongly encouraged.

(16) Agents are required to post the Public Notice Fee Chart, in addition to any other required public notices provided by the Tax Commission, in a conspicuous location in the agency.

(17) All customers' checks are to be made payable to: Oklahoma Tax Commission. One of the following identifying numbers must be listed on the face of the check: drivers license number, Department of Public Safety identification number, or a Social Security number.

(18) ~~Motor License Agents~~ Motor license agents are authorized to perform additional duties as directed by the Tax Commission, in compliance with Oklahoma statutory guidelines.

PART 13. SPECIAL PROVISIONS FOR APPLICATION, QUALIFICATION, APPOINTMENT, AND AGENCY OPERATION APPLICABLE TO CERTAIN MOTOR LICENSE AGENTS AND AGENCIES

710:60-9-137. Appointment

(a) The successful applicant will be furnished a letter of appointment after the interview has been conducted and the Oklahoma Tax Commission has received all the required information and documentation.

(b) If the applicant is rejected, the applicant will be forwarded a notification of rejection within ten (10) days along with the reason for rejection.

(c) The successful applicant must accept or reject the appointment, in writing, within thirty (30) days of the appointment letter.

(d) If the applicant accepts the appointment, he/she will be required to open his/her agency within fifteen (15) days after ~~he accepts~~ acceptance of the appointment, unless a time extension is granted by the Commission.

[OAR Docket #07-1027; filed 5-15-07]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 65. SALES AND USE TAX

[OAR Docket #07-1031]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
710:65-1-7 [AMENDED]
Subchapter 3. Reports and Returns; Payments and Penalties; Records
Part 1. General Provisions
710:65-3-1 [AMENDED]
Subchapter 7. Duties and Liabilities
710:65-7-13 [AMENDED]
Subchapter 13. Sales and Use Tax Exemptions
Part 7. Churches
710:65-13-40 [AMENDED]
Part 9. Computers; Data Processing; Telecommunications
710:65-13-51 [AMENDED]
710:65-13-52 [AMENDED]
Part 23. Gas and Electricity
710:65-13-124 [NEW]
Part 29. Manufacturing
710:65-13-153 [AMENDED]
710:65-13-155 [AMENDED]
710:65-13-156 [AMENDED]
710:65-13-157 [NEW]
Part 31. Medicine, Medical Appliances, and Health Care Entities and Activities
710:65-13-170 [AMENDED]
710:65-13-172 [AMENDED]
Part 35. Newspapers, Periodicals; Programs; Media
710:65-13-195 [NEW]
Part 42. Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate
710:65-13-275 [AMENDED]
Part 43. Social, Charitable and Civic Organizations and Activities
710:65-13-349 through 710:65-13-353 [NEW]
Part 65. Web Portals [NEW]
710:65-13-650 [NEW]
Subchapter 19. Specific Application and Examples
Part 5. "C"
710:65-19-56 [AMENDED]
Part 15. "H"
710:65-19-143 [AMENDED]
Subchapter 21. Use Tax
710:65-21-20 [AMENDED]
AUTHORITY:
68 O.S. §§ 203, 1354.18; Oklahoma Tax Commission
DATES:
Comment Period:
January 16, 2007 to February 21, 2007
Public hearing:
February 22, 2007
Adoption:
March 6, 2007 (Commission Order No. 2007-03-06-02)
Submitted to Governor:
March 15, 2007
Submitted to House:
March 15, 2007
Submitted to Senate:
March 15, 2007
Gubernatorial approval:
April 2, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 10, 2007
Final adoption:
May 10, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:

As part of the Commission's ongoing review of its rules, many proposed amendments to the existing rules have been made to clarify policy, improve readability, correct scrivener's errors, update statutory citation, insure accurate internal cross-reference and comply with statutory changes. All legislative references are to the Second Regular Session and Second Extraordinary Session of the 50th Legislature (2006).

Sections 710:65-1-7, 710:65-7-13 and 710:65-19-56 have been amended to reflect the provisions of SB 1084 exempting purchases by contractors if the property purchased is to be consumed or incorporated into a rural electric cooperative and purchases by contractors on behalf of churches. **[68:1357/68:1356]**

Section 710:65-3-1 has been amended to require, beginning July 1, 2007, all new sales tax registrants to report and remit sales tax in accordance with the Tax Commission's electronic funds transfer and electronic data interchange program unless the vendor receives an exception to the electronic filing requirement.

Section 710:65-13-40 has been amended to reflect the provisions of SB 1084 allowing tax exempt purchases by contractors on behalf of churches. **[68:1356]**

Sections 710:65-13-51, 710:65-13-52 and 710:65-13-155 have been amended to conform to current statutory authority regarding appeals from Oklahoma Tax Commission orders. **[68:225]**

New Section 710:65-13-124 has been adopted to reflect the provisions of SB 1084 which exempts contractors from paying sales tax on purchases of tangible personal property used in the construction or expansion of rural electric cooperatives' facilities. **[68:1357]**

Section 710:65-13-153 has been amended to delete the language limiting the exemption to manufacturers who were classified as such under the Standard Industrial Classification Code and opened it up to include those recognized in the statutes as manufacturers**. [68:1359]**

Section 710:65-13-156 dealing with sales tax exemptions for qualified distributors has been amended to allow the cost of parking, security, docks and facilities necessary for processing vehicles to be considered "costs of construction" and the sales tax paid on the materials used to build them is refundable as enacted by Section 8 of HB 1174XX. **[68:1359]**

New Section 710:65-13-157 has been adopted to reflect the provisions of HB 1174XX which created a manufacturing exemption for persons engaged in the process of manufacturing crushed stone and sand. **[68:1359]**

Section 710:65-13-170 has been amended to reflect a new exemption for vitamins, minerals and dietary supplements sold by a licensed chiropractor enacted by Section 5 of HB 1174XX. **[68:1357]**

Section 710:65-13-172 has been amended to reflect the provisions of HB 1174XX which created an exemption from sales tax on sales of tangible personal property and services to or by community mental health centers. **[68:1356]**

New Section 710:65-13-195 have been added to implement the provisions of SB 1084 which exempts the sale of programs relating to sporting and entertainment events from sales tax. **[68:1357]**

Section 710:65-13-275 has been amended to implement the provisions of SB 1084 which expands the exemption for 100% disabled veterans to include sales to the spouse of the veteran or a member of the veteran's household which are for the benefit of the disabled veteran. **[68:1357]**

Several new Sections have been added to Part 43 to reflect new statutory exemptions: Section 710:65-13-349, dealing with sales of food boxes by churches or organizations which are exempt under 26 U.S.C. §501(c)(3). [HB 2397] **[68:1356];** Section 710:65-13-350, dealing with sales of tangible personal property and services to or by Daughters of the American Revolution [HB 1174XX] **[68:1356]**; Section 710:65-13-351, dealing with sales of tangible personal property and services to or by the Veterans of Foreign Wars organization [HB1174XX] **[68:1356]**; Section 710:65-13-352, dealing with sales of tangible personal property and services to or by YMCA or YWCA organizations [HB 1174XX] **[68:1356]**; Section 710:65-13-353, dealing with sales of tangible personal property and services to or by organizations primarily engaged in providing educational services and programs concerning health-related diseases [HB 1174XX] **[68:1356].**

A New Part 65, dealing with Web Portals, has been added to Subchapter 13. A New Section 710:65-13-650 has been added to Part 65 to reflect the provisions of SB 1577 providing a sales tax exemption for sales to a web search portal located in this state which derives 80% of its gross annual revenue from the sale of a product or service to an out-of-state buyer**. [68:1357]**

Section 710:65-19-143 has been amended to clarify policy regarding the sales tax treatment of food and drinks provided as a part of a packaged room rate by hotel or motel operators.

Section 710:65-21-20 has been amended to clarify policy that tangible personal property can be brought into a county or municipality temporarily for the purposes of fabrication, repair, testing, alteration, maintenance or other service and not be subject to use tax.

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 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

710:65-1-7. Consumer/user defined; specific applications

"Consumer" or **"user"** means a person to whom a taxable sale of tangible personal property is made or for whom a taxable service is performed.

(1) **Hospitals, sanitariums, nursing homes and emergency medical care.** Hospitals and sanitariums are primarily engaged in the business of selling services, and for the purposes of the Sales Tax Code are considered to be the consumers or users of all tangible personal property and services used in the operation of the institution. Thus, the gross proceeds derived from sales of tangible personal property and certain services to such institutions are subject to tax. This paragraph applies to all hospitals, sanitariums and nursing homes, including those owned or operated by churches, fraternities, cooperatives, or any other organization, except those operated by the Federal Government, the State, or a political subdivision thereof.

(2) **Withdrawals from stock.** If any business purchases tangible personal property for resale, manufacturing or further processing and that business withdraws tangible personal property, either from its inventory or after such inventory has been manufactured or processed for its own use or consumption, that business has made a taxable sale and the value of the property withdrawn is taxable at its **"sales value"**, as defined in *OAC* 710:65-1-2. The business withdrawing tangible personal property from inventory should include the **"sales value"** of such property in gross receipts or gross proceeds on its sales tax report for the month the property was withdrawn.

(3) **Contractors.** Contractors are consumers or users, and must pay sales tax on all taxable services and tangible personal property, including materials, supplies, and equipment, purchased to develop and improve real property. Examples of contractors subject to this paragraph are: painting contractors, road contractors, grading and excavating contractors, electrical contractors, plumbing contractors, and other persons engaged in a contractual arrangement to make improvements on real property. A person working for a salary or wage is not considered a contractor. The Sales Tax Code limits the ability of contractors to make purchases exempt from sales tax based on the exempt status of another entity to the following situations: [**See:** 710:65-7-6 and 710:65-7-13]

(A) A contractor who has a public contract, or a subcontractor to that public contract, with an Oklahoma municipality, county, public school district, an institution of the Oklahoma System of Higher Education, a rural water district, the Grand River Dam Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Municipal Power Authority, the City of Tulsa-Rogers County Port Authority, the Broken Bow Economic Development Authority, the Muskogee City-County Port Authority, the Oklahoma Ordnance Works Authority, the Durant Industrial Authority, the Ardmore Development Authority, or the

Oklahoma Department of Veterans Affairs, may make purchases of tangible personal property or services, which are necessary for carrying out the public contract, exempt from sales tax.

(B) A contractor who has entered into a contract with a private institution of higher education or with a private elementary or secondary institution, may make purchases of tangible personal property or services, including materials, supplies and equipment used in the construction of buildings owned and used by the institution for educational purposes exempt from sales tax.

(C) A contractor who has contracted with an agricultural permit holder to construct a facility which will be used directly in the production of any livestock, including facilities used in the production and storage of feed for livestock owned by the agricultural permit holder, may make purchases of materials, supplies and equipment necessary to fulfill the contract, exempt from sales tax.

(D) A contractor may make purchases of materials, supplies and equipment necessary to fulfill a contract, exempt from sales tax, for use on campus construction projects for the benefit of institutions of the Oklahoma State System of Higher Education or private institutions of higher education accredited by the Oklahoma State Regents for Higher Education. The projects must be financed by or through the use of nonprofit entities which are exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

(E) A contractor may make purchases of machinery, equipment, fuels, and chemicals or other materials, exempt from sales tax, which will be incorporated into and directly used or consumed in the process of treatment of hazardous waste, pursuant to *OAC* 710:65-13-80. Contractors claiming exemption for purchases to be used to remediate hazardous wastes should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in 710:65-13-80, and provide a copy of the letter to vendors, pursuant to subsection (f) of that rule.

(F) A contractor, or a subcontractor to such contractor, with whom a church has duly entered into a construction contract may make purchases of tangible personal property or services exempt from sales tax which are necessary for carrying out such construction contract.

(G) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property which is to be *consumed or incorporated in the construction or expansion of a facility for a corporation organized under Section 437 et seq. of Title 18 of the Oklahoma Statutes as a rural electric cooperative* exempt from sales tax.

(4) **Repairmen.** Repairmen are persons engaged in the business of repairing tangible personal property. Parts incidental to the repair service which are consumed/used in making repairs are taxable to the repairman as a consumer/user. [**See:** 68 O.S. § 1352]

SUBCHAPTER 3. REPORTS AND RETURNS; PAYMENTS AND PENALTIES; RECORDS

PART 1. GENERAL PROVISIONS

710:65-3-1. Reports, payments, and penalties

(a) **Monthly reporting.** Every vendor, except as noted in (b), ~~and~~ (c) and (d) of this Section, shall file with the Commission on or before the 20th day of each month, a report on forms to be obtained from the Commission, covering sales for the previous calendar month.

(b) **Semiannual reporting.** Any vendor who is classified as a Group Three vendor or whose total tax liability for any one (1) month does not exceed Fifty Dollars ($50.00) must notify the Commission of its intent to file a Semiannual return and remittance in lieu of a monthly return and remittance, provided the vendor qualifies.

(1) **Qualification.** To qualify, the vendor must substantiate that the vendor is in business making sales incidental to that business, or is seasonal or transient, or makes sales through peddlers, solicitors or other salesmen without an established place of business. Otherwise, to qualify, filing records will have to substantiate the fact that the vendor's sales tax liability, for the past six (6) consecutive months immediately preceding the date of the application, has not exceeded Fifty Dollars ($50.00) in any one month.

(2) **Commencement of semiannual reporting.** It should be clearly understood that semiannual filing should not be commenced until the Commission notifies taxpayer, in writing, that Commission records have been amended to reflect semiannual filing status. Failure to follow this procedure may result in taxpayer receiving assessments, adjustments, etc. for the months of February through June and August through December.

(3) **Semiannual reporting due dates.** When the application for semiannual filing has been approved, returns shall be filed on or before the 20th day of January and July of each year for the preceding six (6) months' period.

(4) **Revocation of authorization.**

(A) Conditions that could cause revocation of the authorization to report semiannually are:

(i) In the event that the vendor filing the return on a semiannual basis becomes delinquent in either the filing of the return or the payment of the taxes due thereon, or

(ii) In the event that the liability of a vendor, who has been authorized to file returns and to make payments on a semiannual basis, exceeds Fifty Dollars ($50.00) in sales tax for any one month, or

(iii) In the event that the Commission determines that any semiannual filing or return or any payment of tax due thereon would unduly jeopardize the proper administration of the Oklahoma Sales Tax Law.

(B) If the Commission decides it is necessary to revoke the authorization to file semiannually in relation to any of the conditions in (A) of this paragraph, the taxpayer will be required to file returns and to pay the tax due on a monthly basis.

(c) **Semimonthly electronic reporting.** Persons owing an average of Two Thousand Five Hundred Dollars ($2,500.00) or more, per month, in total sales taxes for the previous fiscal year shall remit the tax due and shall participate in the Tax Commission's electronic funds transfer and electronic data interchange program, according to the following schedule:

(1) For sales from the first (1st) day through the fifteenth (15th) day of each month, the tax shall be due and payable on the twentieth (20th) day of the month, and remitted to the Tax Commission by electronic funds transfer. A taxpayer will be considered to have complied with the requirements of this paragraph if, on or before the twentieth (20th) day of each month, the taxpayer paid at least ninety (90) percent of the liability for that fifteen-day period, or at least fifty (50) percent of the liability incurred during the immediate preceding calendar year for the same month; and

(2) *For sales from the sixteenth (16th) day through the end of each month, the tax shall be due and payable on the twentieth (20th) day of the following month, and remitted to the Tax Commission by electronic funds transfer*; [**See:** 68 O.S. § 1365(D)(2)]

(d) **Electronic reporting.** Beginning June 1, 2007, all new sales tax registrants required to report and remit sales tax shall file their monthly sales tax report in accordance with the Tax Commission's electronic funds transfer and electronic data interchange program unless the vendor receives an exception to the electronic filing requirement pursuant to OAC 710:65-3-4(c).

(e) **Electronic reporting; due dates; delinquency dates.** Persons required to remit the tax due pursuant to subsection (c) and (d) shall file a monthly sales tax report in accordance with the Tax Commission's electronic data interchange program on the twentieth (20th) day of the month following that in which the sales occurred. Taxes not paid on or before the due dates specified in subsection (c) shall be delinquent from such dates.

(~~e~~f) **Payment.** Remittances covering the sales tax liability reported shall accompany the sales tax return. Sales taxes will be considered delinquent and interest as provided by law will be charged, if payment is not received or postmarked by the date the return is due.

(~~f~~g) **Interest.** Interest at the rate provided by law will be imposed on all liability not paid at the time when required to be paid. Said interest will be imposed and collected on the delinquent tax at the statutory rate from the date the tax is delinquent until paid.

(~~g~~h) **Audit; refund/credit for overpayment; assessment inclusive of interest due.** When, in the course of an audit, it is found that the tax being audited was overpaid for any period included in the audit, and the taxpayer has not filed a verified claim for refund of the overpayment, the overpayment may be allowed as a credit against the total liability established during the audit. The overpayment shall be applied to the liability as of the date of the overpayment. Whenever an assessment is made for any delinquent tax, the amount of interest due thereon at the time the assessment is made shall be included in the assessment.

(~~h~~i) **Liability for tax, penalty, interest; interest computation.** Any taxpayer responsible for the payment of any tax levied by any state tax law shall be liable for payment of interest at the rate set by statute on any amount of tax not paid before it becomes delinquent. Interest shall be computed for each day of delinquency from the date the tax becomes delinquent until it is paid.

(~~i~~j) **Penalty for failure to file and remit.** Penalties - A vendor who fails to file a return and remit the full amount of the tax within fifteen (15) days after the tax is due shall be subject to a penalty of ten (10) percent of the amount of tax due.

(~~j~~k) **Penalty for failure or refusal to file after demand.** In the case of failure or refusal to file within ten (10) days after written demand has been served upon the taxpayer by the Commission, a penalty of twenty-five (25) percent may be assessed and collected.

(~~k~~l) **Penalty for fraud.** If any portion of the deficiency is due to fraud with intent to evade tax, a penalty of fifty (50) percent shall be added, collected, and paid.

(~~l~~m) **Waiver of penalty; interest.** At the discretion of the Commission, the interest or penalty, or both, may be waived provided the taxpayer can demonstrate that the failure to pay the tax when due is satisfactorily explained, or that the failure resulted from a mistake by the taxpayer of either law or fact, or that the taxpayer is unable to pay the interest or penalty due to insolvency. Requests for waiver or remission must be made in writing and must include all pertinent facts to support the request. [**See:** 68 O.S. §§ 217, 1365, 1405]

SUBCHAPTER 7. DUTIES AND LIABILITIES

710:65-7-13. Vendors' responsibility - sales to contractors

(a) **General rule.** Contractors are defined by statute as consumer/users and must pay sales tax on all taxable services and tangible personal property, including materials, supplies, and equipment purchased to develop, repair, alter, remodel, and improve real property.

(b) **Limited exceptions.** A contractor may make purchases based upon the exempt status of another entity only in the statutorily-limited circumstances described in this paragraph.

(1) A contractor who has a public contract, or a subcontractor to that public contract, with an Oklahoma municipality, county, public school district, an institution of the Oklahoma System of Higher Education, a rural water district, the Grand River Dam Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Municipal Power Authority, the City of Tulsa-Rogers County

Port Authority, the Broken Bow Economic Development Authority, the Muskogee City-County Port Authority, the Oklahoma Ordnance Works Authority, the Durant Industrial Authority, the Ardmore Development Authority, or the Oklahoma Department of Veterans Affairs, may make purchases of tangible personal property or services, which are necessary for carrying out the public contract, exempt from sales tax.

(2) A contractor who has entered into a contract with a private institution of higher education or with a private elementary or secondary institution, may make purchases of tangible personal property or services, including materials, supplies and equipment used in the construction of buildings owned and used by the institution for educational purposes exempt from sales tax. However, the institution must be registered or accredited with the Oklahoma State Regents for Higher Education, the State Board of Education, or the State Department of Education.

(3) A contractor who has contracted with an agricultural permit holder to construct a facility which will be used directly in the production of any livestock, including facilities used in the production and storage of feed for livestock owned by the agricultural permit holder, may make purchases of materials, supplies and equipment necessary to fulfill the contract, exempt from sales tax. [**See:** 710:65-7-11]

(4) A contractor may make purchases exempt from sales tax for use on campus construction projects for the benefit of institutions of the Oklahoma State System of Higher Education or private institutions of higher education accredited by the Oklahoma State Regents for Higher Education. The projects must be financed by or through the use of nonprofit entities which are exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code. Contractors claiming exemption for purchases to be used in a qualified campus construction project should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in 710:65-13-210, and provide a copy of the letter to vendors, pursuant to subsection (g) of that rule. [**See:** 68 O.S. ~~1356(38)~~ §1356(41)]

(5) A contractor may make purchases of machinery, equipment, fuels, and chemicals or other materials, exempt from sales tax, which will be incorporated into and directly used or consumed in the process of treatment of hazardous waste, pursuant to *OAC* 710:65-13-80. Contractors claiming exemption for purchases to be used to remediate hazardous wastes should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in 710:65-13-80, and provide a copy of the letter to vendors, pursuant to subsection (f) of that rule.

(6) A contractor, or a subcontractor to such contractor, with whom a church has duly entered into a construction contract may make purchases of tangible personal property or services exempt from sales tax which are necessary for carrying out such construction contract.

(7) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property which is to be *consumed or incorporated in the construction or expansion of a facility for a corporation organized under Section 437 et seq. of Title 18 of the Oklahoma Statutes as a rural electric cooperative* exempt from sales tax.

(c) **Documentation required for limited exceptions.** In the case of a sale to a contractor claiming exemption pursuant to subsections (b)(1), (b)(2), ~~or~~ (b)(3), or (b)(6) of this Section, the vendor must obtain:

(1) A **copy** of the exemption letter or card issued to one of the entities described in (b) of this subsection;

(2) Documentation indicating the contractual relationship between the contractor and the entity; and,

(3) Certification by the purchaser, on the face of each invoice or sales receipt, setting out the name of the exempt entity, that the purchases are being made on behalf of the entity, and that they are necessary for the completion of the contract.

SUBCHAPTER 13. SALES AND USE TAX EXEMPTIONS

PART 7. CHURCHES

710:65-13-40. Sales by churches; sales to churches

(a) **Sales "by" churches.** Sales by churches are not subject to sales tax when it can be said that such selling is noncompetitive with business establishments.

(1) The following are tests for determining that such selling is noncompetitive:

(A) The transactions are conducted by members of the church and not by any franchisee or licensee.

(B) All of the proceeds must go to the church organization.

(C) The transaction must not be a continuing one but rather should be held whether annually or a reasonably small number of times within a year. The test of reasonableness would be an administrative decision, to be made by the Commission.

(D) The reasonably ascertainable dominant motive of most transferees of the items sold must be the making of a contribution, with the transfer of property being merely incidental and secondary to the dominant purpose of making a gift to the church.

(2) In addition, there are these further considerations as guides to the resolution of questions raised by each individual situation:

(A) The nature of the particular item sold. All other things being equal, the decision as to candy might well be different from the decision as to refrigerators.

(B) The character of the particular sale, and the real practical effect upon putative competition. [**See:** 68 O.S. § ~~1356(F)~~ 1356(7)]

(b) **Sales "to" churches.** Generally, sales made directly to a church are exempt from sales and use tax. Only sales

purchased by the church, invoiced to the church, and paid for by funds or check directly from the church, will qualify for the exemption. A vendor wishing to be relieved of liability to collect the tax should follow the requirements of *OAC* 710:65-7-6 and 710:65-7-15.

(c) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor with whom a church has duly entered into a construction contract, or to any subcontractor to such construction contract, ~~as defined by 68 O.S. § 1352,~~ are exempt ~~taxable to the contractor. A contractor who performs improvements to real property for a church may **not** purchase the tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to a church~~ provided they are necessary for carrying out the contract. A vendor wishing to be relieved of liability to collect the tax should follow the requirements of subsection (c) of OAC 710:65-7-13.

PART 9. COMPUTERS; DATA PROCESSING; TELECOMMUNICATIONS

710:65-13-51. Exemption for sales of computers, data processing, telephonic and certain related equipment and services to a qualified aircraft maintenance or manufacturing facility

(a) ~~Effective January, 1991, sales~~ Sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment for use in a qualified aircraft maintenance or manufacturing facility are exempt from sales and use tax.

(1) For purposes of this exemption, **"qualified aircraft maintenance or manufacturing facility"** is defined as any new or expanded business which adds at least Two Hundred Fifty (250) new full-time-equivalent employees, as certified by the Employment Security Commission. In order to qualify for the exemption, the construction cost of the new or expanded facility must exceed Five Million Dollars ($5,000,000.00).

(2) For purposes of this exemption, the following will apply:

(A) **"Computer"** means an electronic device *that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.* [68 O.S.Supp.2003, § 1352]

(B) **"Data processing equipment"** includes machines which perform work using programmed instruction, and which singly or collectively have capabilities of memory, logic, arithmetic and/or communication and all machines used in support of machines possessing those capabilities;

(C) **"Related peripheral"** means input, output, processing, storage, software and communication facilities which are connected or related to a device in a system or network; and

(D) **"Telecommunications"** includes data transmission between a computing system and remotely located devices.

(3) The exemption shall include, but shall not be limited, to the following:

(A) Computer
(B) Terminal
(C) Modem
(D) Printer
(E) Disk Drive
(F) Video Display Terminal
(G) Memory
(H) Removable Disk
(I) Fixed Disk
(J) Bar Code Reader
(K) Key Punch
(L) CRT
(M) Plotter
(N) Card Reader/Punch
(O) Tape Drive
(P) Monitor
(Q) Software
(R) Telephone equipment
(S) Telephone service
(T) Telegraph equipment
(U) Telegraph service
(V) Dedicated lines

(4) The exemption shall not apply to the following:

(A) Supplies, such as:
(i) Diskettes
(ii) Tape
(iii) Paper
(iv) Pens
(v) Ribbons
(vi) Print Wheels
(vii) Media Storage
(viii) Storage Case
(ix) Cleaning Product
(x) Cleaning Kit
(xi) Template
(xii) Print-out Ruler
(xiii) Label

(B) Furniture, such as:
(i) Desk
(ii) Chair
(iii) Table
(iv) Rack
(v) Stand
(vi) Acoustical Protector
(vii) Shelving

(C) Accessories, such as:
(i) Surge Protector
(ii) Filter
(iii) Radiation Shield
(iv) Dust Cover
(v) Static Dissipator
(vi) Security System

(b) No exemption shall be granted if the qualified aircraft maintenance or manufacturing facility fails to file the documentation required below with the Commission within thirty-six (36) months of the date of purchase and the required certification issued by the Employment Security Commission within sixty (60) months of the date of first purchase.

(c) Pursuant to statute, the exemption for sales to ~~a~~ an aircraft maintenance or manufacturing facility outlined above will be administered as a refund for state and local taxes paid by the aircraft maintenance or manufacturing facility to the vendor or, in the case of use tax, self-remitted to the State of Oklahoma.

(d) All persons who believe that they fall within the exemption provided shall file an Application/Intent to Qualify with the Commission. The Application/Intent to Qualify shall be on forms provided by the Commission and shall include, as attachments, specifications of the new or expanded facility, a complete description of the maintenance repair or manufacturing that will take place within the facility, and other information requested by the Commission. Upon receipt of the Application, the Application will be reviewed by the Commission for completeness and compliance with the exemption. A copy of the Application will be forwarded to the Employment Security Commission for establishment of the entity's base line employment. The applicant will be notified of any action taken regarding the Application by the Commission.

(e) For each purchase made, the entity who believes that it will be certified shall file the following documentation with the Commission on forms provided for that purpose by the Commission:

(1) Invoice indicating the amount of state and local taxes billed to the aircraft maintenance or manufacturing facility;

(2) Affidavit of the vendor of the tangible personal property that state and local sales tax reflected on that invoice has not been credited, rebated, or refunded to the aircraft maintenance or manufacturing facility, but rather, that the sales tax charged has been collected by the vendor and remitted to the Commission. Any number of invoices from the same vendor may be attached to one affidavit so long as the affidavit covers all invoices attached;

(3) All additional documentation required to be submitted by the Commission.

(f) At the option of the entity who believes it will be certified as a qualified aircraft maintenance or manufacturing facility, the documentation required in (e) of this Section can be filed monthly, quarterly, semi-annually, or annually. However, all documentation must be filed no later than thirty-six (36) months after the item is purchased. The Commission will review the documentation submitted and determine within thirty (30) days whether the refund claimed will be allowed. In the event that the claim is denied, the person who submitted the documentation will be notified by the Commission as to the reason for denial. The entity submitting the documentation will similarly be notified that a claim has been approved.

(g) Each month, the Commission shall transfer from sales tax collected, to an account designated by the Commission, the estimated amount of claims approved the previous month.

(h) Upon completion of the new or expanded business and the addition of the employees as required by statute, the entity believing it falls within the exemption shall apply for certification on forms provided by the Commission. Each application for certification shall be reviewed by the Commission for the purpose of determining that the total cost of construction exceeded the sum of Five Million Dollars ($5,000,000.00) required by law. During such time that the Commission is reviewing the application for certification, the Commission will forward a copy of the application for certification to the Employment Security Commission who will review employees hired. Upon completion of the review by the Commission and the Employment Securities Commission, the Tax Commission will notify the applicant of the approval or denial of the certification requested.

(1) The applicant whose certification has been approved shall receive a refund in the amount not to exceed the total amount of state and local sales taxes paid and previously approved by the Commission. The qualified aircraft maintenance or manufacturing facility will also receive accrued interest upon the principal amount of the refund made as provided for by statute. [**See:** 68 O.S. §~~1357(L)~~ 1357(14)]

(2) The following shall apply when a request for certification is denied:

(A) Any applicant whose request for certification is denied may, within thirty (30) days after the mailing of the denial by the Commission, file with the Commission a protest under oath, signed by the applicant or a duly authorized agent setting out:

(i) a statement of denial as determined by the Commission;

(ii) a statement of the applicant's disagreement with such denial, and

(iii) supporting documentation relied on by the taxpayer in support of certification.

(B) If an applicant fails to file a written protest within the thirty (30) days, then the denial, without further action of the Commission, shall become final and no appeal will be entertained.

(C) Applicants filing a protest to the denial of certification by the Commission shall be scheduled for a hearing en banc before the Commission for a date, time and place set by the Commission. Notice of the date, time and place will be given by mail at least ten (10) days prior to the hearing. The burden of proving that the denial of certification was erroneous is on the applicant. The applicant can present testimony, evidence and argument in support of the requested certification.

(D) The Commission will issue an order in each case. That order is directly appealable to the Supreme Court. ~~An applicant aggrieved by the order of the Commission must file, within ten (10) days of mailing of the order, a notice of intent to appeal with the Secretary of the Commission.~~ 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 Commission at the same time the Petition in Error is filed. [NOTE: For further information the applicant should refer to the Rules of Practice and Procedure Before the Oklahoma Tax Commission (710:1-5-21 through ~~710:1-5-48)~~ 710:1-5-49. [**See:** 68 O.S. §§ 225, ~~1357.4~~ 1357.5, ~~1404.3~~ 1404.4]

710:65-13-52. Sales of computers, data processing equipment, related peripherals, and telephone, telegraph, or telecommunications service and equipment to a qualified purchaser primarily engaged in computer services and data processing or research and development

(a) **Definitions.** In addition to the definitions found in the Oklahoma Research and Development Act, 68 O.S. Supp. 1992, §54001 et seq., the following words and terms, when used in this Section shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Computer"** means an electronic device *that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.* [68 O.S.Supp.2003, § 1352]

(2) **"Data processing equipment"** means machines which perform work using programmed instruction, and which singly or collectively have capabilities of memory, logic, arithmetic and/or communication and all machines used in support of machines possessing those capabilities.

(3) **"Primarily engaged in"** means that at least seventy-five percent (75%) of the gross revenues of the new or expanding business must come from such activities.

(4) **"Qualified purchaser"** means any new or expanded business or facility which adds at least ten (10) new in-state full-time-equivalent employees, as certified by the Employment Security Commission, for a period of at least thirty-six (36) months at an average annual salary of at least Thirty-five Thousand Dollars ($35,000.00) per year per employee. In addition, at least fifty percent (50%) of the annual gross revenues must be derived from sales of a product or service to an out-of-state buyer or consumer.

(5) **"Qualified purchases"** means computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment.

(6) **"Related peripheral"** means input, output, processing, storage, software and communication facilities which are connected or related to devices in a system or network.

(b) **Qualification.** ~~Effective July 1, 1992, sales~~ Sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications services and equipment sold to a qualified purchaser by a qualified vendor are exempt from sales and use tax.

(c) **Exempt items.** Exempt items shall include, but shall not be limited, to the following:

(1) Bar code reader
(2) Card reader/punch
(3) Computer
(4) CRT
(5) Dedicated lines
(6) Disk drive
(7) Fixed disk
(8) Key punch
(9) Memory
(10) Modem
(11) Monitor
(12) Plotter
(13) Printer
(14) Removable disk
(15) Software
(16) Tape drive
(17) Telegraph equipment
(18) Telegraph service
(19) Telephone equipment
(20) Telephone service
(21) Terminal
(22) Video display terminal

(d) **Non-exempt items.** The exemption shall not apply to the following:

(1) Supplies, such as:
(A) Cleaning product
(B) Cleaning kit
(C) Diskettes
(D) Media storage
(E) Paper
(F) Pens
(G) Print wheels
(H) Print-out label
(I) Print-out ruler
(J) Ribbons
(K) Storage case
(L) Tape
(M) Template

(2) Furniture, such as:
(A) Acoustical protector
(B) Acoustical shelving
(C) Chair
(D) Desk
(E) Rack
(F) Stand
(G) Table

(3) Accessories, such as:
(A) Dust cover
(B) Filter
(C) Radiation shield
(D) Security system
(E) Static dissipater
(F) Surge protector

(e) **Qualified purchaser explained.** Specifically exempted from sales and use taxes are sales of qualified purchases to a qualified purchaser primarily engaged in computer services and data processing as defined under Industrial Group Number 7372 (prepackaged software), Industrial Group Number 7373 (computer integrated system design), Industrial Group Number

7374 (computer processing and data preparation and processing services) and Industrial Group Number 7375 (information retrieval services). In order to qualify for this exemption under Industrial Group 7374 a qualified purchaser must have a minimum of One Hundred Thousand Dollars ($100,000.00) in qualified purchases yearly. In order to qualify for this exemption, a new or expanding business can not include the existing employee positions of any business enterprise that is directly or beneficially owned by a corporation, trust, joint venture, proprietorship, or partnership doing business in this state as of January 1, 1992.

(f) **Out-of-state sales.** Eligibility to receive the exemption provided for in 68 O.S. §54003(1) as a business which derives at least fifty percent (50%) of its annual gross revenues from sales of a product or service to an out-of-state buyer or consumer shall be established, subject to review by the Oklahoma Tax Commission on an annual basis, by an affidavit that the business qualifies for such exemption. The Oklahoma Tax Commission may require additional information as required to ensure that the business qualifies for such exemption. All sales to the federal government shall be considered to be sales to an out-of-state buyer or consumer.

(g) **Limitations.** No exemption shall be granted if the qualified computer services and data processing or research and development facility fails to file the documentation required by Subsection (j) of this Section with the Commission. Additionally, the required certification issued by the Employment Security Commission must be filed with the Tax Commission within thirty-six (36) months of the date of first purchase.

(h) **Administration.** Pursuant to statute, the exemption for sales to a qualified computer service and data processing or research and development facility outlined in this Section will be administered as a refund for state and local taxes paid by the qualified computer services and data processing or research and development facility to the vendor or, in the case of use tax, self-remitted to the State of Oklahoma.

(i) **Application process.** All persons who believe that they fall within the exemption shall file an Application/Intent to Qualify with the Commission. The Application/Intent to Qualify shall be on forms provided by the Commission and shall include, as an attachment, specifications of the new or expanded facility, a complete description of the computer services and data processing or research and development that will take place within the facility, and other information requested by the Commission. Upon receipt of the application, the application will be reviewed by the Commission for completeness and compliance with the exemption. A copy of the application will be forwarded to the Employment Security Commission for establishment of the entity's base line employment. The applicant will be notified of any action taken regarding the application by the Commission.

(j) **Claims process.** For each purchase made, the entity who believes that it will be certified shall file the following documentation with the Commission on forms provided for that purpose by the Commission:

(1) **Invoices** indicating the amount of state and local taxes billed to the qualified computer services and data processing or research and development facility.

(2) **An affidavit** of the vendor of the tangible personal property that state and local sales tax reflected on that invoice has not been credited, rebated, or refunded to the qualified purchasing facility, but rather, that the sales tax charged has been collected by the vendor and remitted to the Commission. Any number of invoices from the same vendor may be attached to one affidavit so long as the affidavit covers all invoices attached.

(3) All additional documentation required to be submitted by the Commission.

(k) **Filing claims.** At the option of the entity who believes it will be certified as a qualified computer services and data processing or research and development facility, the documentation required by Subsection (j) of this Section can be filed monthly, quarterly, semiannually, or annually. The Commission will review the documentation submitted and determine within thirty (30) days whether the refund claimed will be allowed. In the event that the claim is denied, the person who submitted the documentation will be notified by the Commission as to the reason for denial. The entity submitting the documentation will similarly be notified that a claim has been approved.

(l) **Fiscal procedure.** Each month, the Commission shall transfer from sales and use tax collected, to an account designated by the Commission, the estimated amount of claims approved the previous month.

(m) **Certification process.**

(1) **Application review.** Upon completion of the new or expanded business and the addition of the employees as required by statute, the entity believing it falls within the exemption shall apply for certification on forms provided by the Commission. Each application for certification shall be reviewed by the Commission for the purpose of determining that the total annual purchases exceeded the sum of One Hundred Thousand Dollars ($100,000.00) required by law. During such time that the Commission is reviewing the application for certification, the Commission will forward a copy of the application for certification to the Employment Security Commission who will review employees hired. Upon completion of the review by the Commission and the Employment Securities Commission, the Tax Commission will notify the applicant of the approval or denial of the certification requested.

(2) **Approval.** The applicant whose certification has been approved shall receive a refund in the amount not to exceed the total amount of state and local sales taxes paid and previously approved by the Commission. The qualified computer services and data processing or research and development facility will also receive accrued interest upon the principal amount of the refund made as provided for by statute. [**See:** 68 O.S. § 54005(C)]

(3) **Denial.** The following procedure shall apply when a request for certification is denied:

(A) Any applicant whose request for certification is denied may, within thirty (30) days after the mailing of the denial by the Commission, file with the Commission a protest under oath, signed by the Applicant or a duly authorized agent setting out:

(i) A statement of denial as determined by the Commission;

(ii) A statement of the applicant's disagreement with such denial; and,

(iii) Supporting documentation relied on by the taxpayer in support of certification.

(B) If an applicant fails to file a written protest within thirty (30) days, then the denial, without further action of the Commission, shall become final and no appeal will be entertained.

(4) **Protest of denial of certification.** The following procedure shall apply to protests of any denial of certification.

(A) Applicants filing a protest to the denial of certification by the Commission shall be scheduled for a hearing before the Commission for a date, time and place set by the Commission. Notice of the date, time and place will be given by mail at least ten (10) days prior to the hearing. The burden of proving that the denial of certification was erroneous is on the applicant. The applicant can present testimony, evidence and argument in support of the requested certification.

(B) The Commission will issue an order in each case. That order is directly appealable to the Oklahoma Supreme Court. ~~An applicant aggrieved by the order of the Commission must file, within ten (10) days of mailing of the order, a notice of intent to appeal with the Secretary of the Commission.~~ 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 Commission at the same time the Petition in Error is filed. [**See:** 710:1-5-21 through ~~710:1-5-48~~ 710:1-5-49 / 68 O.S. §§225, ~~1357.5~~ 1357.4, ~~1404.4~~ 1404.3]

PART 23. GAS AND ELECTRICITY

710:65-13-124. Rural electric cooperatives

(a) **General Rule.** Purchases by rural electric cooperatives and foreign corporations transacting business under the Rural Electric Cooperative Act of tangible personal property or taxable services are exempt from sales tax.

(b) **Sales related to the construction of a facility for a rural electric cooperative.** *Sales of tangible personal property consumed or incorporated in the construction or expansion of a facility for a corporation organized under Section 437 et seq. of Title 18 of the Oklahoma Statutes as a rural electric cooperative* are exempt from sales tax. *For purposes of this paragraph, sales made to a contractor or subcontractor that has previously entered into a contractual relationship with a rural electric cooperative for construction or expansion of a facility shall be considered sales made to a rural electric cooperative* are also exempt.

(c) **Documentation required on sales to a contractor or subcontractor with a rural electric cooperative.** In the case of a sale to a contractor or subcontractor claiming exemption pursuant to subsection (b) of this Section, the vendor must obtain:

(1) Documentation indicating the contractual relationship between the contractor or subcontractor and the rural electric cooperative; and

(2) Certification, by the purchasing contractor or subcontractor, as the case may be, setting out the name of the rural electric cooperative, and stating that the purchases are being made pursuant to a contract with that rural electric cooperative and that they are necessary for construction or expansion of a facility owned by that rural electric cooperative.

PART 29. MANUFACTURING

710:65-13-153. Exemption for "qualified manufacturers"

(a) **Qualification.** Sales of construction materials to a qualified manufacturer to be consumed or incorporated in a new manufacturing facility or to expand an existing manufacturing facility are exempt from sales and use tax. For purposes of this exemption, sales made to a contractor or sub-contractor who has previously entered into a contractual relationship with a qualified manufacturer for construction or expansion of a manufacturing facility shall be considered sales made to the qualified manufacturer.

(1) **"Manufacturing facility"** for purposes of this exemption, means buildings and land improvements used in manufacturing as defined ~~by the Standard Industrial Classification Code~~in Section 1352 of Title 68 of the Oklahoma Statutes, except that up to ten percent (10%) of the square feet of such building may be devoted to office to provide clerical support for the manufacturing operation and shall also mean building and land improvements used for the purpose of packing, packaging, repackaging, labeling or assembling for distribution to market, if at least seventy percent (70%) of the product is made in Oklahoma by the same company but at an off-site in-state manufacturing facility or facilities. Retail outlets will be included only if the retail outlet is operated in conjunction with and on the same site or premises as the manufacturing facility.

(2) **"Qualified manufacturer"** for purposes of this exemption, means:

(A) Any enterprise whose total cost of construction of a new or expanded facility exceeds the sum of Five Million Dollars ($5,000,000.00) and the new or expanded facility adds at least One Hundred (100) new full-time-equivalent employees, as certified by the Employment Security Commission, and such employees are maintained for a period of at least thirty-six (36) months, upon completion of the facility.

(B) If the cost of construction exceeds Ten Million Dollars ($10,000,000.00) and the combined cost of construction material, machinery, equipment, and

other tangible personal property exceeds Fifty Million Dollars ($50,000,000.00), the required number of new full-time-equivalent employees to be added and maintained to be a **"qualified manufacturer"** is Seventy-five (75).

(C) If the total cost of construction exceeds the sum of Three Hundred Million Dollars ($300,000,000.00) the **"qualified manufacturer"** must maintain an employment level of a least 1,750 full time equivalent employees.

(3) **"Total costs of construction" defined.** For purposes of this Section, **"total cost of construction"** means and includes building and construction materials, and engineering and architectural fees or charges directly associated with the construction of a new or expanded facility, but shall not include attorney fees. For purposes of (a)(2)(C) of this Section the **"total cost of construction"** shall also include the cost of qualified depreciable property, as defined by Section 2357.4 of Title 68 of the Oklahoma Statutes, and labor services performed in the construction of a new or expanded facility.

(4) **The employment requirement.** The employment requirement described in this Section can be satisfied by a portion of the required new full-time-equivalent employees being employed at a manufacturing facility related to or supported by the new or expanded business, so long as both or all facilities are owned by the same person.

(b) **Limitations.**

(1) The exemption pertains only to sales of tangible personal property consumed or incorporated in the construction of a new manufacturing facility or the expansion of an existing facility made after June 1, 1988. The exemption applies to sales made to a contractor or sub-contractor to be consumed or incorporated in the construction of a new or expanded manufacturing facility pursuant to a contract with a qualified manufacturer as well as to sales made to a qualified manufacturer.

(2) The exemption applies only to tangible personal property that becomes a part of the facility or that is directly consumed in the construction process.

(3) No exemption shall be granted if the qualified manufacturer fails to file both the documentation required in (e)(1) of this Section and the required certification issued by the Employment Security Commission with the Commission.

(c) **Administration.** Pursuant to statute, the exemption for sales to a qualified manufacturer outlined in this Section will be administered as a refund for state and local taxes paid by the qualified manufacturer to the vendor or, in the case of use tax, self-remitted to the state of Oklahoma.

(d) **Application process.**

(1) **Application.** All persons who believe that they fall within the exemption provided shall file an Application/Intent to Qualify with the Commission. The Application/Intent to Qualify shall be on forms provided by the Commission and shall include, as attachments, specification of the new or expanded manufacturing facility a complete description of the product to be manufactured, and other information requested by the Commission.

(2) **Review.** Upon receipt of the Application, the Application will be reviewed by the Commission for completeness and compliance with the exemption. A copy of the application will be forwarded to the Employment Security Commission for establishment of the entities base line employment. The applicant will be notified of any action taken regarding the Application by the Commission.

(e) **Claims process.**

(1) **Records required for claim.**

(A) For each purchase made, the entity who believes that it will be certified as a qualified manufacturer shall file the following documentation with the Commission on forms provided for that purpose by the Commission:

(i) Invoice indicating the amount of state and local taxes billed to the qualified manufacturer;

(ii) Affidavit of the vendor of the construction materials reflected on the invoice that state and local sales tax reflected on that invoice has not been audited, rebated, or refunded to the qualified manufacturer but rather the sales tax charge has been collected to the vendor and remitted to the Commission. Any number of invoices from the same vendor may be attached to one affidavit so long as the affidavit covers all invoices attached;

(iii) All additional documentation required to be submitted by the Commission.

(B) In cases where the state and local sales tax was paid by a contractor or sub-contractor who has previously entered into a contract with a qualified manufacturer, the qualified manufacturer shall file with the Commission the following:

(i) Invoices indicating the amount of state and local sales taxes billed;

(ii) An affidavit from the contractor or sub-contractor who made the purchase of construction materials reflected on the invoice stating that the sales tax reflected on the attached invoice and claimed by the qualified manufacturer is based on state and local sales tax paid by the contractor or sub-contractor on construction materials to be consumed or incorporated in a construction of new or expanded manufacturing facility and that the amount of state and local sales tax claimed was paid by the contractor or sub-contractor to the vendor and no credit, refund or rebate has been claimed by the contractor or sub-contractor. Any number of invoices can be attached to an affidavit of a contractor or sub-contractor provided that all invoices attached reflect purchases made by that contractor or sub-contractor and are reflected in the affidavit;

(iii) Additional documentation required by the Commission.

(2) **Filing claims.** At the option of the entity who believes it will be certified as a qualified manufacturer, the

documentation can be filed monthly, quarterly, semi-annually, or annually. Certification issued by the Employment Security Commission must be filed within thirty-six (36) months of the date of first purchase.

(3) **Review.** The Commission will review the documentation submitted and determine within thirty (30) days whether the refund claimed will be allowed. In the event that the claim is denied, the person who submitted the documentation will be notified by the Commission as to the reason for denial. The person who submitted the documentation will similarly be notified that a claim has been approved.

(f) **Fiscal procedure.** Each month, the Commission shall transfer from sales tax collected the estimated amount of claims approved by the Commission the previous month.

(g) **Certification process.**

(1) **Application review.** Upon completion of the new or expanded facility and the addition of the employees as required by statute, the person who believes he falls within the exemption shall apply for certification on forms provided by the Commission. Each application for certification shall be reviewed by the Commission for the purpose of determining that the thresholds required by law have been met. During such time that the Commission is reviewing the application for certification, the Commission will forward a copy of the application for certification to the Employment Security Commission who will review employees hired. Upon completion of the review by the Commission and the Employment Securities Commission, the Commission will notify the applicant of the approval or denial of the certification requested.

(2) **Approval.** The applicant whose certification has been approved shall receive a refund in the amount not to exceed the total amount of state and local sales taxes paid and previously approved by the Commission. The applicant will also receive accrued interest upon the principal amount of the refund made. [**See:** 68 O.S. § 1359.1(C)]

(3) **Assessment.** If at any time within thirty-six (36) months of the date certification is issued by the Oklahoma Employment Security Commission the number of full-time-equivalent employees drops below one hundred (100) such employees, any use or sales tax and interest previously refunded to the taxpayer will be assessed against the taxpayer receiving such refund and interest.

(4) **Denial of certification; protest procedure.**

(A) Any applicant whose request for certification is denied may, within thirty (30) days after the mailing of the denial by the Commission, file with the Commission a protest under oath, signed by the applicant or his duly authorized agent setting out:

(i) a statement of denial as determined by the Commission;

(ii) a statement of the applicant's disagreement with such denial; and

(iii) supporting documentation relied on by the taxpayer in support of certification.

(B) If an applicant fails to file a written protest within the thirty (30) days, then the denial, without further action of the Commission shall become final and no appeal will be entertained.

(C) Applicants filing a protest to the denial of certification by the Commission shall be scheduled for a hearing en banc before the Commission for a date, time and place set by the Commission. Notice of the date, time and place will be given by mail at least ten (10) days prior to the hearing.

(D) The burden of proving that the denial of certification was erroneous is on the applicants. The applicant can present testimony, evidence and argument in support of the requested certification.

(E) The Commission will issue an order in each case. That order is directly appealable to the Supreme Court. ~~An applicant aggrieved by the order of the Commission must file within ten (10) days of mailing of the order a notice of intent to appeal with the Secretary of the Commission.~~ 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 Commission at the same time the Petition in Error is filed. [**See:** 68 O.S. § 225]

(F) For further information the applicant should refer to the Rules of Practice and Procedure Before the Oklahoma Tax Commission (710:1-5-21 through ~~710:1-5-48~~ 710:1-5-49). [**See:** 68 O.S. §§ 1359.1, 1404.1]

710:65-13-155. Exemption for sales of tangible personal property to be consumed or incorporated in the construction or expansion of a qualified aircraft maintenance or manufacturing facility

(a) **Qualification.** ~~Effective January, 1991, sales~~ Sales of tangible personal property to a qualified aircraft maintenance or manufacturing facility to be consumed or incorporated in a new facility or to expand an existing facility are exempt from sales and use tax. For purposes of this exemption, sales made to a contractor or sub-contractor who has previously entered into a contractual relationship with a qualified aircraft maintenance or manufacturing facility for construction or expansion of a facility shall be considered sales made to the qualified aircraft maintenance or manufacturing facility.

(1) For purposes of this exemption "**facility**" is defined as buildings and land improvements used in maintaining or manufacturing aircraft, except that up to ten percent (10%) of the square feet of such building may be devoted to office space used to provide clerical support for the manufacturing operation.

(2) For purposes of this exemption, "**aircraft maintenance or manufacturing facility**" is defined as any enterprise whose total cost of construction exceeds the sum of Five Million Dollars ($5,000,000.00) and which employs at least Two Hundred Fifty (250) new full-time-equivalent employees, as certified by the Employment Security Commission, upon completion of the facility.

(b) **Limitations.**

(1) The exemption pertains only to sales of tangible personal property made after the effective date of the statute. The exemption applies to sales of tangible personal property made to a contractor or sub-contractor to be consumed or incorporated in the construction of a new or expanded facility pursuant to a contract with an aircraft maintenance or manufacturing facility, as well as to sales of tangible personal property made to an aircraft maintenance or manufacturing facility.

(2) No exemption shall be granted if the aircraft maintenance or manufacturing facility fails to file both the documentation required below with the Commission within thirty-six (36) months of first purchase and the required certification issued by the Employment Security Commission within sixty (60) months of first purchase.

(c) **Administration.** Pursuant to statute, the exemption outlined above will be administered as a refund for state and local taxes paid to the vendor or, in the case of use tax, self-remitted to the State of Oklahoma.

(d) **Application process.**

(1) **Application.** All persons who believe that they fall within the exemption provided shall file an Application/Intent to Qualify with the Commission. The Application/Intent to Qualify shall be on forms provided by the Commission and shall include, as attachments, specifications of the new or expanded facility, a complete description of the maintenance, repair or manufacturing that will take place within the facility, and other information requested by the Commission.

(2) **Review.** Upon receipt of the Application, the Application will be reviewed by the Commission for completeness and compliance with the exemption. A copy of the Application will be forwarded to the Employment Security Commission for establishment of the entity's base line employment. The applicant will be notified of any action taken regarding the Application by the Commission.

(e) **Claims process.**

(1) **Records required for claim.**

(A) For each purchase made, the entity who believes that it will be certified shall file the following documentation with the Commission on forms provided for that purpose by the Commission:

(i) Invoice indicating the amount of state and local taxes billed to the aircraft maintenance or manufacturing facility;

(ii) Affidavit of the vendor of the tangible personal property that state and local sales tax reflected on that invoice has not been credited, rebated, or refunded to the aircraft maintenance or manufacturing facility, but rather, that the sales tax charged has been collected by the vendor and remitted to the Tax Commission. Any number of invoices from the same vendor may be attached to one affidavit so long as the affidavit covers all invoices attached;

(iii) All additional documentation required to be submitted by the Commission.

(B) In cases where the state and local sales tax was paid by a contractor or sub-contractor who has previously entered into a contract with an aircraft maintenance or manufacturing facility, the aircraft maintenance or manufacturing facility shall file with the Commission the following:

(i) Invoices indicating the amount of state and local sales taxes billed;

(ii) An affidavit from the contractor or sub-contractor who made the purchase of tangible personal property stating that the sales tax reflected on the attached invoice is based on state and local sales tax paid by the contractor or sub-contractor on tangible personal property to be consumed or incorporated in a construction of new or expanded aircraft maintenance or manufacturing facility and that the amount of state and local sales tax claimed was paid by the contractor or sub-contractor to the vendor and no credit, refund or rebate has been claimed by the contractor or sub-contractor. Any number of invoices can be attached to an affidavit of a contractor or sub-contractor provided that all invoices attached reflect purchases made by that contractor or sub-contractor and are reflected in the affidavit;

(iii) Additional documentation required by the Commission.

(2) **Filing claims.** At the option of the entity who believes it will be certified as an aircraft maintenance or manufacturing facility, the documentation can be filed monthly, quarterly, semi-annually, or annually. However, all documentation must be filed no later than thirty-six (36) months after first purchase is made.

(3) **Review.** The Commission will review the documentation submitted and determine within thirty (30) days whether the refund claimed will be allowed. In the event that the claim is denied, the person who submitted the documentation will be notified by the Commission as to the reason for the denial. The person who submitted the documentation will similarly be notified that a claim has been approved.

(f) **Fiscal procedure.** Each month, the Commission shall transfer from sales tax collected, to an account designated by the Commission, the estimated amount of claims approved by the Commission the previous month.

(g) **Certification process.**

(1) **Application review.** Upon completion of the new or expanded facility and the addition of the employees as required by statute, the person who believes he falls within the exemption shall apply for certification on forms provided by the Commission. Each application for certification shall be reviewed by the Commission for the purpose of determining that the total costs of construction for such facility exceeded the sum of Five Million Dollars ($5,000,000.00) required by law. During such time that the Commission is reviewing the application for certification, the Commission will forward a copy of the application for certification to the Employment Security

Commission who will review employees hired. Upon completion of the review by the Commission and the Employment Securities Commission, the Tax Commission will notify the applicant of the approval or denial of the certification requested.

(2) **Approval.** The applicant whose certification has been approved shall receive a refund in the amount not to exceed the total amount of state and local sales taxes paid and previously approved by the Commission. The applicant will also receive accrued interest upon the principal amount of the refund made as provided for by statute. [**See:** 68 O.S. §~~1357(M)~~ 1357.5(C)]

(3) **Denial of certification; protest procedure.**

(A) Any applicant whose request for certification is denied may, within thirty (30) days after the mailing of the denial by the Commission, file with the Commission a protest under oath, signed by the applicant or a duly authorized agent setting out:

(i) a statement of denial as determined by the Commission;

(ii) a statement of the applicant's disagreement with such denial, and

(iii) supporting documentation relied on by the taxpayer in support of certification.

(B) If an applicant fails to file a written protest within the thirty (30) days, then the denial, without further action of the Commission, shall become final and no appeal will be entertained.

(C) Applicants filing a protest to the denial of certification by the Commission shall be scheduled for a hearing en banc before the Commission for a date, time and place set by the Commission. Notice of the date, time and place will be given by mail at least ten (10) days prior to the hearing.

(D) The burden of proving that the denial of certification was erroneous is on the applicant. The applicant can present testimony, evidence and argument in support of the requested certification.

(E) The Commission will issue an order in each case. That order is directly appealable to the Supreme Court. ~~An applicant aggrieved by the order of the Commission must file, within ten (10) days of mailing of the order, a notice of intent to appeal with the Secretary of the Commission.~~ 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 Commission at the same time the Petition in Error is filed. [**See:** 68 O.S. §225]

(F) **Additional information.** For further information the applicant should refer to the Rules of Practice and Procedure Before the Oklahoma Tax Commission (710:1-5-21 through ~~710:1-5-48~~ 710:1-5-49). [**See:** 68 O.S. §§1357.5, 1404.4]

710:65-13-156. Exemption for "qualified distributor"

(a) **Qualification.** Sales of construction materials to a qualified distributor to be consumed or incorporated in a new distribution facility or to expand an existing distributing facility are exempt from sales and use tax. For purposes of this exemption, sales made to a contractor or sub-contractor who has previously entered into a contractual relationship with a qualified distributor for construction or expansion of a distribution facility shall be considered sales made to the qualified distributor.

(1) **"Distribution facility"** for purposes of this exemption, means buildings and land improvements used in the general wholesale distribution of groceries as defined or classified in the North American Industry Classification System (NAICS) under Industry No. 4244 and 4245, except that up to ten percent (10%) of the square feet of such building may be devoted to office to provide clerical support for the distribution operation.

(2) **"Qualified distributor"** for purposes of this exemption, means an enterprise:

(A) Whose total cost of construction of a new or expanded facility exceeds the sum of Forty Million Dollars ($40,000,000) and the new or expanded facility adds at least fifty (50) new full-time-equivalent employees, as certified by the Employment Security Commission, and such employees are maintained for a period of at least thirty-six (36) months, upon completion of the facility.

(B) Which has at least seventy-five percent (75%) of its total sales to in-state customers or buyers.

(C) Which starts construction of its new or expanded facility on or after July 1, 2005 and before December 31, 2005.

(D) The exemption authorized pursuant to subsection (a) of this ~~section~~ Section shall only become effective when the governing body of the municipality in which the enterprises is located approves a resolution expressing the municipality's support for the construction for such new or expanded facility. Upon approval by the municipality, the municipality shall forward a copy of such resolution to the Oklahoma Tax Commission.

(3) **"Total costs of construction" defined.** For purposes of this Section, **"total cost of construction"** means and includes building and construction materials, and engineering and architectural fees or charges directly associated with the construction of a new or expanded facility, but shall not include attorney fees. It *shall also include the cost of all parking, security and dock structures or facilities necessary to manage, process or secure vehicles used to receive and/or distribute groceries through such a facility.* For purposes of (a)(2)(A) of this Section the **"total cost of construction"** shall also include the cost of qualified depreciable property, as defined by Section 2357.4 of Title 68 of the Oklahoma Statutes, and labor services performed in the construction of a new or expanded facility.

(4) **The employment requirement.** The employment requirement described in this Section can be satisfied by a portion of the required new full-time-equivalent employees being employed at a distribution facility related to or supported by the new or expanded distribution facility, so long as both or all facilities are owned by the same person.

(b) **Limitations.**

(1) The exemption pertains only to sales of tangible personal property consumed or incorporated in the construction of a new manufacturing facility or the expansion of an existing facility made after June 1, 1988. The exemption applies to sales made to a contractor or sub-contractor to be consumed or incorporated in the construction of a new or expanded manufacturing facility pursuant to a contract with a qualified manufacturer as well as to sales made to a qualified manufacturer.

(2) The exemption applies only to tangible personal property that becomes a part of the facility or that is directly consumed in the construction process.

(3) No exemption shall be granted if the qualified distributor fails to file both the documentation required in (e)(1) of this Section and the required certification issued by the Employment Security Commission with the Commission.

(c) **Administration.** Pursuant to statute, the exemption for sales to a qualified distributor outlined in this Section will be administered as a refund for state and local taxes paid by the qualified distributor to the vendor or, in the case of use tax, self-remitted to the state of Oklahoma.

(d) **Application process.**

(1) **Application.** All persons who believe that they fall within the exemption provided shall file an Application/Intent to Qualify with the Commission. The Application/Intent to Qualify shall be on forms provided by the Commission and shall include, as attachments, specification of the new or expanded manufacturing facility a complete description of the facility to be expanded or newly built, and other information requested by the Commission.

(2) **Review.** Upon receipt of the Application, the Application will be reviewed by the Commission for completeness and compliance with the exemption. A copy of the application will be forwarded to the Employment Security Commission for establishment of the entities base line employment. The applicant will be notified of any action taken regarding the Application by the Commission.

(e) **Claims process.**

(1) **Records required for claim.**

(A) For each purchase made, the entity who believes that it will be certified as a qualified distributor shall file the following documentation with the Commission on forms provided for that purpose by the Commission:

(i) Invoice indicating the amount of state and local taxes billed to the qualified distributor;

(ii) Affidavit of the vendor of the construction materials reflected on the invoice that state and local sales tax reflected on that invoice has not been audited, rebated, or refunded to the qualified manufacturer but rather the sales tax charge has been collected to the vendor and remitted to the Commission. Any number of invoices from the same vendor may be attached to one affidavit so long as the affidavit covers all invoices attached;

(iii) All additional documentation required to be submitted by the Commission.

(B) In cases where the state and local sales tax was paid by a contractor or sub-contractor who has previously entered into a contract with a qualified distributor, the qualified distributor shall file with the Commission the following:

(i) Invoices indicating the amount of state and local sales taxes billed;

(ii) An affidavit from the contractor or sub-contractor who made the purchase of construction materials reflected on the invoice stating that the sales tax reflected on the attached invoice and claimed by the qualified distributor is based on state and local sales tax paid by the contractor or sub-contractor on construction materials to be consumed or incorporated in a construction of new or expanded distribution facility and that the amount of state and local sales tax claimed was paid by the contractor or sub-contractor to the vendor and no credit, refund or rebate has been claimed by the contractor or sub-contractor. Any number of invoices can be attached to an affidavit of a contractor or sub-contractor provided that all invoices attached reflect purchases made by that contractor or sub-contractor and are reflected in the affidavit;

(iii) Additional documentation required by the Commission.

(2) **Filing claims.** At the option of the entity who believes it will be certified as a qualified manufacturer, the documentation can be filed monthly, quarterly, semi-annually, or annually. Certification issued by the Employment Security Commission must be filed within thirty-six (36) months of the date of first purchase.

(3) **Review.** The Commission will review the documentation submitted and determine within thirty (30) days whether the refund claimed will be allowed. In the event that the claim is denied, the person who submitted the documentation will be notified by the Commission as to the reason for denial. The person who submitted the documentation will similarly be notified that a claim has been approved.

(f) **Fiscal procedure.** Each month, the Commission shall transfer from sales tax collected the estimated amount of claims approved by the Commission the previous month.

(g) **Certification process.**

(1) **Application review.** Upon completion of the new or expanded distribution facility and the addition of the employees as required by statute, the person who believes he falls within the exemption shall apply for certification on forms provided by the Commission. Each application for certification shall be reviewed by the Commission for

the purpose of determining that the thresholds required by law have been met. During such time that the Commission is reviewing the application for certification, the Commission will forward a copy of the application for certification to the Employment Security Commission who will review employees hired. Upon completion of the review by the Tax Commission and the Employment Securities Commission, the Tax Commission will notify the applicant of the approval or denial of the certification requested.

(2) **Approval.** The applicant whose certification has been approved shall receive a refund in the amount not to exceed the total amount of state and local sales taxes paid and previously approved by the Tax Commission. The applicant will also receive accrued interest upon the principal amount of the refund made. Provided, no claim for refund shall be filed by a qualified distributor before July 1, 2006. [**See:** 68 O.S. § 1359.1(C)]

(3) **Assessment.** If at any time within thirty-six (36) months of the date certification is issued by the Oklahoma Employment Security Commission the number of full-time-equivalent employees drops below fifty (50) such employees, any use or sales tax and interest previously refunded to the taxpayer will be assessed against the taxpayer receiving such refund and interest.

(4) **Denial of certification; protest procedure.**

(A) Any applicant whose request for certification is denied may, within thirty (30) days after the mailing of the denial by the Commission, file with the Commission a protest under oath, signed by the applicant or his duly authorized agent setting out:

(i) a statement of denial as determined by the Commission;

(ii) a statement of the applicant's disagreement with such denial; and

(iii) supporting documentation relied on by the taxpayer in support of certification.

(B) If an applicant fails to file a written protest within the thirty (30) days, then the denial, without further action of the Commission shall become final and no appeal will be entertained.

(C) Applicants filing a protest to the denial of certification by the Commission shall be scheduled for a hearing en banc before the Commission for a date, time and place set by the Commission. Notice of the date, time and place will be given by mail at least ten (10) days prior to the hearing.

(D) The burden of proving that the denial of certification was erroneous is on the applicants. The applicant can present testimony, evidence and argument in support of the requested certification.

(E) The Commission will issue an order in each case. That order is directly appealable to the Supreme Court. [**See:** 68 O. S. § 225]

(F) For further information the applicant should refer to the Rules of Practice and Procedure Before the Oklahoma Tax Commission (710:1-5-21 through ~~710:1-5-48~~ 710:1-5-49). [**See:** 68 O.S. §§ 1359.1, 1404.1]

710:65-13-157. Exemption for persons engaged in the extraction and manufacturing of crushed stone and sand

(a) **General rule.** The extraction and manufacturing of crushed stone and sand are manufacturing operations and the persons engaged in these operations, upon application will be issued Manufacturer Exemption Permits which will allow them to make purchases exempt from sales or use tax of tangible personal property or services to be used or consumed in all phases of the extraction and manufacturing of crushed stone and sand.

(b) **Activities included in exempt operations.** The exemption includes but is *not limited to site preparation, dredging, overburden removal, explosive placement and detonation, on-site material hauling and/or crushing, product weighing and site reclamation.*

(c) **Administration.** Persons claiming exemption from sales or use tax under this Section should claim exemption from sales or use tax from their vendors when making purchases and provide their vendors a copy of their Manufacturer Exemption Permit as set out in OAC 710:65-7-9 to support their claimed exemption.

PART 31. MEDICINE, MEDICAL APPLIANCES, AND HEALTH CARE ENTITIES AND ACTIVITIES

710:65-13-170. Medicines, drugs, hospitals, nursing homes, practitioners, and medical equipment and appliances, generally

(a) **Drugs.** Sales of drugs, except for over-the-counter drugs, prescribed for the treatment of human beings by a person licensed to prescribe the drugs are exempt from sales tax. Ocular lenses, if permanently implanted through medical surgery, and sales of insulin and medical oxygen are also exempt from sales tax. [68 O.S.~~Supp.2003, § 1357(7)~~ § 1357(9)]

(b) **Medical equipment or device.** Except as set forth in 710:65-13-173, the sale or rental of medical equipment, supplies or devices is taxable. Examples of these taxable items are: syringes, replacement joints, bandages, oxygen regulators and tanks, crutches and wheelchairs.

(c) **Sales to hospitals, nursing homes and practitioners.** Sales of medical appliances, medical devices and other medical equipment to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, and practitioners are taxable when such items are furnished to their patients as part of the services provided. The institutions, companies and practitioners are considered to be the users or consumers. In-state vendors collect and remit the tax on sales of such property to the institutions, and use tax is due on out-of-state purchases. These institutions and practitioners primarily render services and are not liable for sales tax on receipts from meals, bandages, dressings, x-ray photographs, and other tangible personal property when used in rendering medical service to patients, regardless of whether the tangible items are billed separately.

(d) **Sales to medical benefits recipients, generally.** Unless otherwise prohibited by federal or state law, if a vendor of medical equipment and devices makes a sale to an individual, the sale is not considered to be made to a governmental agency or insurance company, even if the individual assigns the proceeds of an insurance policy to the vendor and the vendor receives payment directly from the insurance company or the governmental agency via the assignment. ~~[**See:** 68 O.S. § 1357(7); OTC Order 90-01-25-009]~~

(e) **Vitamins, minerals and dietary supplements.** *Sales of vitamins, minerals and dietary supplements by a licensed chiropractor to a person who is the patient of such chiropractor at the physical location where the chiropractor provides chiropractic care or services to such patient* are exempt from sales tax. [68 O.S. § 1357(37)]

710:65-13-172. Exemption for community health centers, migrant health centers, indigent health care clinics, ~~and~~ certain community-based health care centers, and community mental health centers

(a) **Qualification for the exemption for community health centers, migrant health centers, indigent health care clinics and certain community-based health care centers.** ~~Effective July 1, 1996, sales~~ Sales tax does not apply to the sale of tangible personal property or taxable services when sold to:

(1) Any federally qualified community health center as defined in Section 254c of Title 42 of the United States Code;

(2) Any migrant health center as defined in Section 254b of Title 42 of the United States Code;

(3) Any clinic receiving disbursements of state monies from the Indigent Health Care Revolving Fund pursuant to the provisions of Section 66 of Title 56 of the Oklahoma Statues; ~~or~~

(4) Any community-based health center which provides primary care services at no cost to the recipients, **and** is exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3). For purposes of this Section, **"primary care services"** means health services related to family medicine, internal medicine, pediatrics, obstetrics, or gynecology that are furnished by physicians, and where appropriate, physician assistants, nurse practitioners, or other licensed medical professionals~~.~~; or

(5) Any community mental health center as defined in Section 3-302 of Title 43A of the Oklahoma Statutes. For purposes of this Section, "**community mental health center**" means *a facility offering:*

(A) *A comprehensive array of community-based mental health services, including, but not limited to, inpatient treatment, outpatient treatment, partial hospitalization, emergency care, consultation and education, and*

(B) *Certain services at the option of the center, including, but not limited to, prescreening, rehabilitation services, pre-care and after-care, training programs, and research and evaluation programs.*

(b) **Application process.** Application shall be made by letter addressed to the Taxpayer Assistance Division, Oklahoma Tax Commission. Before a document verifying an exemption under this Section can be issued, the following information is required to substantiate eligibility for the exemption claimed:

(1) Legal name of the entity seeking exemption;

(2) Mailing address;

(3) Location address; and

(4) Federal employer's identification number.

(c) **Supporting documentation required.**

(1) **Federally qualified community health centers or migrant health centers.** Federally qualified community health centers or migrant health centers, must submit the letter of notification from the U.S. Department of Health and Human Services, recognizing that the center qualifies under the terms of the relevant statute.

(2) **Clinics receiving disbursements of state monies from the Oklahoma Indigent Health Care Revolving Fund.** Clinics receiving disbursements of state monies from the Oklahoma Indigent Health Care Revolving Fund must submit a copy of the letter or disbursement voucher from the Fund, showing the date the funds were disbursed.

(3) **Community-based health centers.** Community-based health centers must submit the documentation described in (A) through (C) of this paragraph:

(A) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3);

(B) A written description of the primary care services provided must be submitted, stating the activities of the organization, and evidenced by copies of the following, as applicable:

(i) By-laws;

(ii) An audit or other financial statement, showing the types and amounts of revenue received; and

(iii) Intake documents or other forms used to obtain information from clients and which specifically reflect that the primary care services were being provided at no cost to the recipients.

(C) For the purposes of this paragraph, **"at no cost to the recipient"** means at no cost to either the recipient or any unit of government, or any insurance company, or any other person or entity. Centers which provide primary care services on a "sliding scale" fee schedule do **not** qualify for the exemption.

(4) **Community mental health centers.** Community mental health centers must submit to the Commission, along with the application a written description of the comprehensive array of community-based mental health and other optional services the facility offers, as may be evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or

(D) Notarized letter from the President or Chairman of the organization.

(d) **Exemption limited to eligible, properly documented transactions.** Only sales of tangible personal property and services purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.

(e) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. §1352, are taxable to the contractor. A contractor who performs improvements to real property for the health care organizations enumerated in this section may not purchase the tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the health care organizations.

PART 35. NEWSPAPERS, PERIODICALS; PROGRAMS; MEDIA

710:65-13-195. Exemption for sales of certain types of programs

Gross proceeds from the sale of programs relating to sporting and entertainment events are exempt from sales tax. [**See:** 68 O.S. Section 1357(5)]

PART 42. DISABLED VETERANS IN RECEIPT OF COMPENSATION AT THE ONE HUNDRED PERCENT RATE

710:65-13-275. Exemption for disabled veterans in receipt of compensation at the one hundred percent rate

(a) **General provisions.** Sales of tangible personal property or services are exempt from sales tax when made to persons who have been honorably discharged from active service in any branch of the Armed Forces of the United States or Oklahoma National Guard, and who have been certified by the United States Department of Veterans Affairs, or its successor, to be in receipt of compensation at the one hundred percent (100%) rate for a permanent disability sustained through military action or accident or resulting from a disease contracted while in such service. The exemption includes sales to the spouse of such veteran or to a household member where the veteran resides and who is authorized to make purchases on behalf of the veteran in the veteran's absence, so long as the purchase is for the benefit of the qualified veteran.

(b) ~~**Supporting documentation required**~~ **Qualification to receive an exemption card.** To receive an exemption card under this ~~section~~ Section, a veteran must provide a letter from the United States Department of Veterans Affairs certifying that the veteran is receiving disability compensation at the 100% rate and the veteran must be an Oklahoma "resident" as defined in 68 O. S. § 2353.

(c) **Exemption limitation ~~and qualifying sales~~.** The authorized exemption in this ~~subsection~~ Section is limited to Twenty-five Thousand Dollars ($25,000.00) per year of qualifying purchases ~~per year per individual~~ made by the qualified veteran, spouse or household member authorized to make purchases on behalf of the qualified veteran in the veteran's absence. The Tax Commission may request persons asserting or claiming exemption under this Section to provide a statement executed under oath, that the total sales amounts for which the exemption is applicable have not exceeded the yearly limitation of Twenty-five Thousand Dollars ($25,000.00). If an exempt sale exceeds the exemption limitation, the sales tax in excess of the limitation shall be treated as a direct sales tax liability and the Tax Commission may recover the tax including penalty and interest by the use of any method authorized by law.

(d) **Qualifying sales.** Sales are exempt if the qualified veteran has an interest in the funds presented and the purchase is made on his or her behalf, and the ~~person~~ qualified veteran, spouse or household member authorized to make purchases on behalf of the veteran in the veteran's absence ~~making the purchase on behalf of the qualified veteran~~ has presented the ~~qualifying documentation~~ exemption card issued by the Oklahoma Tax Commission. All vendors shall honor the proof of eligibility for the sales tax exemption to both the qualified veteran and persons making purchases for the benefit of the disabled veteran.

(e) **Purchases by contractors.** Purchases of tangible personal property or services by a contractor, as defined by 68 O.S. Section 1352 are taxable to the contractor. A contractor who performs improvements to real property for a disabled veteran in receipt of compensation at the one hundred percent (100%) rate who qualifies for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to disabled veterans in receipt of compensation at the one hundred percent rate.

PART 43. SOCIAL, CHARITABLE AND CIVIC ORGANIZATIONS AND ACTIVITIES

710:65-13-349. Exemption for sale of food boxes

Sales of boxes of food by a church or by an organization, which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3) are exempt from sales tax, provided the boxes *only contain edible staple food items. To qualify under the provisions of this* Section, *the organization must be organized for the primary purpose of feeding needy individuals or to encourage volunteer service by requiring such service in order to purchase food.*

710:65-13-350. Exemption for Daughters of the American Revolution

(a) **General provisions.** Sales of tangible personal property or services to or by the Daughters of the American Revolution are exempt from sales tax.

(b) **Application process.** Application shall be made by letter directed to the Business Registration Services Section of the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194. Before a document verifying an exemption under this Section can

be issued, the following information is required to substantiate eligibility for the exemption claimed:

(1) Legal name of the entity seeking exemption;

(2) Mailing address;

(3) Location address;

(4) Federal employer's identification number; and

(5) Name(s) and current mailing addresses of responsible officer(s).

(c) **Supporting documentation required.** To support the exemption claimed under this Section, the applicant must submit to the Commission, along with the application:

(1) Written confirmation that the applicant is currently recognized as an Oklahoma chapter of the Daughters of the American Revolution; and

(2) A written description stating the activities of the organization, as evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or

(D) Notarized letter from the President or Chairman of the organization.

(d) **Exemption limited to eligible, properly-documented transactions.** Only property or services actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.

(e) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. Section 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

710:65-13-351. Exemption for Veterans of Foreign Wars, Department of Oklahoma, Inc. and subordinate posts

(a) **General provisions.** Sales of tangible personal property or services to or by the Veterans of Foreign Wars, Department of Oklahoma, Inc. and its subordinate posts are exempt from sales tax.

(b) **Application process.** Application shall be made by letter directed to the Business Registration Services Section of the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194. Before a document verifying an exemption under this Section can be issued, the following information is required to substantiate eligibility for the exemption claimed:

(1) Legal name of the entity seeking exemption;

(2) Mailing address;

(3) Location address;

(4) Federal employer's identification number; and

(5) Name(s) and current mailing addresses of responsible officer(s).

(c) **Supporting documentation required.** To support the exemption claimed under this Section, the applicant must submit to the Commission, along with the application:

(1) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U. S. C. § 501(c)(19);

(2) Written confirmation that the applicant is currently recognized as a post of the Veterans of Foreign Wars, Department of Oklahoma, Inc.; and

(3) A written description stating the activities of the organization, as evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or

(D) Notarized letter from the President or Chairman of the organization.

(d) **Exemption limited to eligible, properly-documented transactions.** Only property or services actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.

(e) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. Section 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

710:65-13-352. Exemption for YWCA or YMCA organizations

(a) **General provisions.** Sales of tangible personal property or services to or by YWCA or YMCA organizations are exempt from sales tax.

(b) **Application process.** Application shall be made by letter directed to the Business Registration Services Section of the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194. Before a document verifying an exemption under this Section can be issued, the following information is required to substantiate eligibility for the exemption claimed:

(1) Legal name of the entity seeking exemption;

(2) Mailing address;

(3) Location address;

(4) Federal employer's identification number; and

(5) Name(s) and current mailing addresses of responsible officer(s).

(c) **Supporting documentation required.** To support the exemption claimed under this Section, the applicant must submit to the Commission, along with the application:

(1) Written confirmation that the applicant is currently recognized as part of a national nonprofit community service organization meeting the health and social service needs of its members; and

(2) A written description stating the activities of the organization, as evidenced by copies of:

(A) Articles of incorporation;
(B) By-laws;
(C) Brochure; or
(D) Notarized letter from the President or Chairman of the organization.

(d) **Exemption limited to eligible, properly-documented transactions.** Only property or services actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.

(e) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. Section 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

710:65-13-353. Exemption for organizations primarily engaged in providing educational services and programs concerning health-related diseases and conditions

(a) **Qualification for organizations primarily engaged in providing educational services and programs concerning health-related diseases and conditions exemption.** Sales of tangible personal property or services to an organization primarily engaged in providing educational services and programs concerning health-related diseases and conditions to individuals suffering from such health-related diseases and conditions, their caregivers and family members, or in health-related research of such diseases and conditions, or both, are exempt from sales tax. However, in order to qualify, such organization must itself be a member of a tax-exempt organization that is primarily engaged in advancing the purposes of its member organizations through fundraising, public awareness or other efforts for the benefit of its member organizations.

(b) **Application process.** Application shall be made by letter directed to the Business Registration Services Section of the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194. Before a document verifying an exemption under this Section can be issued, the following information is required to substantiate eligibility for the exemption claimed:

(1) Legal name of the entity seeking exemption;
(2) Mailing address;
(3) Location address; and
(4) Federal employer's identification number.

(c) **Supporting documentation required.** To support the exemption claimed under this Section, the applicant must submit to the Commission, along with the application:

(1) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U. S. C. § 501(c)(3);
(2) Proof of membership in a tax-exempt organization primarily engaged in advancing the purposes of its member organization, including a description of the activities of the membership organization; and
(3) Documentation showing that the organization is primarily engaged either in providing educational services, programs or support concerning health-related diseases and conditions to individuals suffering from such diseases or their caregivers and family members and or health-related research of such diseases or conditions, along with a written description of the activities of the organization, as may be evidenced by copies of one or more of the following:
(A) Articles of incorporation;
(B) By-laws;
(C) Brochure; or
(D) Notarized letter from the President or Chairman of the organization.

(d) **Exemption limited to eligible, properly-documented transactions.** Only property or services actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.

(e) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. Section 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

PART 65. WEB PORTALS

710:65-13-650. Exemption for sales of tangible personal property and services to a web search portal

(a) **General provisions.** Exempted from sales tax are *sales of goods, wares, merchandise, tangible personal property, machinery and equipment to a web search portal located in this state which derives at least eighty percent (80%) of its annual gross revenue from the sale of a product or service to an out-of-state buyer or consumer. For purposes of this paragraph, "web search portal" means an establishment classified under NAICS code 518112 which operates web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format.*

(b) **Where to apply.** To qualify for the exemption, the entity operating the web search portal must apply in writing to the Director's Office, Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, OK 73194, requesting an exemption letter.

(c) **Application.** Application for exemption may be made by filing a signed, sworn affidavit with the Commission, stating:

(1) The name, address, and federal employer's identification number of the applicant and the name and title of the person signing for the applicant;

(2) A statement that the entity which owns the establishment derives at least eighty percent (80%) of its annual gross revenue from the sale of products or services to out-of-state buyers or consumers, a statement of the entity's annual gross revenues, and the percentage of the annual gross revenues derived from sales made to out-of-state buyers and consumers, determined for the most recently completed income tax year;

(3) A statement that the applicant is primarily engaged in the activities appropriate to NAICS code 518112;

(4) The signature of a person authorized to bind the applicant, signed under penalty of perjury before a notary; and

(5) Such additional information as the Commission may require to confirm eligibility.

(d) **Review and determination.** Upon receipt of the application, the Commission will review and make a determination as to the applicant's eligibility. Upon approval, a letter certifying the exemption will be forwarded to the applicant.

(e) **Issuance, scope, limitations of certification letter.** The letter of certification issued by the Commission will become effective as of the date of the letter and will remain effective until revoked. The letter is valid only for property actually purchased by the qualifying entity, invoiced to that entity, and paid for by funds or check directly from the qualifying entity.

(f) **Purchases by contractors.** Purchases of taxable tangible personal property or services by a contractor, as defined by 68 O.S. §1352, are taxable to the contractor. A contractor who performs improvements to real property for entities which are certified for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the certified entity.

(g) **Denial of certification; cancellation, suspension, revocation of certification.** Certification may be denied, cancelled, suspended, or revoked by the Commission for non-compliance under the provisions of this Section and applicable Oklahoma tax statutes, or for other good cause shown. Proceedings related to the cancellation or refusal to issue a certification pursuant to this Section shall be governed by 710:1-5-100 and 710:1-5-21 through 710:1-5-49 of the permanent rules of the Commission.

SUBCHAPTER 19. SPECIFIC APPLICATION AND EXAMPLES

PART 5. "C"

710:65-19-56. Contractors and subcontractors

(a) **Definition.** The term **"contractor"** as used in this Section means both contractors and subcontractors and includes, but is not limited to, building, grading and excavating, electrical, plumbing, heating, painting, drilling, decorating, paper hanging, air conditioning, ventilating, insulating, sheet metal, steel, masonry, carpentry, plastering, cement, road, bridge, landscape, and roofing contractors. The term contractor also includes any person engaged in a contractual arrangement for the repair, alteration, improvement, remodeling or construction of real property. A person working for a salary or wage is not considered a contractor.

(b) **General provisions.** As consumer/users, contractors must pay sales tax on all taxable services and tangible personal property, including materials, supplies, and equipment, purchased to develop, repair, alter, remodel, and improve real property.

(c) **Exempt transactions.** A contractor may make purchases based upon the exempt status of another entity **only** in the statutorily-limited circumstances described in this Section:

(1) A contractor who has a public contract, or a subcontractor to that public contract, with an Oklahoma municipality, county, public school district, an institution of the Oklahoma System of Higher Education, a rural water district, the Grand River Dam Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Municipal Power Authority, the City of Tulsa-Rogers County Port Authority, the Broken Bow Economic Development Authority, the Muskogee City-County Port Authority, the Oklahoma Ordnance Works Authority, the Durant Industrial Authority, the Ardmore Development Authority, or the Oklahoma Department of Veterans Affairs may make purchases of tangible personal property or services, which are necessary for carrying out the public contract, exempt from sales tax.

(2) A contractor who has entered into a contract with a private institution of higher education or with a private elementary or secondary institution, may make purchases of tangible personal property or services, including materials, supplies and equipment used in the construction of buildings owned and used by the institution for educational purposes exempt from sales tax.

(3) A contractor who has contracted with an agricultural permit holder to construct a facility which will be used directly in the production of any livestock, including facilities used in the production and storage of feed for livestock owned by the agricultural permit holder, may make purchases of materials, supplies and equipment necessary to fulfill the contract, exempt from sales tax. [**See:** 710:65-7-6 and 710:65-7-11]

(4) A contractor may make purchases exempt from sales tax for use on campus construction projects for the benefit of institutions of the Oklahoma State System of Higher Education or private institutions of higher education accredited by the Oklahoma State Regents for Higher Education. The projects must be financed by or through the use of nonprofit entities which are exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

(5) A contractor may make purchases of machinery, equipment, fuels, and chemicals or other materials, exempt from sales tax, which will be incorporated into and directly used or consumed in the process of treatment of hazardous waste, pursuant to *OAC* 710:65-13-80. Contractors claiming exemption for purchases to be used to remediate hazardous wastes should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in 710:65-13-80, and provide a copy of the letter to vendors, pursuant to subsection (f) of that rule.

(6) A contractor or a subcontractor to a construction contract, which has been duly entered into between a contractor and a church, may make purchases, exempt from sales tax of tangible personal property or services necessary for carrying out the construction contract. A vendor wishing to be relieved of liability to collect the tax should follow the requirements of subsection (c) of *OAC* 710:65-7-13.

(7) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property which is to be *consumed or incorporated in the construction or expansion of a facility for a corporation organized under Section 437 et seq. of Title 18 of the Oklahoma Statutes as a rural electric cooperative*.exempt from sales tax.

(d) **Fabrication by contractors.** A contractor may fabricate part or all of the articles to be used in construction work. For example, a sheet metal contractor may partly or wholly manufacture roofing, cornices, gutter pipe, furnace pipe, furnaces, ventilation or air conditioning ducts or other items from sheet metal purchased and used pursuant to a contract for the construction or improvement of real property. In such a contract the purchase by the contractor is a purchase by a consumer or user and the contractor is required to pay the sales or use tax at the time of purchase. This is so, whether the articles fabricated are used in the alteration, repair or reconstruction of an old building, or in new construction.

PART 15. "H"

710:65-19-143. Hotels, motels, apartments, etc.

(a) The gross receipts from the furnishing of rooms, except meeting rooms, by a hotel, apartment-hotel, cottage camp, or lodging house open to the public is subject to sales tax. Should a hotel operate apartments in connection with and as a part of their hotel business, the rentals on such apartments are subject to the tax. The tax will always apply so long as the place of business retains its identity as a hotel, apartment-hotel, cottage camp or lodging house, without regard to the length of stay of the guest.

(b) The revenue received from the forfeiture of a deposit is not revenue arising from the furnishing of a room and is therefore not subject to sales tax. However, revenue which is derived from a guaranteed room is subject to sales tax, even if the guest did not occupy the room.

(c) The gross proceeds received by hotels or other persons for local telephone calls are considered a part of the service of furnishing rooms and are, therefore, taxable. No deduction will be allowed for any expense in connection with such service such as switchboard rental, trunk line rental, etc.

(d) Supplies such as toilet tissue, soap, shoeshine cloths, clothes bags, matches, facial tissue, ~~complimentary meals, beverages~~ and other items available for guests' use are subject to sales or use tax at the time of purchase by the hotel or motel. Linens, furniture, pool equipment and supplies, and similar items are subject to sales or use tax at the time purchased by the hotel or motel.

(e) Sales tax is not due on food or drinks that are provided as a part of a packaged room rate by hotel or motel operators if the furnishing of the room is subject to tax under Section 1354 of Title 68 and if no separate charge is made for the food or drinks. Such food or drinks are considered to be sold at retail as part of the total charge for the room.

(~~e~~f) With the exception of subsection (e) ~~Hotel~~ hotel or motel operators who are also vendors of meals are required to remit sales tax on the "sales value" of inventory withdrawn from stock that is used in providing complimentary meals to its customers. The proper sales tax basis to be used for sales of food and beverages for related services, and for various "complimentary" offerings, both in the context of rooms and of other services, is explained in more detail in OAC 710:65-1-2 and 710:65-19-109.

(~~f~~g) A **"mini-bar"** means a closed container, either refrigerated or non-refrigerated, with access to the interior limited to a key, magnetic card, or similar device and controlled at all times by the holder of the license.

(~~g~~h) A hotel beverage license shall authorize the holder to sell or serve alcoholic beverages in 50 milliliter spirits, 187 milliliter wine and 12 ounce malt beverage containers which are distributed from a hotel room mini-bar. The total retail value of the sale of alcoholic beverages by the license-holder is subject to sales tax, pursuant to *OAC* 710:20-5-4.

SUBCHAPTER 21. USE TAX

710:65-21-20. Use tax exemptions

The following are specifically exempt from use tax: [**See:** 68 O.S. §§ 1404 and 1411]

(1) Tangible personal property brought into this state by a non-resident for his or her personal use visiting or with the intent to become a resident.

(2) Tangible personal property that is purchased for resale.

(3) Tangible personal property on which sales/use tax has been paid that is equal to or greater than the rate charged by Oklahoma. If the rate charged by another state is less than the rate charged by Oklahoma, the difference in the rate is to be multiplied by the purchase price of the tangible personal property to give the amount of tax due for that purchase. In the same manner, a credit against any municipal or county use tax paid may be taken if a municipal or county sales or use tax, respectively, has been paid to an out-of-state municipality or county.

(4) Those items specifically exempted by the Oklahoma Sales Tax Code. [**See:** 68 O.S. §§ 1350 et seq.]
(5) Tangible personal property used in or by commercial airlines and railroads.
(6) Livestock purchased for feeding or breeding purposes and later resold.
(7) For municipal and county uses tax purposes only, the municipal or county rate does not apply to goods which are brought into the city or county temporarily for the purpose of fabrication, repair, testing, alteration, maintenance or other service.
(8) ~~As of January 1, 1991, the~~ The use of rail transportation cars to haul coal to coal-fired electric generating plants located in Oklahoma.
(9) Tangible personal property purchased for use by manufacturers in manufacturing operations located in Oklahoma.
(10) Municipal and county use taxes do not apply to property purchased in Oklahoma.

[OAR Docket #07-1031; filed 5-15-07]

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

[OAR Docket #07-1035]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 26. Vehicle and Traffic Safety
725:30-26-14 [AMENDED]
AUTHORITY:
Oklahoma Tourism and Recreation Commission to make rules pursuant to Title 74, Section 2204 (2005) of the Oklahoma Statutes.
DATES:
Comment period:
February 1, 2007 - March 6, 2007
Public hearing:
March 6, 2007
Adoption:
March 15, 2007
Submitted to Governor:
March 19, 2007
Submitted to House:
March 19, 2007
Submitted to Senate:
March 19, 2007
Gubernatorial approval:
April 3, 2007
Legislative approval:
Failure of the Legislature to diasapprove the rules resulted in approval on May 11, 2007.
Final adoption:
May 11, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTION:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Existing Subchapter 26 has been amended to increase the safety of off-road vehicle users in state parks.

CONTACT PERSON:
Sara Gibson, Oklahoma Tourism and Recreation Department, 120 N. Robinson, Suite 600, Oklahoma City, OK 73102, 405.230.8307.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 26. VEHICLE AND TRAFFIC SAFETY

725:30-26-14. Off-road vehicles

(a) Off-road vehicles, when operated within designated off-road vehicle areas, shall operate such vehicles in a reasonable and prudent manner which provides for the safety and protection of the operator, wildlife, park resources, and the general public. Operating an off-road vehicle in an unreasonable or imprudent manner or without the proper equipment as defined in subsection (b) of this section may result in the suspension or revocation of off-road vehicle area use privileges.
(b) The following equipment is required for off-road vehicles operation in designated areas:
(1) The vehicle will have a whip, which is any pole, rod, antenna, etc., that is securely mounted on the vehicle and which extends at least ten feet from the surface of the ground to the end of the whip. In addition, when the vehicle is stopped, the whip shall be capable of standing upright when supporting the weight of any flags attached thereto.
(2) At least one whip attached to the vehicle shall have a flag that is s~~olid bright red or~~ solid bright orange in color and that is at least six inches by twelve inches in size. The flags must be within ten inches of the tip of the whip and may be of triangular, square, or rectangle shape. Club or other flags may be mounted below the above flag or on a second whip.
(3) Each 4 wheel vehicle equipped with bench or bucket seats must be equipped with adequate roll bars or roll structure or sufficient strength to support the vehicle weight.
(4) Each 4 wheel vehicle shall be equipped with a seat and seat belt for the vehicle operator and each passenger, except a 4 wheel cycle equipped with a seat that must be straddled by the operator and passenger shall not require seat belts. Each 2,3, and 4 wheel cycle shall have a seat for the vehicle operator and each passenger.
(5) For operation at nighttime, every vehicle shall be equipped with at least one headlamp emitting a white light visible from a distance of not less than 200 feet to the front and at least one tail lamp emitting a red light visible not less than 200 feet to the rear. For the purposes of this

section, "nighttime" is defined as $\frac{1}{2}$ hour after sunset to $\frac{1}{2}$ hour before sunrise.

[OAR Docket #07-1035; filed 5-15-07]

TITLE 735. STATE TREASURER CHAPTER 15. RECORDING AND AUDITING INVESTMENT TRANSACTIONS

[OAR Docket #07-1195]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
Subchapter 5. Auditing Investment Transactions
735:15-5-1 [AMENDED]
AUTHORITY:
State Treasurer, 62 O.S. 517.1 - 517.7.
DATES:
Comment period:
February 16, 2007 to March 19, 2007
Public Hearing:
March 21, 2007
Adoption:
March 22, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007
Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2007
Final adoption:
May 18, 2007
Effective:
June 26, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
These Permanent Rules amend the text of Chapter 15. Recording and Auditing Investment Transactions. Change language to give more options for method of electronic recording
CONTACT PERSON:
Susan Bateman, Office of the State Treasurer, 2300 North Lincoln Boulevard, Room 217, Oklahoma City, Oklahoma 73105-4895, telephone number (405) 521-3191.

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 26, 2007:

SUBCHAPTER 5. AUDITING INVESTMENT TRANSACTIONS

735:15-5-1. Duties of OST's Internal Auditor

OST's Internal Auditor shall determine that the State Treasurer's investment policies and procedures adhere to state statutes, these administrative rules, and other applicable policies of OST. In carrying out those duties, he or she shall have the following specific duties:

(1) Determine that the appropriate internal controls exist, including the safeguarding of the paper and electronic documents;

(2) Determine that the trade file was prepared and reviewed by the appropriate personnel;

(3) Determine that all required documents are present;

(4) Determine that the type of investment is allowed by statute;

(5) Determine that a system of competitive bidding was used when practicable, and that only approved financial institutions were solicited;

(6) Determine that the information on all documents agrees;

(7) Determine that the recorded ~~telephone~~ information agrees with the paper documents;

(8) Determine that the trade was settled in accordance with the transaction records;

(9) Conclude whether the trade was executed in accordance with the State Treasurer's investment policies and procedures and state statutes;

(10) Report to the State Treasurer any exceptions noted during the examination; and

(11) Conduct appropriate follow-up procedures to assure that any exceptions noted have been resolved in a proper and timely manner.

[OAR Docket #07-1195; filed 5-24-07]

TITLE 735. STATE TREASURER CHAPTER 80. UNCLAIMED PROPERTY

[OAR Docket #07-1196]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
Subchapter 3. Reporting Requirements
Part 5. Business Associations
735:80-3-15 [AMENDED]
Subchapter 7. Claims Process
735:80-7-3 [AMENDED]
AUTHORITY:
State Treasurer, 62 O.S. 517.1 - 517.7.
DATES:
Comment period:
February 16, 2007 to March 19, 2007
Public Hearing:
March 21, 2007
Adoption:
March 22, 2007
Submitted to Governor:
March 26, 2007
Submitted to House:
March 26, 2007
Submitted to Senate:
March 26, 2007

Gubernatorial approval:
May 1, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2007
Final adoption:
May 18, 2007
Effective:
June 26, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
These Permanent Rules amend the text of Chapter 80. Unclaimed Property. Changes language to conform to Treasurer's policies. Current rule conflicts with statutorily language.
CONTACT PERSON:
Susan Bateman, Office of the State Treasurer, 2300 North Lincoln Boulevard, Room 217, Oklahoma City, Oklahoma 73105-4895, telephone number (405) 521-3191.

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 26, 2007:

SUBCHAPTER 3. REPORTING REQUIREMENTS

PART 5. BUSINESS ASSOCIATIONS

735:80-3-15. Business associations; reporting requirements

~~(a) Undelivered shares of stock or other intangible ownership interest in a business association is presumed abandoned:~~

~~(1) If an owner has failed to claim a dividend, distribution, or other money payable as a result of the interest and, if the owner has failed to communicate, in writing or otherwise, with the association regarding the interest or a dividend, distribution, or other money payable as a result of the interest within seven (7) years; and~~

~~(2) If there have been at least seven (7) dividends, distributions, or other money payable during the seven (7) year presumptive period and all such dividends or distributions remained unclaimed by the owner.~~

(~~b~~a) Unless owner contact can be established and documented to the satisfaction of OST, all unclaimed stock (undeliverable and underlying shares) certificates, including the shares distributable as a result of a stock dividend or stock split, shall be reissued in the name of the Oklahoma State Treasurer and delivered to the securities custodian designated by OST.

(~~c~~b) The responsibility for filing an unclaimed property report is placed on a business association if it is incorporated in this state, or if it is doing business in this state but incorporated in another state, or if it is an unincorporated business association doing business in Oklahoma, and its records show that the last known address of the owner is in this state. If the owner is unknown or owner's last known address is unknown, report requirement is placed on a business association if it is incorporated in Oklahoma or, in the case of an unincorporated business association, if its principal place of business is in Oklahoma.

(~~d~~c) For purposes of this Section, the association is the holder of undelivered shares of stock or other intangible ownership interest.

SUBCHAPTER 7. CLAIMS PROCESS

735:80-7-3. Release of non-cash items

(a) Stock certificates received through safe-deposit boxes ~~or directly from a holder~~ may be released to the rightful owner ~~by one of the following methods:~~ upon approval of the owner's claim.

~~(1) Stock certificate in the owner's name;~~

~~(2) Stock certificate in the name of the Treasurer with an affidavit ready for transfer to the owner;~~

~~(3) Payment of money received for the certificate if the certificate has been redeemed by the issuer or has been sold in accordance with state law;~~

~~(4) Obsolete stock certificates in the original owner's name will be transferred directly to the owner. If the original owner is deceased, the lawful heirs must determine disposition;~~

~~(5) Instruments issued as a result of stock transactions directed by the issuer;~~

~~(6) Execution of a receipt acknowledging delivery.~~

(b) Stock certificates received directly from a holder may be transferred to the rightful owner upon approval of the owner's claim.

[OAR Docket #07-1196; filed 5-24-07]

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

[OAR Docket #07-1201]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 17. Travel
780:1-17-1 [AMENDED]
AUTHORITY:
State Board of Career and Technology Education; 70 O.S. 2001, §14-104, as amended; 75 O.S. 2001, §250 et. seq., as amended
DATES:
Comment Period:
February 16, 2007 through March 19, 2007
Public Hearing:
March 29, 2007
Adoption:
March 29, 2007
Submitted to Governor:
March 30, 2007
Submitted to House:
March 30, 2007
Submitted to Senate:
March 30, 2007

Gubernatorial Approval:
May 4, 2007
Legislative Approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 24, 2007.
Final Adoption:
May 24, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
CONTACT PERSON:
Judy Draper, 405-743-5437

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 17. TRAVEL

780:1-17-1. Compensation

The Department shall provide compensation for authorized state travel. The rate of compensation shall be in conformity with state laws. The State Director shall be authorized to approve out-of-state travel requests~~.~~ and the actual and necessary expenses by the Director and other employees of the Department for the purpose of business recruitment, training, and technical assistance. Reimbursement of actual and necessary expenses claimed must be approved by the State Board of Career and Technology Education prior to reimbursement.

[OAR Docket #07-1201; filed 5-25-07]

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

[OAR Docket #07-1202]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. State Technical Assistance, Supervision, and Services
780:10-3-4 [AMENDED]
780:10-3-11 [AMENDED]
Subchapter 5. Finance
780:10-5-4 [AMENDED]
Subchapter 7. Local Programs: Application; Student Accounting; Evaluation
780:10-7-3 [AMENDED]
Subchapter 9. Service Contracts and Equipment Guidelines
780:10-9-2 [AMENDED]
AUTHORITY:
State Board of Career and Technology Education; 70 O.S. 2001, §14-104, as amended; 75 O.S. 2001, §250 et. seq., as amended
DATES:
Comment Period:
February 16, 2007 through March 19, 2007
Public Hearing:
March 29, 2007
Adoption:
March 29, 2007
Submitted to Governor:
March 30, 2007
Submitted to House:
March 30, 2007
Submitted to Senate:
March 30, 2007
Gubernatorial Approval:
May 4, 2007
Legislative Approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 24, 2007.
Final Adoption:
May 24, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
CONTACT PERSON:
Judy Draper, 405-743-5437

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. STATE TECHNICAL ASSISTANCE, SUPERVISION, AND SERVICES

780:10-3-4. ~~Resource Center~~ Information Commons

(a) **Objectives.** The ~~Resource Center~~ Information Commons shall be responsible for the following activities:

(1) Providing current career and technology education materials and services designed to meet the informational requirements of Department personnel and *Career*Tech educators in the state of Oklahoma; and,

(2) Providing assistance to persons doing research in the field of *Career*Tech education.

(b) **Services.** The ~~Resource Center~~ Information Commons shall accomplish its objectives by providing the following services:

(1) Searches of the ~~Resource Center~~ Information Commons collection using the on-line database. Searches may be initiated by phone, fax, Internet e-mail, or walk-in requests;

(2) Searching commercial on-line databases and the Internet if needed;

(3) Promoting new acquisitions to *Career*Tech educators in Oklahoma through a monthly acquisitions list; and,

(4) Utilizing interlibrary loans as need dictates.

(c) **Circulation.**

(1) **Patrons.** The ~~Resource Center~~ Information Commons shall circulate materials primarily to Department

personnel, career and technology faculty, and students at any Oklahoma college or university, and to *Career*Tech educators in Oklahoma.

(2) **Researchers.** Materials may be circulated to persons doing research in the field of career and technology education, subject to recall if needed by Department personnel.

(3) **Circulation periods for printed materials.**

(A) **One-month circulation; renewals.** Printed materials, except high-demand materials, shall be circulated for one month and may be renewed in written or verbal form if there are no holds on the materials.

(B) **High-demand materials.** High-demand materials will be checked out for a two-week period only.

(C) **Fines; replacement copy charges.** No fines will be charged on late materials, but if materials are lost, a replacement copy charge will be issued to the responsible party. No additional materials will be loaned to that particular party until such previously stated charges are paid, or overdue materials are returned.

(D) **Interlibrary loan fines.** Materials obtained through interlibrary loans are subject to fines assessed by the lending library. If these materials are returned late, the fines will be the responsibility of the person requesting the interlibrary loan.

(d) **Gifts.** The ~~Resource Center~~ Information Commons may accept gifts of materials. Upon acceptance, these materials become property of the ~~Resource Center~~ Information Commons and will be evaluated according to the ~~Resource Center's~~ Information Commons's selection criteria and then added or disposed of accordingly.

(e) **Collection development.**

(1) **Selection.** Materials are considered for purchase on requests and recommendations from the Oklahoma Department of Career and Technology Education staff, from catalogs and advertisements of publishers, and from professionally prepared selection aids. Criteria for selection of materials for purchase are considered on the basis of the subject matter with emphasis on career and technology education, the reputation of the author/artist/publisher, the publication year, and the price. The ~~Resource Center~~ Information Commons tries to accommodate all requests for job-related materials from the staff, but it has the responsibility of adhering to the budget restraints of the Department. Some requests may be evaluated by the ~~Resource Center~~ Information Commons staff and determined to be too expensive or unrelated to vocational education and will not be purchased.

(2) **Weeding.** Materials on Oklahoma career and technology education will be retained indefinitely in the "Historical Collection." All other materials in the ~~Resource Center~~ Information Commons collection will be reviewed on an ongoing basis according to age, space, usage, and relevance. If the items have not been checked out in the last year or if technological changes have rendered the items obsolete, they will be ~~discarded~~ evaluated and may be discarded.

780:10-3-11. Career Resource Network (CRN)

The Career Resource Network (CRN), as specified in P.L. 105-332, Section 118, as amended by P.L. 109-270 shall be responsible for the following activities:

(1) Provide support for career guidance and academic-counseling programs designed to promote improved career decision-making by individuals, especially in the areas of career information delivery and use.

(2) Make information and planning resources available to students, parents, teachers, counselors, and administrators that relate educational preparation to career goals and expectations.

(3) Provide information to assist students and parents with career exploration, educational opportunities, and educational financing.

(4) Establish and/or improve coordination and communication among administrators and planners of programs authorized by P.L. 105-332, Section 118, and by Section 15 duplication of efforts and the appropriate use of shared information and data as amended by P.L. 109-270.

(5) Provide an ongoing means for customers to provide comments and feedback on products and services to better meet customer requirements.

SUBCHAPTER 5. FINANCE

780:10-5-4. Program funding

(a) **Secondary and full-time adult programs in technology centers.**

(1) **Formula payments.** The State Board will fund a portion of the cost of programs and services in accordance with an approved technology center funding formula. The Department shall consider enrollment, number of school sites in the district, number of programs approved, transportation, availability of funds, and appropriate state and federal laws in developing the annual technology center funding budget.

(2) **Formula adjustment.** The failure of a program to meet minimum standards may result in an adjustment of the funding.

(b) **Secondary programs in comprehensive schools.**

(1) **Budgets.** The State Board will assist local districts in providing for excess costs of *Career*Tech programs. The Department shall prepare budgets to be approved annually based upon availability of funds and appropriate state and federal laws.

(2) **Program assistance monies.** All approved *Career*Tech programs shall receive the program assistance monies annually. These monies shall be used to support the additional costs of the *Career*Tech program ~~including~~ limited to the purchase of equipment, instructional supplies, and staff development.

(3) **Equipment matching funds.** New *Career*Tech programs will receive equipment matching funds in the first year of operation, if funding is available. If funding is available, equipment matching funds will be provided to existing programs.

(4) **Location of equipment.** Any program equipment purchased with state or federal funds shall remain in the program area for which it is intended.

(5) ***Career*Tech teacher contracts.** *Career*Tech teacher contracts shall be a minimum of 10 months and shall begin on or before August 1 of each year.

(6) **Teacher salary supplement.** The Department shall determine annually the amount to reimburse each school district to augment the salary of each teacher of a 10-month *Career*Tech program in a comprehensive school.

(7) **Additional salary.** In those programs where the instructor is employed and approved by the State Board beyond 10 calendar months, the additional salary will be calculated on the basis of 1/10 of the base salary as prescribed by the school district for an instructor of like qualifications employed on a 10-month basis. The career and technology instructor's summer pay is to be calculated on the local school base schedule (including increments and any flat raises provided by the legislature over and above the minimum salary and increments) for instructors of like qualifications.

(8) **Part-time programs.** In order to receive 100 percent funding, a program must be full-time. Any exceptions to the offering of a full-time program shall constitute a reduction in funding of 50 percent.

(c) **TechConnect and TechConnect Plus.** Reimbursement for approved TechConnect and TechConnect Plus programs shall include incentive assistance and teacher salary supplement in the same manner as with other comprehensive school programs. The program assistance (state) funds are provided to meet the minimum program operation requirements. Federal career and technology (vocational) education funds and/or local funds may be used to meet the program operation recommendations.

(d) **Business and Industry Services programs.** The Department shall reimburse Business and Industry Services programs based on the availability of funds and approved by the Business and Industry Services Division.

(e) **Skills Centers programs.** The Department shall reimburse Skills Centers programs based on the availability of funds and approved by the Skills Centers Division.

(f) **Postsecondary institutions-collegiate.** Funds shall be allocated to postsecondary institutions as set forth in agreements between the State Board and the Oklahoma State Regents for Higher Education or as mandated by P.L. 101-392.

(g) **Apprenticeship.** Local education agencies conducting apprenticeship-related training programs shall qualify for reimbursement at a rate approved by the Department.

(h) **Work-site learning.** Approved work-site learning programs shall meet the standards established by the Department. Reimbursement for these programs shall be based on availability of funds and approval by the Department.

(i) **Program closures due to changes in funding.** The Oklahoma Department of Career and Technology Education may also recommend closure for secondary and postsecondary education programs based upon loss of funding, lack of funding, revenue shortfalls or other changes in funding. The rules dealing with probationary status and reevaluation shall not apply to a program being considered for closure based upon changes in funding. The State Board shall make the determination for program closure based on economic factors, vocational need, duplication of programs, school-to-work connection, student demand, student placement, student completion/ retention, and program standards and the decision of the Board shall be final.

SUBCHAPTER 7. LOCAL PROGRAMS: APPLICATION; STUDENT ACCOUNTING; EVALUATION

780:10-7-3. Standard; accreditation; review

(a) **Minimum standards.**

(1) **Establishment; program funding.** Minimum standards shall be established by the State Board for postsecondary and secondary *Career*Tech programs. These standards shall be comprehensive, reflecting state and federal mandates as they relate to quality *Career*Tech education. Program funding approval is contingent upon programs meeting minimum standards or making satisfactory progress toward meeting those standards.

(2) **Standards.** Program standards shall include the following:

(A) STANDARD I-Instructional Planning and Organization

(B) STANDARD II-Instructional Materials Utilization

(C) STANDARD III-Qualified Instructional Personnel

(D) STANDARD IV-Enrollment and Student-Teacher Ratio

(E) STANDARD V-Equipment and Supplies

(F) STANDARD VI-Instructional Facilities

(G) STANDARD VII-Safety Training and Practices

(H) STANDARD VIII-Advisory Committee and Community Relations

(I) STANDARD IX-~~*Career*Tech Student Organizations (excluded in Small Business Management, Agricultural Business Management, and most Skills Centers programs)~~ Leadership Development

(J) STANDARD X-Coordination Activities (excluded in Technology Education, TechConnect and most Skills Centers programs)

(K) STANDARD XI-Student Accounting and Reports

~~(L) STANDARD XII-Adult Education (if applicable)~~

(3) **Revisions.** The standards are revised periodically based upon input from appropriate sources and relevant data regarding factors that influence student learning and the quality of *Career*Tech programs. Any such revisions will be taken to the State Board for approval.

(4) **Dissemination.** The standards will be disseminated to *Career*Tech personnel throughout the state.

Results of program evaluations will be considered in the processes of planning and funding programs.

(5) **Program Evaluation and Improvement.** Each instructor shall annually review the progress of the program based on the accountability measures developed as required by ~~P.L. 105-332~~ P. L. 109-270 which include:

(A) Student attainment of challenging State established academic~~, and vocational~~ and technical skill proficiencies.

(B) Student attainment of a secondary school diploma or its recognized equivalent, a proficiency credential in conjunction with a secondary school diploma, or a postsecondary degree or credential.

(C) Placement in, retention in, and completion of, postsecondary education or advanced training, placement in military service, or placement or retention in employment.

(D) Student participation in and completion of career and technology (vocational and technical) education programs that lead to nontraditional training and employment.

(6) **Monitoring.** Programs not meeting minimum standards will be monitored on an annual basis. If a technology center, skills center or comprehensive school has programs and/or services not meeting evaluation standards, an annual status report addressing completed and/or pending corrective actions will be submitted to the Accreditation Division for review no later than the last Friday in March. During the month of April, the Accreditation Division will notify the school in writing whether the status report was approved or disapproved.

(7) **Technical assistance.** The Department staff will provide technical assistance to help *Career*Tech programs meet the standards established by the State Board and other accrediting agencies.

(b) **Postsecondary accreditation.**

(1) **Approval/accreditation agency.** For the purpose of determining eligibility for federal student assistance programs administered by the Department of Education, the Oklahoma State Board of Career and Technology Education is recognized by the United States Secretary of Education for the approval/accreditation of all public postsecondary *Career*Tech institutions and programs that are not offered for college credit or under jurisdiction of the Oklahoma State Regents for Higher Education.

(2) **Adopted procedures.** Schools seeking and maintaining postsecondary approval/accreditation status shall follow the State Board's adopted procedures as prescribed in the publication **Approval, Evaluation~~,~~ and Accreditation~~, and Audit~~ Procedures ~~of~~ for Schools ~~for~~ with Postsecondary Programs.** This publication shall be made available to interested parties from the Accreditation ~~Unit~~ Division of the Department.

(3) **Noncompliance of corrective action plan.** The State Board shall have the authority to assume the administration and supervision of any technology center that after being placed on "Probational Accreditation Status" continues to be in noncompliance of the corrective action plan as approved by the State Board.

(c) **Secondary evaluation.** Substandard secondary *Career*Tech education programs shall be formally evaluated, utilizing minimum program standards, as adopted by the State Board.

(d) **Review of substandard programs.**

(1) **Probationary status.** A *Career*Tech program may be placed on a probationary status if:

(A) The program fails to meet program standards and the deficiencies are documented in writing as a result of a program visit or a team evaluation, and/or

(B) The program does not meet the specifications as outlined in the **Rules for Career and Technology Education.**

(2) **Written notification.** Written notification of probationary status that identifies the deficiencies and outlines recommended steps for program improvement shall be given to the school administration.

(3) **Reevaluation.** A program on probationary status shall be reevaluated within one year.

(A) **Removal of probation.** If the documented deficiencies have been corrected upon reevaluation, the probationary status shall be removed.

(B) **Reevaluation failure.** If the program has failed to make improvement on documented deficiencies upon reevaluation, a report shall be made in writing to the Associate State Director of Educational Services Department and the program may be recommended for program closure or reduction in funding for the following school year.

(i) **Written notification; appeal.** The Associate State Director of Educational Services Department will notify, in writing, the superintendent of the school in which the program is located that the Department is recommending closure or reduction in funding for the program for the following school year. An appeal process will be included for those superintendents who can show evidence of projected program improvement.

(ii) **Recommended program closures.** The Associate State Director of Educational Services will make a presentation of recommended program closures for State Board approval at the March board meeting.

(e) **Evaluation of recipients receiving federal funds.** Programs of eligible recipients receiving federal funds under ~~P.L. 105-332~~ P. L. 109-270 shall be evaluated annually. Such contracts and agreements shall be in accordance with state and federal laws.

SUBCHAPTER 9. SERVICE CONTRACTS AND EQUIPMENT GUIDELINES

780:10-9-2. Equipment

(a) **State-owned equipment.**

(1) **Donated or purchased equipment.** Equipment donated to or purchased by the Department through reimbursement shall be considered the property of the Department.

(2) **Special funding.** Equipment purchased through special funding, which require that the equipment be used in specific programs, shall be placed in those programs and shall be subject to appropriate state and federal laws, rules and regulations.

(3) **Maintenance.** The receiving institution shall be responsible for maintaining equipment supplied by the Department.

(4) **Closing program.** The Program Administrator of the training program shall notify the Department inventory personnel, in writing, when a program or class is to be terminated or completed.

(b) **Loaning of equipment.** Equipment purchased for use by the Business and Industry Development Division may be loaned to other eligible training sites. The equipment shall be subject to any restrictions and is subject to recall on notice by the Department when needed for industrial training.

(c) **Identification.**

(1) **Department Purchased.** All equipment purchased by the Department with a value of $500 or more shall be affixed with an appropriate tag.

(2) **Department Reimbursement.**

(A) ~~All equipment~~ Equipment purchased by local education agencies (LEA) and reimbursed by the Department with state funds and ~~has~~ having a value of $2500 or more shall be affixed with an appropriate Department asset tag.

(B) Equipment purchased by local education agencies (LEA) and reimbursed by the Department based on grant awards shall not be required to be tagged as Department assets.

(3) **Inventory records.** The Department shall maintain inventory records on all tagged equipment. Identification tags will be assigned by the Department and sent to the local education agency or to the appropriate Department personnel to be affixed to the equipment.

(d) **Accountability.**

(1) **Tagged equipment.** Equipment to be inventoried annually will be mailed to Superintendent or their designee, by the Department, with a request to update the list and return within 60 days unless a physical inventory is conducted by Department inventory personnel

~~(2) **Non-tagged equipment.** The local education agency (LEA) is responsible for maintaining an accurate list of items that were reimbursed with state funds with a value of $500 to $2500.~~

(~~3~~ 2) **Adjustments.** The Department, after review of requests, will make necessary adjustments to the inventory.

(e) **Disposal.** Schools requesting items to be removed due to lost, stolen, salvage, or surplus must submit an inventory adjustment form for approval. Department personnel will inspect and/or make recommendations on the request.

(f) **Transfer of Ownership.** In no case shall an equipment transfer be made without advanced approval from Department inventory personnel. The ownership of state-owned equipment may be transferred upon approval of the Board and the State Purchasing Director to the local education agency (LEA) in possession of equipment unless said equipment is essential for operation of industry specific or new industry training programs. Department inventory personnel will provide requests to accept and notification of transfers.

(g) **Guidelines.** Equipment procedures and guidelines, and the inventory adjustment forms can be found on the Department Website and will be utilized to enforce these rules.

[OAR Docket #07-1202; filed 5-25-07]

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 15. TECHNOLOGY CENTERS

[OAR Docket #07-1203]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Technology Centers Education
780:15-3-2 [AMENDED]
780:15-3-6 [AMENDED]
780:15-3-7 [AMENDED]
AUTHORITY:
State Board of Career and Technology Education; 70 O.S. 2001, §14-104, as amended; 75 O.S. 2001, §250 et. seq., as amended
DATES:
Comment Period:
February 16, 2007 through March 19, 2007
Public Hearing:
March 29, 2007
Adoption:
March 29, 2007
Submitted to Governor:
March 30, 2007
Submitted to House:
March 30, 2007
Submitted to Senate:
March 30, 2007
Gubernatorial Approval:
May 4, 2007
Legislative Approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 24, 2007.
Final Adoption:
May 24, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
CONTACT PERSON:
Judy Draper, 405-743-5437

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. TECHNOLOGY CENTERS EDUCATION

780:15-3-2. Establishment/Sustainment of a technology center district; sites and buildings

(a) **Establishment.** A technology center district shall be established in accordance with the steps outlined in this section.

(b) **State Board study of proposed technology center district.**

(1) **Proposed district study.** The State Board, upon request of the public school(s) within a proposed district, board of county commissioners, or citizens within a proposed district, shall make a study of the proposed district in regard to the following factors:

(A) Size;
(B) Total population;
(C) Assessed valuation;
(D) Current school enrollments;
(E) Estimated secondary school enrollments;
(F) Estimated full-time adult enrollments;
(G) Other information pertinent to determining the feasibility of a technology center district.

(2) **Costs.** The study shall also include building and equipment costs, as well as estimated annual operating costs.

(3) **Sharing of study information.** The information compiled as a result of the study shall be shared with the local schools and/or county commissioners and other interested persons within the proposed technology center district.

(c) **State Board determination of technology center feasibility.**

(1) **Decision by State Board.** After a study of the proposed technology center district has been completed and reviewed by the interested and affected schools and/or county commissioners, a decision will be reached as to the course of action to be taken. The State Board shall finally determine if the proposed technology center district meets the criteria and requirements prescribed, if there is a need for the district, and if the operation of the district can be adequately funded.

(2) **Valuation of district; waivers.** A proposed technology center district shall have a minimum valuation of $100,000,000 after homestead exemptions. In situations involving low valuations and/or sparsely populated areas where this requirement is not feasible, the State Board, upon presentation of sufficient justification, may give special permission to waive the minimum criteria.

(d) **Presentation of resolutions.**

(1) **Resolutions signees.** If the State Board determines the proposed technology center district is feasible and needed, resolutions shall be presented to the State Board signed by:

(A) Local boards of education of districts desiring to become a part of a technology center district,
(B) A majority of the membership of a board of county commissioners, or
(C) A combination of (A) and (B) of this subsection where there exists a county and school districts outside that county desiring to become a part of the same technology center district.

(2) **Cooperation.** The State Board shall work with the area in order to establish a district that is feasible and will fit into its state plan.

(3) **Established school districts.** The State Board shall protect the attendance area of established technology centers and not approve any part of an existing technology center district for inclusion into a new area district unless that area cannot be served adequately by the existing technology center (Deannexation proceedings may have to be followed first.)

(e) **Technology center district formation election.**

(1) **Call for election.** The State Board shall call an election in each district submitting a resolution, or in each district within a county submitting the resolution, if a technology center district is found to be feasible and needed.

(2) **Election.** An election will be held in each independent and elementary school district, and/or entire county, having territory that would be included in the proposed technology center district, for the purpose of permitting electors of the district to vote on the question of whether the territory comprising the independent or elementary school district, and/or entire county, shall be included in the proposed technology center district.

(f) **Elections relative to the creation of new technology center district (general rules).** The rules of this subsection shall be used for conducting elections relative to the creation of at technology center district, electing the initial board of education, voting the initial operating levy, and for annexation of an independent or elementary school district to an existing technology center district.

(1) **Election date.** The State Board with advice and counsel of local boards of independent and elementary school districts and/or county commissioners shall designate the date on which an election shall be conducted.

(2) **Responsibilities of county election board; State Board.** The State Board shall cooperate with the county election board designated to conduct the election. The county election board shall receive notice from the State Board and shall conduct the elections in the school district at the time specified by the State Board. The State Board shall prepare the publication notice and submit it to at least one newspaper of general circulation in each county officially calling the election, stating the purpose of the election and listing the polling places in the county. The State Board shall assume the cost of such publication.

(3) **Forms.** All forms to be used in technology center district elections will be provided by the County Election Board.

(4) **Hours.** The polls for election shall be open from 7 a.m. until 7 p.m.

(5) **Certification of results.** The county election boards shall, when appropriate, certify to the local school boards the results of an election. The county election boards shall certify to the State Board, also, the results of

any election pertaining to the creation of a new technology center district, the initial board of education election, and the initial operating levy election.

(6) **Costs of elections.** When holding the election for the creation of a technology center district, the election of the original board of education, and the election for the first operation levy, the cost for these elections will be borne by the State Board.

(7) **Annexation election costs.** Annexation election costs of individual independent and elementary school districts will be borne by the State Board.

(g) **Formation election results determination.**

(1) **Election results.** Results of the election for the formation of a technology center district shall be submitted to the State Board and each school district involved. If the results of the election satisfy the criteria for the formation of a technology center district, the State Board may declare the district formed.

(2) **Election results from resolutions from school districts.**

(A) **Inclusion in the proposed district.** The territory comprising an independent or elementary school district shall be included in the proposed technology center district if a majority of the electors who voted cast ballots in favor of the question.

(B) **Establishment after an unfavorable vote.** Notwithstanding an unfavorable vote in an independent or elementary school district(s), a technology center district may be established and the territory comprising other independent and elementary school districts in which the votes have been favorable may be included in the technology center district, if criteria prescribed by the State Board can be met.

(i) **Study of election results.** The State Board shall study the results of the elections to determine if a sufficient number of the school districts voted in favor of becoming a part of a technology center district. If the area is deemed sufficient, the State Board shall form the district.

(ii) **Valuation; reconsideration of districts.** If the valuation of the area that voted in favor of the proposition is not sufficient to form the district, the State Board shall continue to work with the proposed area; and if the school districts that were opposed to becoming a part of the technology center district wish to vote again on the proposition, they may do so by presenting another resolution to the State Board.

(C) **District establishment suspension; second election.** If the criteria cannot be met because of unfavorable votes in one or more independent or elementary school districts, the State Board may hold establishment of the proposed technology center district in suspension for a period not to exceed one year, and in the meantime may, but no sooner than after ninety (90) days, at the request of the local board of education where the election failed, call another election on the same question.

(3) **Election results from resolutions by a majority of a board of commissioners.**

(A) **Voters.** The majority of the votes cast in the county shall determine whether the territory of the county becomes a part of a technology center district. The electors residing in any portion of a county that is already a part of an existing technology center district shall not be allowed to participate in this election.

(B) **Electors in adjoining county.** A local school district that has its main buildings within the county calling the election but has electors residing in an adjoining county should pass a resolution for that part and present it to the State Board, which shall call an election as provided in these rules and regulations.

(C) **Addition of adjoining county electors to the technology center district.** If the majority of the voting electors in the county vote to establish a technology center district, then that part of the local district located in the adjoining county shall become part of the new district, provided a majority of those voting cast ballots in the affirmative, and they shall be entitled to the rights and privileges and be subject to the assessments as are all other patrons in the district.

(D) **Second election.** If the election fails, the State Board may call another election in the county at the request of the county commissioners after a period of three months or 90 days has elapsed since the previous election.

(4) **Declaration; number designation.** Whenever there has been a compliance with these rules and regulations, the State Board may issue an order declaring the technology center district to be established and designating its number.

(5) **Validation period.** Results of school districts and/or counties that voted to become a part of a technology center district shall be held valid for a period of 12 months, or one year, to allow time for the passage of an operational mill levy election.

(6) **State Board approval of sites and ~~Branch~~ branch campuses.** The State Board shall approve the location of a site for an official campus of a technology center district. If the branch campus is able to provide a minimum of five full-time programs, then it may be recognized as an official satellite campus and will be eligible for additional funding under a formula approved by the State Board. Branch campuses may be established by the technology center board of education to serve special needs or remote areas of the district. In the event the local board elects to pursue an additional campus or provide an ongoing occupational program at a site other than the main campus, prior approval must be granted by the State Board. Factors that will be used in determining approval will include, but not be limited to, student travel time to nearest available *Career*Tech programs, district valuation, student enumeration, and local industry needs. ~~If the branch campus is able to provide a minimum of five full-time programs, then it may be recognized as an~~

~~official satellite campus and will be eligible for additional funding under a formula approved by the State Board.~~

(h) **Zoning of the new technology center district.**

(1) **Advisement.** When the State Board forms a technology center district, it shall then divide the district into board districts with the advice and counsel of the local school districts.

(2) **Five board districts.** After consultation with the local school officials, the State Board will divide each technology center district into five numbered board districts of approximately equal population.

(i) **Election of members to the board of education of the new technology center district.**

(1) **Call to elect members.** When a technology center district is established, the State Board shall call, and the appropriate county election board(s) shall conduct an election to choose a board of education, which shall consist of five (5) members except as hereinafter provided, elected by all of the school district electors of the technology center district.

(2) **Composition of board.** Candidates for board district offices of the board shall be residents of the board district. Electors shall vote on all candidates in board elections.

(3) **Terms.** The newly elected board members will serve initial terms as follows:

(A) Office Number 1, Board District 1: One year
(B) Office Number 2, Board District 2: Two years
(C) Office Number 3, Board District 3: Three years
(D) Office Number 4, Board District 4: Four years
(E) Office Number 5, Board District 5: Five years

(4) **Cycle of elections; terms.** At the first regular school election, as prescribed by the state statutes, after the technology center district has become operative for one year, an election shall be held to fill the office that expires in one year. The terms of other offices shall expire in the sequence noted in the schedule above. After the initial terms of offices expire, each school board member shall be elected for a five-year term.

(5) **Notification and declaration of intent.** Each candidate shall file a written notification and declaration of intent to be a candidate for the board district in which he/she resides or as a candidate-at-large. The notification and declaration of intent shall be filed with the county election board within the time prescribed by the election board.

(6) **Seven-member board.** In the event the total area of five or more counties is involved, a seven (7) member board of education may be elected to serve the technology center district.

(7) **Seven-member terms.** When there are seven board members, they shall be elected in the same manner as board of education members of other technology center districts. The terms of office of members shall be staggered so that the term of office of only one member shall expire each year. Offices shall be numbered one through seven.

(8) **Relations with State Board.** Representatives of the State Board shall meet with the elected board and administer the oath of office, which shall be the same as for boards of independent school districts. The State Board shall provide guidance, direction, and technical assistance to the newly elected board members.

(j) **Operational tax levy election for a new technology center.**

(1) **Call for election.** As soon as practical, and when it can legally do so, after members of the board of education of a technology center district are first elected following the establishment of the district, the board of education shall call an election to vote on an operational tax levy for the district.

(2) **Educational plan.** The elected board of the technology center district shall make a study utilizing the services of the State Board and all other agencies that may be at its disposal to determine an educational plan for the district.

(3) **Tax levy; estimate of needs.** No technology center district shall begin operations until the electors have approved a tax levy as provided by Section 9B, Article 10, Oklahoma Constitution and 70 O.S 2001, § 14-108, as amended, and the county excise board has approved an "Estimate of Needs" for the district.

(4) **Second election.** If an election for an operational levy is held and the proposed levy fails to receive a majority of the votes cast, a second election will be held within 180 days after the original election for the purpose of voting again on an operational levy.

(5) **Dissolution of district; board.** The State Board has the authority to disband a newly formed technology center district, release the board of education of its obligations, and release all public school districts from any obligation in the new technology center district when an operational levy is rejected by the voters a second time. Disbanding or dissolving a newly created technology center district will be done only after consultation with the local school districts involved.

(6) **School planning.** After passage of a successful operational levy, the technology center board shall employ professional help, engage the services of an architect to plan buildings, and take such action as necessary to establish the technology center.

(k) **Selection of the technology center superintendent.**

(1) **Choice of superintendent.** Following passage of a successful operational tax levy, the local board of education shall employ a technology center district superintendent.

(2) **Duties; qualifications.** The duties and minimum qualifications of technology center superintendents shall be as follows:

(A) **Duties.** The technology center superintendent shall be the principal administrative officer of the technology center. He/she shall be responsible for the organization, curriculum development, evaluation, and improvement of the technology center program. The technology center superintendent shall maintain

close contact with the employment services, advisory committees, potential employers, and all agencies and institutions relative to employment needs and job opportunities in order that training may be closely coordinated with current needs and anticipated opportunities in the employment market. He/she shall evaluate programs continuously and bring about changes and improvements that will ensure that students will obtain the skills and knowledge for which instruction is being provided. The technology center superintendent shall be responsible for maintaining a system of complete and accurate records and shall make such financial, statistical, and descriptive reports as may be required by the State Board.

(B) **Qualifications.** First, the technology center superintendent shall have a superintendent's certificate as defined by the State Department of Education. Second, the technology center superintendent shall have had at least five years of experience as a teacher, supervisor, or administrator of an approved *Career*Tech program. Third, the technology center superintendent shall hold a valid Oklahoma *Career*Tech teaching certificate. Persons having these three qualifications shall be issued a Standard Technology Center Administrator's Credential. A person who has a superintendent's certificate or a secondary principal's certificate, at least five years of experience as a teacher, supervisor, or administrator of an approved *Career*Tech program and has a valid Oklahoma *Career*Tech teaching certificate shall be issued a standard technology center administrator's credential.

(3) **Provisional technology center administrator's credential.** A person with a superintendent's certificate or a secondary principal's certificate and at least five years of experience as a teacher, supervisor, or administrator of an approved *Career*Tech program and without a valid Oklahoma *Career*Tech teaching certificate shall be issued a provisional technology center administrator's credential and be given three years from the date of issuance to complete the requirements for a standard technology center administrator's credential. A person who has been employed in an administrator, counselor or coordinator position for at least five years at a technology center, who has a superintendent's certificate or a secondary principal's certificate and a valid Oklahoma teaching certificate or valid school counseling certification shall be issued a provisional technology center administrator's credential and be given five years from the date of issuance to complete the eight semester hours specified below plus the appropriate ODCTE administrator development program(s) identified when the technology center administrator's credential is issued. The issuance of the technology center administrator's standard credential shall be based on the completion of a minimum of eight semester hours from three of the following areas:

(A) History and Philosophy of Career and Technology Education;

(B) Technology Center Finance;

(C) Curriculum for Career and Technology Education; and,

(D) Career and Technology Education Program Planning Development and Evaluation.

(4) **Issuance by the Technology Center Services Division.** The Technology Center Services Division of the Oklahoma Department of Career and Technology Education shall be responsible for the issuance of the technology center administrator's credential.

(5) **Technology Center Administrator's Credential.** Other school administrators who are responsible for the evaluation of certified faculty under the provisions of the Education Improvement Act of 1985 shall also be required to have a standard or a provisional Technology Center Administrator's Credential as provided for above in 780:15-3-2(k)(2) & (3) of the rules and regulations governing technology centers. The technology center superintendent shall be responsible for assigning appropriate administrative personnel to evaluate the technology center's certified faculty and determining that such persons have a technology center administrator's credential.

(l) **Other actions necessary to establish a new technology center.**

(1) **Funding for buildings and equipment.** The elected board may submit a building fund levy proposal or a capital outlay bond proposal to finance new buildings and equipment after a study has been made and professional help has been employed.

(2) **Election guidelines.** The building fund levy election or capital outlay bond election shall be conducted in accordance with the prescribed election rules and regulations.

(~~n~~m) **Approval of ~~buildings~~ capital improvement projects.** After local board approval, ~~All~~ all plans and specifications for technology center buildings, additions, including parking lots and modifications designed for *Career*Tech programs and/or services shall be reviewed by the disability specialist of the Oklahoma Department of Career and Technology Education and shall be approved by the technology center services division of the Oklahoma Department of Career and Technology Education. ~~thereto and major modifications thereof that are designed to have career tech education programs and services shall be approved by the Local board and the technology center services division of the Oklahoma Department of Career and Technology Education.~~ In addition all capital improvement projects must comply with local building codes and be reviewed by the local and/or state fire marshall and the State Department of Education.

(~~m~~n) **State Board approval of ~~site~~ capital improvement projects.** ~~The location of a site for a technology center district building shall be approved by the State Board.~~ The board of education of a technology center district may, without prior approval of the State Board of Career and Technology Education, approve all plans and specifications for technology center school buildings, additions, and major modifications to school buildings that are designed to provide for the offering of *Career*Tech education programs and services when the cost

of the building project is to be paid with local levies or state bond monies or both local levies and state bond monies. (70 O.S. 2001, Section 14-108, as amended.) The State Board must grant prior approval of all plans and specifications for technology center school buildings, additions, and modifications to school buildings that are designed to provide for the offering of *Career*Tech programs and services when the cost of the building project is to be paid with state appropriated funds, which includes projects funded with monies from the Educational Lottery Trust Fund, or both local levies and state appropriated funds.

(o) **Ownership of instructional equipment.** Instructional equipment purchased or reimbursed with state and/or federal funds will remain the property of the State Board except as provided in 780:10-9-2(d)(2). When a program can no longer be justified, the State Board may remove the equipment and transfer it to another technology center or place it in the equipment pool warehouse.

(p) **Insurance and equipment maintenance.** The technology center district shall be responsible for insurance and maintenance and repair of state-owned equipment while it is being utilized in training programs conducted by the district.

(q) **Architect involvement.** Technology center buildings that are to be remodeled, repaired, or constructed at a cost of greater than $40,000 shall have an architect engaged in the planning of such building as provided in 59 O.S. Supp. 1986, §46.3.

(r) **Accommodations for individuals with disabilities.** It shall be the responsibility of the board of education of a technology center district to follow the provisions of the Uniform Federal Accessibility Standards or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities when constructing new facilities or altering existing structures.

780:15-3-6. Technology center students

(a) **Student eligibility.**

(1) **High school students.** For students currently enrolled in high school, the technology center is an extension of the student's high school and shall be subject to the regulations thereof. The student's home high school shall transcript the units of instruction earned by high school students attending the technology center. High school students who successfully complete their career plans of study shall be awarded a competency/completion certificate by the technology center. The technology center is a separate entity in that it also serves adult students.

(2) **Admission criteria and enrollment procedures.** High school students shall meet the admission criteria established by the technology center for the specific program of study in which they wish to enroll, regardless of lawful immigration status. All high school students shall be enrolled through a cooperative effort of the sending comprehensive high school and the technology center, except in cases where the student's parent or guardian has provided ~~an affidavit and~~ sufficient evidence that he/she is participating in a home-schooled education plan in accordance with 70 O.S. ~~1981~~ 2001, §10-105, as amended.

(3) **Approval to withdraw and withdrawal procedures.** Students who wish to withdraw from a technology center must have approval of both the technology center and the comprehensive high school. Specific procedures for withdrawal are established cooperatively by the technology center and the respective home high school.

(4) **Student discipline.** High school students' discipline and control shall be a cooperative effort between the comprehensive (home) high school and the technology center. Each institution shall enforce rules and regulations in accordance with their board-approved policies. Both institutions shall recognize the students' rights to "due process."

(A) **Qualified Students with Disabilities under IDEA.** Discipline for students with disabilities who have an IEP shall be in accordance with current federal and state legislation and rule of law.

(B) **Qualified Students with Disabilities under Section 504/ADA.** Qualified students with disabilities under Section 504 of the Rehabilitation Act of 1973 as amended or the Americans with Disabilities Act of 1990 as amended who are disabled by drug addiction or alcoholism may be disciplined to the same extent as other students. However, a student who is disabled by some other condition in addition to drug addiction or alcoholism must be evaluated and afforded due process prior to disciplinary action that would constitute a significant change in placement. Denial of access, and/or a significant change in placement, should not occur when there is a definable relationship between the misconduct and the disability. The student's 504/ADA team should meet and make this determination. There is no requirement in Section 504 or the ADA for the continuation of educational services following the expulsion of a student for behavior unrelated to the student's disability.

(5) **Certified coursework.** Units of coursework earned by a student in an approved technology center in Oklahoma shall be certified by the technology center to the sending high school in which the student is regularly enrolled. These units of coursework shall be counted toward meeting local and state requirements for graduation. The technology center is considered to be an extension of the sending school curriculum and shall be subject to the regulations thereof.

(6) **Hours of attendance.** High school students attending a technology center may spend one-half day pursuing a high school diploma or GED and one-half day completing a *Career*Tech program in the technology center. The students are counted as attending a full day at the home high school.

(7) **Secondary Students.** Secondary *Career*Tech programs in the technology centers may be offered to secondary students. Students who are on an Individualized Education Program may participate in the technology center program for up to four years.

(8) **Postsecondary/adult students.** The technology center functions as a separate postsecondary-level educational institution for adult students who are beyond the age of compulsory school attendance and/or are not enrolled in high school. Postsecondary/adult students may attend full-time programs in the technology center or short-term classes held any time during the day on or off campus. Postsecondary/adult students are subject to the policies and procedures established for adult students by the technology center and shall be afforded all benefits and services for which they qualify, regardless of lawful immigration status. Units of coursework completed at a technology center by a postsecondary/adult student are transcripted by the technology center as postsecondary level credit. Postsecondary/adult students who successfully complete their occupational plan of study shall be awarded a competency/completion certification by the technology center. Units of instruction and/or credits earned by postsecondary/adult students may also be applied toward an associate degree, in accordance with the cooperative agreements and cooperative alliance agreements developed by each technology center.

(9) **Residency.** Students that meet the residency requirements of 70 O.S. Supp. 1996, Section 1-113, shall have the same opportunity to access technology center programs, regardless of lawful immigration status, as any other in-district student. These students may enroll in an appropriate program following the same admission and enrollment procedures as other students.

(10) **Cooperative Alliances.** Cooperative Alliances may be formed between technology centers and colleges or universities offering technical Associate of Applied Science (AAS) degrees. The decision to form a Cooperative Alliance by institutions will be voluntary and agreed upon by both partners. Each Alliance will be formally codified in a charter that commits the partner institutions to their respective responsibilities. The State Regents for Higher Education and the State Board of Career and Technology Education will review and approve the charter for each Cooperative Alliance. All programs that are currently approved in a cooperative agreement shall continue and be assumed as part of this Alliance agreement. The partner college will serve as the principal Oklahoma higher education partner with the Center. Other Institutions of higher education may submit a written proposal to offer college-level programs at the Center with the joint approval of the college and Technology Center in the Alliance. If the Institution and Center cannot agree, the written proposal may be sent to the Chancellor (OSRHE) and the State Director (ODCTE) to arbitrate. The Alliance will allow transferability of college credit by requiring that qualified high school students and adults be admitted to the partner Institution or another approved Alliance participating Institution, enroll in the college-credit courses, obtain the college credit upon course completion, and have an official college transcript. Students enrolled in these courses are encouraged but not required to take them for college credit.

(A) **Transfer matrix.** The college and technology center will participate in a state-wide transfer equivalency matrix maintained by OSRHE for all courses as required offered through the Alliance. The courses approved for college credit shall have a defined course syllabus, course objectives and industry standards. The courses shall be reviewed for equivalency and approved by the ODCTE staff.

(B) **High School Students.** High school juniors and seniors enrolled in an accredited high school and receiving high school level instruction at home or from an unaccredited high school may, if s/he meets the minimum requirements established by the Oklahoma State Regents for Higher Education, be admitted as a concurrent student to a college or university in The Oklahoma State System of Higher Education that offers technical AAS and certificate programs to enroll in technical courses only. High school students are also required to have a written statement from the student and parent/guardian indicating an understanding (1) of the eligibility for admission to the Institution and the Center, (2) of the guidelines and policies regarding the transcription of the Institution technical course on the Institution's official student transcript, and (3) of the industry requirements for certificate completion in the Center's program. Credit for the technical course will be granted by the high school for graduation and by the college for credit toward an AAS degree each semester while the student is enrolled in and successfully completing the course.

(C) **Postsecondary/Adult students.** College admission requirements for regular admissions to the Institutions listed in the Institution's "*Catalog*" shall apply to recent high school graduates and adults. Likewise, admission requirements to non-credit programs at the Technology Center are listed in the Center's student handbook and annual schedule.

(b) **Tuition.**

(1) **Resident high school students.** High school students who are residents of the technology center district attend on a tuition-free basis, regardless of lawful immigration status.

(2) **Tuition charge.** Technology centers are authorized to charge tuition to postsecondary students. Amounts charged by a technology center district for tuition are subject to the approval of the State Board.

(3) **Out of District Tuition.** Technology center districts shall charge a tuition to any secondary student who does not reside in the technology center district. The fee for tuition shall be not less than twice the amount of the local cost of providing the program for the student. The State Board may waive this requirement in situations where the technology center district has shown evidence that such requirement will be detrimental to the mission of the local technology center district. Reciprocity agreements to benefit in-district students may be made between technology centers and approved by the Oklahoma Department of Career and Technology Education.

(c) **Transportation.**

(1) **Responsibility.** The technology center is responsible for providing transportation of daytime secondary students to and from in-district, sending schools for those students who are enrolled in a three-period block of instruction. Transportation for students requesting alternative schedules or programs shall be determined by an agreement between the comprehensive school and the technology center.

(2) **Operation under Oklahoma school laws.** All technology centers owning or leasing and operating school buses that transport students to and from points being served by the technology center shall operate under the current school laws of Oklahoma.

(3) **Adult transportation.** Upon approval of the technology center board of education, postsecondary students enrolled in *Career*Tech programs may be transported, as space is available, on established bus routes and related auxiliary activities.

(d) **Student accounting.** Student Accounting information shall be submitted to the Information Management Division as outlined in OAC 780:10-7-2.

780:15-3-7. Special provisions

(a) **Sex discrimination.** It shall be the responsibility of the board of education of the technology center district to review and conform to all regulations that prohibit sex discrimination. *No person in the United States shall on the basis of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance* [Public Law 92-318, Title IX, Sec. 901 (A)]. Any reference to discriminatory language or practices relative to race, creed, or national origin should be deleted.

(b) **Basic education.** No technology center district shall be required to provide any training or instruction that is independent of career and/or technology education. However, foundational and contextual academic education should be provided to persons in order to bring them up to a level at which they may successfully accomplish occupational training.

(c) **Programs in other districts.** No technology center district shall offer *Career*Tech education programs and/or services to any entities inside another technology center district without prior approval of that district. Territory not presently a part of any technology center district may be served by a technology center district in accordance with the policy and procedures approved by the State Board.

(d) **Agreements between technology center and two-year colleges.** Cooperative agreements negotiated between technology centers and two-year colleges, which would permit postsecondary students to receive college credit for *Career*Tech programs offered at the technology center, shall be approved by the State Board. The merits of each request will be evaluated by the following criteria:

(1) Increased utilization of existing resources;

(2) Increased student access to additional educational options;

(3) Continued credibility of the instructional programs at both institutions;

(4) Increased student employability; and,

(5) Consistency with goals and objectives of *Career*Tech education in Oklahoma.

(e) **Live Work Policy.** The live work policy adopted by the State Board of Career and Technology Education in February 2004 shall be incorporated into all technology center policies and procedures. The policies developed by the technology centers will become an item for review during all standard accreditation visits or audit/reviews. This policy will take effect July 1, 2004. Live work is work performed by students in a laboratory, classroom, shop, or in a field setting under written contract and under the direction of the program instructor. The process by which all live work projects will be approved should be outline~~sd~~ in the live work policy. Live work projects should be chosen on the basis of merit in relation to the instructional objectives of the individual program as well as the determined value of the project to allow students to achieve a desired level of competency. ~~Live work projects may be undertaken for any individual or organization residing within the technology center district.~~ Superintendents, Deputy Superintendents, Assistant Superintendents and local board members shall be ineligible from utilizing live work services. These projects are not to replace other learning activities, nor to compete with other organizations within the district, but are to complement the program learning activities. These projects will allow students to experience situations not easily duplicated in a lab or classroom, and at little or no cost to the school. Documentation for each live work project will be maintained by the technology center and will contain pre-numbered live work tickets, authorization signatures, signature of the project owner, estimated amount, amount paid or deposited, scope of the work, estimated completion date, and record of all materials and parts purchased. Live work accounts shall be paid in full upon the completion of the project. The list of live work projects may be reviewed at any time by the ODCTE audit/review staff or others as designated by the State Director of Career and Technology Education. All records of live work projects will be maintained by the technology center for at least three (3) fiscal years following the most recent technology center financial audit. The following policy should be incorporated into all technology center policies and procedures. The policies developed by the technology centers will become an item for review during all standard accreditation visits or audit/reviews. This policy will take effect July 1, 2004.

(f) **Technology Center Code of Ethics Guidelines.** Each technology center will ensure that its district policies and procedures comply with the guidelines for the Technology Center Code of Ethics approved by the State Board of Career and Technology Education in April 2004. If a technology center has an existing code of ethics that meets or exceeds these guidelines, no additional action is necessary. However, if a code of ethics does not meet these guidelines, or if a technology center has not adopted a code of ethics, revision or development is necessary to ensure that the essence of these guidelines is incorporated by October 1, 2004. Technology center district boards may add any other provisions to these guidelines with

discretion. Policies and procedures shall be developed by each technology center board for reporting and resolving alleged violations. The guidelines for the Technology Center Code of Ethics are:

(A) **Focus on the success of students and clients as the fundamental value upon which all decisions are made.** Provide a safe, supportive environment to include up-to-date facilities, equipment, instructional materials, and methods, as well as other appropriate student services to enhance the educational experience and enable all students to achieve their full potential for success. Ensure that all instructors are appropriately qualified to provide a high level of instruction to enable students to obtain realistic training and education for successful career and workplace readiness.

(B) **Acknowledge that the System is accountable to the taxpayers and patrons of the local district and the State of Oklahoma.** The district will compile and make available an annual report or profile that identifies the standards by which the district measures program success. A copy of this report will also be published on the district website. The annual report or profile may measure standards such as teacher qualifications, cost per program, cost per student, economic impact of programs and services, completion rates, sending school secondary service rate, positive placement of completers, percentage of completers who attain a state or national licensure or certification, etc.

(C) **Understand that the role of the board of education is to set policy and direction for the school district, and the role of the administration and staff is to implement the policies of the board in a fair and consistent manner.** The district will maintain and enforce an up-to-date manual of Policies and Procedures. The district will utilize a strategic planning process that will include, at a minimum, the following components: core values and beliefs, vision statement, mission statement, and strategic goals. Adoption of policies not in conformity with the administrator's recommendations or beliefs is not just cause for refusal by the administration to support and implement those policies. Administration must be impartial in the execution of the school policies and the enforcement of rules and regulations. It is a breach of ethics to give preferential consideration to any individual or group because of special status or position in the school system or the community.

(D) **Not use position or influence for any personal gain; and will avoid actions that create a conflict of interest and strive to avoid actions that might appear to create a conflict of interest.** The term "conflict of interest" describes any circumstance that could cast doubt on a person's ability to act with total objectivity with regard to the district's interest. Conflicts of interest are prohibited. It is improper for a board member or school administrator to profit financially from interest in any business which publishes, sells, manufactures, or in any way deals in goods or services which are, or may be expected to be, purchased by the school system they serve. It is a breach of public trust for a board member or administrator to use confidential information concerning schools affairs (such as the knowledge of the selection of specific school sites) for personal profit or to divulge such information to others who might profit. Although it is impossible to list all potential conflict of interest situations, the following examples represent situations where a conflict of interest could arise: A direct or indirect financial interest in any business or organization that is a district vendor or competitor, if the employee or board of education member can influence decisions with respect to the district's business. Use of any district asset for the employee's personal business advantage (examples of such assets include not only equipment, tools, and supplies, but also valuable ideas, technical data, and other confidential information). Relationships, including business, financial, personal, and family may give rise to conflicts of interest or the appearance of a conflict. Employees should carefully evaluate relationships as they relate to district business to avoid conflict or the appearance of a conflict.

(E) **Fulfill professional responsibilities with honesty and integrity.** The Board of Education, superintendent, administration, faculty, and staff will fulfill their duties and responsibilities with honesty and integrity and improve their professional effectiveness through continuing professional development. Board members will be diligent and well informed of issues surrounding Board decisions and regularly attend Board meetings.

(F) **Support the Constitutions of the State of Oklahoma and the United States of America and obey all federal, state, and local laws.** Board members will uphold the Oath of Office. Professional development will be held annually for board members, superintendent, administration, faculty, and staff to learn about new laws.

(G) Encourage effective communication between the Board, the students, the staff, and all elements of the community. A communication plan will be developed to address internal and external audiences.

(H) **Improve professional effectiveness through continuing professional development.** In addition to meeting the minimum requirements for continuing education mandated by state law, board members, administration and staff have a professional obligation to attend conferences, seminars, and other learning activities that hold promise of contributing to their professional growth and development.

(g) **Rules; regulations.** In the absence or omission of specific rules and regulations pertaining to the technology center districts, the state statutes and the rules and regulations governing independent school districts will prevail.

(h) **Present rules supersede.** The rules and regulations contained herein supersede all rules and regulations in existence prior to the date of this publication.

(i) **Review of the Policy and Procedures manual.** The **Policy and Procedures** manual approved by the State Board should be reviewed in connection with developing *Career*Tech training programs.

[OAR Docket #07-1203; filed 5-25-07]

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

[OAR Docket #07-1204]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Secondary, Full-Time and Short-Term Adult *Career*Tech Programs 780:20-3-2 [AMENDED]
Subchapter 5. Programs, Services, and Activities Funded Through P.L. 105-332 Carl D. Perkins Vocational and Technical Education Act of 1998
780:20-5-1 [AMENDED]
AUTHORITY:
State Board of Career and Technology Education; 70 O.S. 2001, §14-104, as amended; 75 O.S. 2001, §250 et. seq., as amended
DATES:
Comment Period:
February 16, 2007 through March 19, 2007
Public Hearing:
March 29, 2007
Adoption:
March 29, 2007
Submitted to Governor:
March 30, 2007
Submitted to House:
March 30, 2007
Submitted to Senate:
March 30, 2007
Gubernatorial Approval:
May 4, 2007
Legislative Approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 24, 2007.
Final Adoption:
May 24, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
CONTACT PERSON:
Judy Draper, 405-743-5437

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. SECONDARY, FULL-TIME AND SHORT-TERM ADULT *CAREER*TECH PROGRAMS

780:20-3-2. Programs: admissions, operations, enrollment, and length

(a) **Nondiscrimination; admission guidelines.** Students shall be provided access to *Career*Tech programs and facilities without regard to race, color, national origin, sex, or disability.

(1) **Agricultural Education.** Agricultural Education programs are designed for junior high and high school students (grades 8 through 12) and adults. Secondary students must have a supervised agricultural experience project. Each ODCTE funded agricultural education program shall be provided transportation services, by the local school district, for all agricultural education/FFA (FFA is an integral part of the agricultural education program) program related duties and activities.

(2) **Business and Information Technology Education.** Business and Information Technology Education programs are designed to prepare high school students (grades 8 through 12) and adults for pathways to careers in business and information technology.

(3) **Family and Consumer Sciences Education.**

(A) **Family and Consumer Sciences Education in comprehensive schools.** Family and Consumer Sciences programs are designed for junior high and high school students (grades 6 through 12).

(B) **Family and Consumer Sciences Occupational Education.** Occupational Family and Consumer Sciences programs are designed for high school students (grades 11 and 12) and/or adults to train or retrain in a specific family and consumer sciences related occupation.

(4) **Health Careers Education.**

(A) ***Career*Tech health careers.** Health Careers Education programs are designed to prepare junior high students, high school students and adults for employment in a health career of their choice.

(B) **Requirements for applicants.** Applicants for admission to Health Careers Education programs must meet requirements as set by the individual program, state statutes, and any other requirements of the appropriate licensing or accrediting agency.

(5) **Marketing Education.** Marketing Management and Entrepreneurship Education programs are designed to prepare students (grades 8 through 12) and adults for career clusters in marketing, business management and entrepreneurship. Students may also earn additional units by participating in a supervised on-the-job internship.

(6) **Technology Education/TechConnect.** Technology Education programs are designed for students in grades 5 through 10 who desire an opportunity to explore and experience technological occupations.

(7) **Trade and Industrial Education/TechConnect Plus.** Trade and Industrial Education programs in comprehensive schools are designed for students in grades 10 through 12. TechConnect Plus programs are designed

for 11th and 12th grade students when access to advanced career and technology programs are not available or special needs are identified. Schools must apply with the appropriate division for approval of a TechConnect Plus program.___Trade and Industrial Education programs in technology centers are designed for students in grades 11 and 12 and/or adults. In technology center programs, tenth-grade students, or over-age students in a grade lower than the eleventh, may be enrolled upon approval of the sending school.

(b) **Program operations.**

(1) **Recommendation for program approval.** The appropriate *Career*Tech program administrator shall recommend approval of a program when criteria for the approval of new programs are met and funds are available.

(2) **Program composition.** Programs shall offer hands-on experience or supervised occupational experiences in the laboratory or clinical setting as well as classroom instruction to provide opportunities for students to achieve career objectives.

(3) **Course titles.** *Career*Tech course offerings must be in agreement with the course titles listed in the current ***Standards for Accreditation of Oklahoma Schools***, published by the State Department of Education. These same course titles (or abbreviated titles) should be the class titles entered on the student's transcript.

(4) **Units of credit.** The units of credit shall be determined by the number of periods the student is in class plus on-the-job training, clinical training, or internship served. (Refer to the ***Standards for Accreditation of Oklahoma Schools.***)

(5) **Full-time programs.** A full-time program in a comprehensive school shall consist of five *Career*Tech instruction class periods and one planning period for a six-period day, and six *Career*Tech instruction class periods and one planning period for a seven-period day. Exceptions to this rule shall include the following:

(A) **Two planning periods.** Teachers who supervise students' agricultural experience programs shall have a minimum of two periods to plan, supervise, and coordinate the activities of student learners (see 780:20-3-1(e) and 780:20-3-2(b)(7)(A)). It is recommended that the last hour of the school day be utilized as one of the planning periods. Schools offering Agricultural Education courses the final period of the day must provide a written explanation to the program administrator.

(B) **Teaching of related courses.** Teachers of Marketing Management and Entrepreneurship Education, Technology Education, TechConnect, Individualized Cooperative Education (ICE), and TechConnect Plus may be allowed to teach one related course, subject to the approval of the appropriate program administrator.

(C) **Trade and Industrial Education/TechConnect Plus.** Two three-hour block courses shall constitute a full-time program in Trade and Industrial Education in a Technology Center. Three two-hour block courses or six one-hour block courses or any combination thereof shall constitute a full-time program in a TechConnect Plus program in a seven period day at a comprehensive school.

(D) **Marketing Education.** Teachers of Marketing Management and Entrepreneurship Education may be allowed to teach one related course (if the school is on a standard six- or seven-period teaching day), subject to the approval of the Marketing Education program administrator.

(E) **Health Careers Education.** Teachers of Health Careers may be allowed to teach one or two related courses with at least one conference period (if the school is on a standard six or seven-period teaching day), subject to the approval of the Health Careers Education program Administrator.

(6) **Adult Training and Development.** Adult Training and Development (short-term adult) programs in comprehensive schools may be organized under the supervision of the *Career*Tech teacher and must be occupationally specific. These programs are organized on request or as the need indicates. They may vary in length.

(7) **Program operations by occupational division.**

(A) **Agricultural Education.**

(i) **Secondary programs.** The agricultural education instructor is a full-time, 12-month employee and shall teach only approved agricultural education courses. Agricultural education instructor shall have no other extra curricular duties or responsibilities other than those required through the FFA student organization and normal school supervisory duties. Coaching, administration, or other similar full-time duties will not be approved.

(ii) **Summer program.** The agricultural education instructor shall formulate a summer program of work and a calendar of activities, which are to be submitted to the local education agency at the completion of the school year.

(iii) **Activities.** Summer activities shall include supervision of students' activities; educational field days and tours; in-service and professional development activities; and, working with adults, agricultural organizations, and industries.

(iv) **Summer leave.** Agricultural Education teachers are entitled to two weeks of summer leave. In lieu of these two weeks of vacation, three weeks each year may be allowed for professional improvement. Summer leave should be coordinated with the local administration. If there is a question in regard to summer leave, the program administrator should be contacted for approval.

(v) **Full-time adult programs.** Full-time adult Agricultural Business Management programs vary in length and are designated for and intended to meet the needs of adults engaged in agriculture and agricultural business operations.

(B) **Business and Information Technology Education.**

(i) **Methods of delivery.** The Business and Information Technology Education programs provide three methods of delivery:

(I) Business and Information Technology Education internships in the comprehensive school shall consist of one or two block periods of classroom instruction and supervised work-site training through part-time employment in training-specific positions in business for students in grades 11 or 12.

(II) Business and Information Technology Education courses in the comprehensive school shall consist of one or two block periods of instruction offered in grades 9 through 12. Instructors shall teach only approved business and information technology education courses. Nine week and semester rotation courses are not approved for Business and Information Technology Education programs. Business and Information Technology Education instructors shall have no other extra curricular duties or responsibilities other than those required through the BPA student organization and normal school supervisory duties. Coaching, administration, or other similar full-time duties will not be approved.

(III) Business and Information Technology Education programs in technology centers shall consist of three-hour block periods of classroom instruction for students in grades 11 or 12 and should include a work-site learning component. Any exceptions must be approved in writing by the Program Administrator of Business and Information Technology Education.

(ii) **Course levels.** Comprehensive school Business and Information Technology Education programs shall not mix levels of courses in the same period without written permission from the State Department of Education.

(iii) **Technology/equipment.** Business and Information Technology Education programs shall provide technology that is appropriate for the defined occupational objectives and is reflective of a modern business environment. A written plan integrating curriculum, training materials, and technology shall be maintained to guide program development and maintain relevance to the marketplace.

(C) **Family and Consumer Sciences Education in comprehensive schools.**

(i) **Full-time programs.** A full-time program shall consist of at least three levels of family and consumer sciences classes with one or more conference periods in the daily schedule, and the instructor shall teach only approved family and consumer sciences courses. Family and consumer sciences instructors shall have no other extra curricular duties or responsibilities other than those required through the FCCLA student organization and normal school supervisory duties. Coaching, administration, or other similar full-time duties will not be approved.

(ii) **Part-time programs.** Programs that are less than full-time will be funded as a half-time program and will be approved only through permission of the program administrator. A part-time program shall include a minimum of two family and consumer sciences classes and a conference period for a six period day and three family and consumer sciences classes and a conference period for a seven period day.

(iii) **Course coordination.** Comprehensive school Family and Consumer Sciences Education programs shall not mix levels of courses in the same class period without written permission from the State Department of Education. This written permission does not ensure programs are meeting Oklahoma Department of Career and Technology Education standards.

(iv) **Adult programs for Family and Consumer Sciences Education.**

(I) **Adult Training and Development.** The Family and Consumer Sciences Education Division staff shall authorize Family and Consumer Sciences Education programs to include instruction for out-of-school and adult groups to be conducted as Adult Training and Development (short-term adult) programs.

(II) **Local organization of courses.** Adult training and development classes may be organized under the supervision and control of the local board of education and are designed for persons 16 years of age and older who are not enrolled in regular day school classes.

(D) **Family and Consumer Sciences Occupational Education.**

(i) **Full-time occupational programs in comprehensive schools.** A full-time family and consumer sciences related occupational education program in the comprehensive school will include two or more classes, two to three periods in length for 11th- and 12th-grade students.

(ii) **Full-time occupational programs in technology centers.** A full-time family and consumer sciences related occupational education program in a technology center will include two classes, three periods in length for 11th- and 12th-grade students and adults.

(iii) **Length; order.** Two years of occupational training may be offered. No student shall be enrolled in Occupational Training II until Occupational Training I has been successfully completed.

(E) **Health Careers Education.**

(i) **Secondary programs.** Programs in 7th, 8th, and 9th grade or high schools vary in length and may be offered in one, two or three blocks of time.

Secondary programs in technology centers may be one or two academic years in length and vary in hours per day.

(ii) **Full-time adult programs.** Full-time adult programs vary in length in accordance with accrediting bodies.

(F) **Marketing Education.**

(i) **Secondary programs.** The three basic methods of offering secondary Marketing Management and Entrepreneurship Education programs shall be as follows:

(I) Project class, providing classroom instruction and application only;

(II) Project with shadowing component, providing a combination of classroom instruction and participating in a shadowing experience with business; and,

(III) Cooperative method/internship, providing classroom instruction plus a supervised work-site learning experience in a cooperating business.

(ii) **First- and second-year students.** Comprehensive school Marketing Management and Entrepreneurship Education programs shall not mix first- and second-year marketing management students in the same class without written permission from the State Department of Education.

(iii) **Technology/equipment.** Marketing Education programs shall provide technology that is appropriate for the defined occupational objectives and is reflective of a modern business environment.

(G) **Technology Education/TechConnect.**

(i) **Program operation requirements.**

(I) **Program design.** The primary purpose of the Technology Education/TechConnect is a career and technology education program designed to transition ninth and tenth grade students to the next level of career development. These programs provide foundational competency experiences by focusing on integration of rigorous academics, all aspects of the industry, employability and technical skills. Technology Education/TechConnect_programs are targeted for grades 9 and 10, but they may be extended an additional two years through an 11th and 12th grade TechConnect Plus program where access to advanced *Career*Tech programs is unavailable and/or limited or where special student needs are identified. Enrollment priority should be considered for students who are at-risk or who are members of special populations; however, enrollment should not be limited to these students only. Through the infusion of *Career*Tech preparation strategies in academic classes, Technology Education/TechConnect students develop an understanding of how principles of math, science, and English are applied in the workplace and why it is necessary for them to master academic skills. Technology Education/TechConnect programs are designed to provide students a solid foundation in academic skills, practical "hands-on" activities, and the ability to relate abstract concepts to the "hands-on" activities. An essential component of an Technology Education/TechConnect program is the development and implementation of a comprehensive career guidance program, so Technology Education/TechConnect students will be able to make more meaningful career choices by developing a better understanding of their own interests, skills, and abilities; understanding labor market projections; and learning to formulate a plan of study to achieve their individual career goals. The school guidance program should include a total occupational assessment of each student as well as components that address the student's personal, social, educational and career development needs. Technology Education/TechConnect programs shall consist of occupational instruction for two consecutive periods. Programs shall have laboratory experiences, where appropriate, to provide the progressive situations necessary for general occupational skills training. In order to integrate academics and *Career*Tech education, teachers of the Technology Education/TechConnect programs shall participate in appropriate professional improvement activities including the summer *Career*Tech conference, professional improvement meetings, and other related activities. Technology Education/TechConnect students shall have access to appropriate career and technology student organizations that are consistent with the related *Career*Tech programs as well as other personal development components. Technology Education/TechConnect program enrollment numbers shall be consistent with related *Career*Tech program guidelines with particular attention given to work situations and available resources. Technology Education/TechConnect teacher certification shall be consistent with related *Career*Tech program areas. Exceptions shall be approved by the appropriate occupational division administrator.

(II) **Occupational preparation.** Programs shall be designed to introduce students to careers in "clusters" of closely related occupations, including but not limited to Construction, Mechanical-Construction, Mechanics, Electrical/Electronics, Communications, Horticulture, Food Services, Hospitality, Child/Elder Care, Health Services, Metals, Food Services,

Agricultural Related, Business, and Family and Consumer Sciences Related.

(III) **Full-time program.** ~~The offering of at least two classes, which are each two consecutive periods in length or four one-hour periods in length, in a six period day shall be considered a full-time Technology Education/TechConnect *Career*Tech program~~. A six period day will require two, two-hour blocks or four one-hour blocks with one hour of related instruction for a full time program. One two-period block or less than four one-hour period blocks will constitute a half-time program in a six period day. A seven period day will require three two-hour blocks or ~~four~~ five one-hour blocks with one hour of related instruction for a full time program. Two two-hour blocks or less than five one-hour blocks will constitute a half-time program in a seven period day.

(IV) **Full-time teacher.** A teacher who is teaching two or more Technology Education/TechConnect classes, which are each two consecutive periods in length, or who is teaching four or more Technology Education/TechConnect classes, which are each one period in length, shall be considered as a full-time *Career*Tech teacher in a six period day. A Technology Education/TechConnect teacher may be assigned three two period or six one period *Career*Tech classes in a seven period day.

(V) **Technology Education/TechConnect program operation recommendations.** Technology Education/TechConnect students should have access to comprehensive guidance services. These services should include the development of a plan of study that provides direction through course enrollment leading toward high school graduation. The plan should be flexible with periodic review to ensure program/course relevance in attainment of the student's career goal(s). Schools should offer applied academic courses in English, mathematics, and science for Technology Education/TechConnect_students. Enrollment in applied courses should be consistent with each Technology Education/TechConnect student plan of study. Enrollment in the Technology Education/TechConnect applied academic courses should not be limited to Technology Education/TechConnect students. Teachers of the applied academic courses should participate in appropriate professional improvement activities including summer *Career*Tech conference, professional improvement meetings, and other related activities. Technology Education/TechConnect students should be provided support services to enhance academic competence. These services may be provided through an education enhancement center, tutoring services, or other activities that will assist the student in attainment of academic/occupational competencies.

(ii) **Supervision.** The State Board shall provide state and federal funds to enhance special populations students equal access and full participation in *Career*Tech programs. Programs shall be supervised by the appropriate occupational and Technology Education division.

(H) **Technology Education.**

(i) **Course duration.** Each technology education course shall be taught in a one-period block of time (45-55 minutes).

(ii) **Curriculum.** The curriculum shall include the following technology systems: construction, communications, manufacturing, and transportation, and bio-tech. Through these systems, all sixteen of the nationally recognized Career Clusters will be covered.

(iii) **Four periods per day.** Each program shall implement the technology education curriculum into a minimum of four periods per day, with one additional period allotted for a conference/planning period.

(iv) **Equipment.** Technology Education programs shall provide technically up-to-date equipment to allow students opportunities for modernistic hands-on experiences. Schools are encouraged to use state program assistance funds to purchase this equipment.

(I) **Trade and Industrial Education.** All secondary trade and industrial education students in Technology Centers shall be enrolled for three consecutive periods daily, five days a week. Secondary TechConnect Plus students in comprehensive high schools may be enrolled for one period daily, five days a week. Adult trade and industrial education students may enroll for one-half day (three periods) or a full day (six periods). The Program Administrator of Trade and Industrial Education must approve any exceptions in writing.

(J) **Integrated Academics.** Academics taught in the technology center shall be delivered in the context of the program in which each student is enrolled. If academic instruction is offered for credit through the sending school, it shall be structured so as to meet current legislation and State Department of Education guidelines. Students must meet, within the structure of the academic class, the attendance requirements of their comprehensive schools in order to receive academic credit. Further, the legislated limit of 10 days of absence from the academic class for school-related activities applies.

(c) **Enrollment for full-time programs.**

(1) **Guidelines compliance.** Program enrollments shall comply with the established guidelines of the appropriate occupational division. Exceptions must have written approval by the appropriate program administrator prior to the second week of class. Consideration shall be given to the availability of work stations, clinical experiences and individual student needs.

(2) **Enrollments specific to occupational divisions and programs.**

(A) **Agricultural Education.**

(i) **Student enrollment limits.** If a department has adequate space, equipment, and laboratory sites, a maximum of 25 students may be enrolled in each agricultural education class with the exception of lab classes, such as Horticulture and Ag Mechanics, and they shall be limited to 15 per class. Exceptions to these numbers must have written approval by the appropriate program administrator.

(ii) **Maximum class enrollment.** The maximum enrollment in each agricultural mechanics and horticulture class shall be 15 students per class period.

(iii) **Course prerequisite.** Agricultural Science I is the prerequisite for all other agricultural education courses with the exception of eighth-grade Agricultural Orientation.

(iv) **Employment in Agribusiness.** The Agricultural Education course, Employment in Agribusiness, is considered a **Cooperative Program** in which students can earn scholastic credit if the course meets all requirements listed under section (780:20-3-1 section e). It must be taught and supervised by the agricultural education instructor. Note: The work-site experience must be directly related to the curriculum offered in the program.

(B) **Business and Information Technology Education.**

(i) **Business and Information Technology Education programs in comprehensive schools.** A maximum of 25 students per class shall be enrolled in the business and computer technology internship. Other Business and Information Technology Education courses may enroll a maximum of 25 students at a ratio of one work station per student.

(ii) **Business and computer technology programs in technology centers.** Business and Information Technology Education courses may enroll a maximum of 25 students at a ratio of one work station per student.

(C) **Family and Consumer Sciences Education.**

(i) **Family and Consumer Sciences programs in comprehensive schools.** If a department has adequate space, equipment and laboratory sites, maximum enrollment for the following courses shall be: (Not all class offerings are listed, but those not listed have enrollment determinatives in common with one of the courses listed.)

(I) Personal Development, Teen Ecology, and Life Management-20 Students

(II) Family and Consumer Sciences I and II-20 Students

(III) Healthy Life Choices-25 Students

(IV) Hospitality Careers Orientation, Career Orientation, and Adult and Family Living-25 Students

(V) In-depth semester courses and/or Family and Consumer Sciences III and IV-25 Students

(ii) **Family and Consumer Sciences Occupational Education.** A minimum of 10 and a maximum of 20 students shall be enrolled in each section of family and consumer sciences related occupational education.

(D) **Health Careers Education.**

(i) **Secondary health careers programs.** A minimum of 10 and a maximum of 18 students shall be enrolled in each section of a secondary health careers education program.

(ii) **Full-time adult health careers programs.** A minimum of 8 and a maximum of 12 students per instructor shall be enrolled in a full-time adult Health Careers Education program, or the limit set by national accrediting agencies. Program enrollment may also be limited by clinical site and availability.

(E) **Marketing Education.**

(i) **Student enrollment limits.** The maximum number of cooperative students in a full-time cooperative Marketing Management and Entrepreneurship program shall not exceed ~~50~~ 25 students per marketing management teacher-coordinator. A maximum of ~~50~~ 25 students per class may be enrolled in the marketing internship. Other Marketing Education courses may enroll a maximum of 25 students.

(ii) **Project class enrollment.** Where the marketing management teacher-coordinator teaches a marketing management project class in conjunction with the cooperative programs, enrollment in the project class is determined by the size of the classroom facility and SDE policies.

(iii) **"Marketing management project students. "** Sophomore, junior or senior students may be allowed to enroll in each existing cooperative class for the theory and classroom application portion only. These students would not be required to obtain work-site learning experience and would receive only one unit of credit.

(iv) **Half-time program enrollment.** The maximum number of cooperative students in a half-time cooperative program is 25 per teacher-coordinator.

(F) **Technology Education and TechConect.** The maximum enrollment for each period of Technology Education shall be 24 students. The maximum enrollment for each period of TechConnect shall be 20 students. Consideration should be given to the size of the facility and the number of students that the modular workstations are designed to accommodate.

(G) **Trade and Industrial Education and TechConnect.**

(i) **Maximum enrollment.** The maximum enrollment for each Trade and Industrial Education, TechConnect Plus program section shall be 20 students, with the exceptions of cosmetology, which may have a maximum of 22 students, and ICE programs, which may have 50 students per ICE teacher.

(ii) **Alternate program enrollment.** The Trade and Industrial Education Division shall establish a reduced maximum enrollment for any program not meeting adequate size or layout of teaching facilities, number of training stations, appropriate quality and quantity of tools, and equipment and supplies. Individual student needs, student safety and supervision shall also be considered when determining maximum student enrollment.

(iii) **Inclusion of on-the-job students.** Students involved in on-the-job training shall be included in the maximum enrollment for the program unless each school has an on-the-job training coordinator.

(d) **Length of programs.** *Career*Tech programs shall be 10 or 12 calendar months as approved by the appropriate program administrator. Exceptions must be approved by the Department.

SUBCHAPTER 5. PROGRAMS, SERVICES, AND ACTIVITIES FUNDED THROUGH P.L. 105-332 CARL D. PERKINS VOCATIONAL AND TECHNICAL EDUCATION ACT OF 1998, AS AMENDED BY P.L. 109-270

780:20-5-1. Services and Activities

(a) **Supervision and technical assistance for P.L. 105-332 services and activities as amended by P.L. 109-270.** Staff will provide technical assistance, to local administrators, and teachers in meeting federal compliance requirements for *Career*Tech students.

(b) **Compliance-related activities.**

(1) **Monitoring.** The Department shall monitor eligible recipients' compliance with federal mandates regarding the use of funds under P.L. 105-332 as amended by P.L. 109-270.

(2) **Assist local administrators.** The Department will assist local administrators in meeting federal mandates by providing in-service training and on-site consultations.

(c) **Allocations for eligible recipients.**

(1) **Program funding.** The State Board shall provide federal funds, through the Carl Perkins Vocational and Technical Education Act of 1998, as amended by P.L. 109-270, to eligible recipients offering *Career*Tech programs or postsecondary technical degree programs.

(2) **Application for funding.** The funding shall be applied for by eligible recipients through the local application. To qualify for federal funds, the school administrator must complete and return the required local application forms on the established due dates. The school administrator must sign assurances of compliance when accepting the federal funds.

(d) **Reporting requirements.** Eligible recipients using federal funds shall report annual expenditures and the kinds of services provided. These reports shall be submitted by the specified due date(s).

(e) **Funding requirements.** Eligible recipients who apply for federal funds must meet specific guidelines in their applications as stated in P.L. 105-332 as amended by P.L. 109-270. Funds may be used only for the populations and allowable activities as specified on the application and in P.L. 105-332 as amended by P.L. 109-270.

[OAR Docket #07-1204; filed 5-25-07]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 5. FEES

[OAR Docket #07-1177]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
785:5-1-11. Well driller and pump installer licensing fees [AMENDED]
AUTHORITY:
Oklahoma Water Resources Board, 82 O.S., Section 1020.16; 82 O.S., Section 1085.2(7); and 82 O.S., Section 1085.4.
DATES:
Comment period:
January 2, 2007 through February 5, 2007
Public hearing:
February 5, 2007
Adoption:
March 13, 2007
Submitted to Governor:
March 21, 2007
Submitted to House:
March 21, 2007
Submitted to Senate:
March 21, 2007
Gubernatorial approval:
April 6, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 16, 2007
Final adoption:
May 16, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The Oklahoma Water Resources Board ("OWRB") has adopted amendments to Oklahoma Administrative Code ("OAC") Section 785:5-1-11 that will increase the initial license fee for out-of-state water well drillers from $400 to $500 to cover the increased costs of reviewing the applications for such licenses. Licenses are issued for two-year periods, so the effective annual cost would increase from $200 to $250. That section was also amended to increase Indemnity Fund fees to increase the amount available to remedy wells that may cause pollution where the well is abandoned or the original driller cannot be found. Subsection (k) was amended by increasing the initial Indemnity Fund fee from $100 to $200 (effective annual cost would increase from $50 to $100). Subsection (l) of the same rule will increase the Indemnity Fund fee for each activity subject of the well driller license from $40 to $75, and subsection (m) will increase the Indemnity Fund fee for renewals for each activity from $40 to $75. Renewals, like initial issuance, of licenses are for two years.
CONTACT PERSON:
Dean Couch, General Counsel, (405) 530-8800

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

785:5-1-11. Well driller and pump installer licensing fees

(a) The filing application and license fee for issuance of individual, partnership, or corporation well driller licenses for one activity to be certified under 785:35-3-1 which shall include the operator certification for the individual license or, in the case of a partnership or corporation, one operator certification for such activity shall be $300.00 for two years.
(b) The license application fee for each additional activity shall be $40.00 for two years.
(c) The application fee for each additional operator certificate, which includes certification to conduct one activity, shall be $60.00 for two years.
(d) The application fee for each additional activity under an operator certificate shall be $30.00.
(e) The renewal fee for each license for one certified activity, which shall include the operator certification shall be $200.00, if the application to renew is filed by May 31, and $250.00 if the application to renew is filed after May 31; provided that a late fee of $150.00 shall be due for the completed license renewal application if received by the Board after July 1 of the year to be renewed, but before the end of the applicable grace period.
(f) The license renewal fee for each additional activity shall be $40.00 for a two (2) year period.
(g) The fee for each additional operator certification renewal, which includes certification to conduct the authorized activities, shall be $40.00 for a two (2) year period.
(h) The fee for examination of any operator shall be $50.00.
(i) The fee for transfer of individual licensee designation to partnership, corporation or other entity or certified operator from one firm or corporation to another shall be $50.00.
(j) The license fee for a nonresident shall be the amount charged in the state of the nonresident but in no case less than ~~$400.00~~ $500.00 for two years.
(k) The initial fee for the Indemnity Fund for one activity certified under 785:35-3-1 shall be ~~$100.00~~ $200.00 for a two (2) year period.
(l) The initial fee for the Indemnity Fund for each additional activity certified under 785:35-3-1 shall be ~~$40.00~~ $75.00 for a two (2) year period.
(m) The renewal fee for the Indemnity Fund for each activity certified under 785:35-3-1 shall be ~~$40.00~~ $75.00 for a two (2) year period.
(n) The fee to file a request for a variance or exception from any well construction, completion, plugging or other requirement set forth for wells, test holes or geotechnical borings in Chapter 35 in this Title shall be $50.00.

[OAR Docket #07-1177; filed 5-24-07]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 45. OKLAHOMA'S WATER QUALITY STANDARDS

[OAR Docket #07-1178]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
785:45-1-2. Definitions [AMENDED]
Subchapter 3. Antidegradation Requirements
785:45-3-2. Applications of antidegradation policy [AMENDED]
Subchapter 5. Surface Water Quality Standards
Part 1. General Provisions
785:45-5-4. Applicability of narrative and numerical criteria [AMENDED]
Part 3. Beneficial Uses and Criteria to Protect Uses
785:45-5-9. General narrative criteria [AMENDED]
785:45-5-12. Fish and wildlife propagation [AMENDED]
785:45-5-13. Agriculture: livestock and irrigation [AMENDED]
785:45-5-14. Hydroelectric power generation [REVOKED]
785:45-5-15. Industrial and municipal process and cooling water [REVOKED]
Part 5. Special Provisions
785:45-5-25. Implementation Policies for the Antidegradation Policy Statement [AMENDED]
785:45-5-29. Delineation of NLW areas [AMENDED]
Appendix A. Designated Beneficial Uses for Surface Waters [REVOKED]
Appendix A. Designated Beneficial Uses for Surface Waters [NEW]
Appendix B. Areas with Waters of Recreational and/or Ecological Significance [REVOKED]
Appendix B. Areas with Waters of Recreational and/or Ecological Significance [NEW]
Appendix E. Requirements for Development of Site-Specific Criteria for Metals [REVOKED]
Appendix E. Requirements for Development of Site-Specific Criteria for Certain Parameters [NEW]
Appendix G. Numerical Criteria to Protect Beneficial Uses [REVOKED]
Appendix G. Numerical Criteria to Protect Beneficial Uses [NEW]
Appendix H. Beneficial Use Designations for Certain Limited Areas of Groundwater [REVOKED]
Appendix H. Beneficial Use Designations for Certain Limited Areas of Groundwater [NEW]

AUTHORITY:

Oklahoma Water Resources Board, 82 O.S., §§ 1085.30 and 1085.30a; 27A O.S., § 1-3-101; and 82 O.S., § 1085.2.

DATES:

Comment period:

November 15, 2006 through January 12, 2007

Public hearing:

January 12, 2007

Adoption:

March 13, 2007

Submitted to Governor:

March 21, 2007

Submitted to House:

March 21, 2007

Submitted to Senate:

March 21, 2007

Gubernatorial approval:

April 6, 2007

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 16, 2007

Final adoption:

May 16, 2007

Effective:

July 1, 2007

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATION BY REFERENCE:

n/a

ANALYSIS:

Oklahoma Administrative Code ("OAC") Section 785:45-1-2, Definitions, has been amended. A definition explaining that the acronym "SWS" means "Sensitive Water Supply" has been added. The circumstance which created the need for this amendment is that this acronym is used in several places in OAC 785:45 without being defined. The intended effect of this amendment is to clarify that this acronym refers to Sensitive Water Supplies.

OAC 785:45-3-2, Applications of Antidegradation Policy, has been amended to add language dealing with Sensitive Water Supplies. The Oklahoma Water Resources Board ("OWRB") staff recently re-examined the text surrounding the SWS designations and found some areas that could be clarified. No new limitations have been added, but tests have been incorporated into the narrative that should help clarify what benchmarks a waterbody must attain in order to be designated as SWS. The circumstance which created the need for this amendment is that staff have been approached twice in recent years to make new designations of SWS waters, but had no guidance to measure the validity of the requests. The intended effect of this amendment is to provide users of the Water Quality Standards ("WQS") a consistent measure of what is required in order for a waterbody to be designated as SWS.

OAC 785:45-5-4, Applicability of narrative and numerical criteria, has been amended in two ways. First, the language referring to instream applicability has been changed to specify that it applies to all waterbodies. The circumstance which created the need for this amendment is that staff from other state environmental agencies have alerted OWRB staff that the term "instream" may be construed by some persons to prevent application of water quality criteria to reservoirs. The intended effect of this amendment is clarify that water quality criteria apply to all waters designated with the pertinent beneficial uses. Also in this section, new language has been added to discuss the applicability of site-specific criteria. The circumstance which created the need for this amendment is the recognition that no language currently exists which allows for the derivation and use of criteria other than those applied statewide. The intended effect of this amendment is to specifically allow the derivation and use of site-specific criteria which are already being developed and used.

OAC 785:45-5-9, General narrative criteria, has been amended in order to correct a typographical error by changing the word "of" to "or".

Numerical criteria for phosphorus for Lake Eucha and Lake Spavinaw have been adopted in OAC 785:45-5-10, Public and private water supplies. The circumstance which created the need for this amendment is the recognition that excess phosphorus is contributing to the overall decline of water quality of these lakes and ongoing taste and odor problems associated with the algae attributed to the excess phosphorus. Additional benefit is expected to be derived from this revision through increased dissolved oxygen concentrations. The intended effect of this amendment is to reduce the operation and maintenance costs for the City of Tulsa in treating this lake water for use as a drinking water supply and extend the usable life of the reservoirs while improving conditions for fish and wildlife.

OAC 785:45-5-12, Fish and wildlife propagation, has also been amended. Language dealing with dissolved metals in this section has been revised to be consistent with federal law. The circumstance which created the need for this amendment is the recognition that certain language in the WQS appears to allow the use of dissolved metal concentrations for determining permit conditions. The latter result is contrary to federal regulation. The amendment limits the use of dissolved metals to assessment purposes only. The intended effect of this amendment is to maintain consistency between federal and state regulation.

OAC 785:45-5-13, Agriculture: livestock and irrigation, has been amended in at least two ways. First, the Board has adopted amendments to delete the reference to "instream" since it appears to be grammatically unnecessary and potentially confusing. The circumstance which created the need for this amendment is that staff from other state environmental agencies have alerted OWRB staff that the term "instream" may be construed by some persons to prevent application of water quality criteria to reservoirs. The intended effect of this amendment is to clarify that water quality criteria apply to all waters designated with the pertinent beneficial uses. Also, the reference to Appendix C has been deleted. The circumstance which created the need for this amendment is that Appendix C was deleted last year and all references should have been deleted with it. The intended effect of this amendment is to correct this oversight.

OAC Sections 785:45-5-14, Hydroelectric power generation, 785:45-5-15, Industrial and municipal process and cooling water, and corresponding language and references in Appendix A, have all been revoked. The circumstance that created the need for these amendments is the recognition by staff that these rules are extraneous and create the need for additional language elsewhere in OAC 785:46 and the Unified Assessment Report to the U.S. Environmental Protection Agency ("EPA") to account for the assessment of whether these beneficial uses are being supported. The intended effect of these amendments is to allow agencies to stop spending effort reporting support status of beneficial uses that have no criteria associated with them and therefore cannot be monitored.

OAC 785:45-5-25, Implementation Policies for the Antidegradation Policy Statement, has been amended. Language has been added to this section to clarify the applicability of HQW and SWS designations. Staff re-examined the text surrounding the HQW and SWS designations and found some areas that could be clarified. No new limitations have been added, but tests have been incorporated into the narrative that should help clarify what benchmarks a waterbody must attain in order to be designated as HQW or SWS. The circumstance which created the need for this amendment is that staff have been approached twice in recent years to make new designations of HQW or SWS waters but had no guidance to measure the validity of the requests. The intended effect of this amendment is to provide users of the WQS a consistent measure of what is required in order for a waterbody to be designated as HQW or SWS.

OAC 785:45-5-29, Delineation of NLW areas, has been amended. Lake Chickasha has been added to the list of NLW waters due to excessive algae growth caused by nutrient loading that is potentially causing impairment of the beneficial uses of this waterbody. The circumstance which created the need for this amendment is the lake has exceeded 62 TSI, which is the threshold previously established for this designation. The intended effect of this amendment is to cause implementation of more protective regulations or practices in the affected watershed.

Appendix A, Designated Beneficial Uses for Surface Waters, has been revoked and reenacted with numerous changes. First, the entire Appendix has been reformatted and divided into eight smaller appendices, which will include Appendix A (the current introductory text) and then Appendices A.1 through A.7 (corresponding to the seven water quality management basins in the state). Language changes have been made to the introduction text to reflect this change. The circumstance which created the need for these amendments is the size of Appendix A has made rulemaking difficult and cumbersome. The intended effect of these amendments is to make it easier and less complicated to change this Appendix in the future. Another change is replacing the WQM segment numbers with Waterbody Identification Numbers. Language changes have also been made to the introduction text to reflect this change. The circumstance which created the need for these amendments is that many other state environmental agencies have requested that Waterbody Identification Numbers be incorporated into the WQS. The intended effect of these amendments is to facilitate integration of water quality management between state agencies. Another change is the addition of many alternate names of waterbodies listed in the tables. The circumstance which

created the need for these amendments is that the Department of Environmental Quality ("DEQ") uses alternate names for many waterbodies that are different from those listed in the WQS. The intended effect of these amendments is to include these alternate names for ease of reference. Another change is adding an NLW designation for Lake Chickasha. The circumstance which created the need for this amendment is the lake has exceeded 62 TSI, which is the threshold previously established for this designation. Excessive algae growth caused by nutrient loading is potentially causing impairment of the beneficial uses of this waterbody. The intended effect of this amendment is to cause implementation of more protectiv regulations or practices in the affected watershed. Another change is adding an HQW designation for the Lower Mountain Fork River located between U.S. Highway 70 and the confluence with the Little River in eastern McCurtain County. The circumstance which created the need for this amendment is the recognition that environmental conditions found in the segment in question are similar to the conditions found in the surrounding stream segments that are currently designated HQW. The segment between U.S. Highway 70 and the Broken Bow Reservoir dam to the north is already designated as an HQW and has the beneficial use designation of "Trout". Little River below this segment is already listed as an HQW. There is no physical separation between the segments. The intended effect of this revision to provide consistent protection for all waters with similar environmental conditions. Another set of changes is to remove the numbers referring to the different classes of Agriculture from the introduction and the tables, and replace the numbers with dots only in the tables. The circumstance which created the need for these amendments is that the appendix providing explanation and support for these numbers was deleted last year. The intended effect of this amendment is to correct an oversight referencing an appendix that no longer exists. Another change is to add the Public and Private Water Supply beneficial use for Lake Overholser. The circumstance which created the need for this amendment is that this use, which has been and is an existing use, was inadvertently omitted when Appendix A was revoked and reenacted in 2006. The intended effect of this amendment is to correct this omission so that Lake Overholser is protected for this use. Finally, the Fish and Wildlife Propagation beneficial use subcategory for the segment of the Canadian River from U.S. Highway 81 in Canadian County to Buckhead Creek near Rosedale in McClain County has been changed from Habitat Limited Aquatic Community to Warm Water Aquatic Community. The circumstance which created the need for this amendment is the discovery of a substantial biotic community in that segment of the river that indicated the more stringent designation was warranted. Both federal and state rule require incremental increases in levels of protection as the water quality and biological community improve. The intended effect of this amendment is to provide appropriate levels of protection for the existing biological community in that waterbody.

Appendix B, Areas With Waters Of Recreational And/Or Ecological Significance, has been revoked and reenacted with several changes. Appendix B areas include wildlife refuges, wildlife management areas, state parks and resorts and critical habitat for federally-listed endangered species of wildlife. Other agencies have requested that additional areas be included in Appendix B in order to provide a level of support for the agencies' jurisdictional areas of responsibility. The circumstances which created the need for these amendments are: (1) the Oklahoma Department of Wildlife Conservation has acquired new areas of land in its management system; (2) the name for Oklahoma Bat Cave has changed to Ozark Plateau; and (3) a federal notice has been issued which formally designates critical habitat for the Arkansas River Shiner, a federally-listed threatened species. The intended effect of these amendments is to provide a central listing of areas that other state and federal environmental agencies have determined require additional levels of protection beyond those already provided by the WQS.

Appendix E, Requirements for Development of Site-Specific Criteria for Metals, has been revoked and reenacted with extensive changes. Appendix E is being revised to allow for development and promulgation of site-specific criteria for parameters other than metals. The first set of edits involves segregating the applicability to metals and non-metals, as well as situations specific to National Pollutant Discharge Elimination System permits and those that are not related to discharges. Finally, changes have been made to address the future site-specific criteria needs for nutrients and other non-metals. One subdivision of the revised appendix will contain the metals criteria that have previously been derived for certain waterbodies. Two of the new subdivisions will address the future needs for non-metals as currently foreseen. The circumstance that created the need for these amendments is the increasing likelihood of needing site-specific criteria for compounds other than metals. The science surrounding this issue is improving and there is recognition that statewide criteria for some compounds other than metals may not be appropriate. The intended effect of these amendments is to allow for development of water quality criteria that is protective of the environment while considering localized effects.

Appendix G, Numerical Criteria to Protect Beneficial Uses, has been revoked and reenacted with several changes. New criteria for Nonylphenol, Diazinon, and Perchlorate have been added. While diazinon is a relic insecticide that is no longer manufactured, unknown amounts still exist and are being used by the public. Nonylphenol is an intermediate product of certain petrochemical processes and a companion compound used in certain fuel dyes and additives. Both compounds are toxic to fish and wildlife above certain concentrations and the EPA has released new guidance on protective water quality criteria. Water quality criteria have also been added for perchlorate for the protection of human health as well as fish and wildlife. Perchlorate is an ionic molecule primarily used in defense activities and the aerospace industry as a strong oxidizer of explosives and solid rocket boosters. It has also been found in fireworks, airbag deployment charges in cars, road flares, and some fertilizers. The circumstance which created the need for these amendments is the absence of WQS for these compounds, the increased likelihood of finding them in Oklahoma waters, and the publication of the guidance documents assisting states in promulgating appropriately protective criteria for diazinon and nonlyphenol. The intended effect of these amendments is to provide state environmental agencies appropriately protective criteria for these compounds on which to base decisions pertinent to their individual areas of jurisdictional responsibility.

Appendix H, Beneficial Use Designations for Certain Limited Areas of Groundwater, has been revoked and reenacted with a few changes. The amendments and new language will provide beneficial use designations for certain limited areas of groundwater that are more appropriate and accurate than the default designations prescribed in 785:45-7-3. The circumstance which created the need for these amendments is that the default designated uses for certain areas of groundwater are not existing uses and likely cannot be supported due to natural conditions or irreversible human-induced impacts such as pollution. The intended effect of these amendments is to provide more accurate and appropriate designations of the uses of the groundwater in these limited areas. This appendix has also been modified to add clarifying language and definitions to the introduction. The circumstance which created the need for these amendments is an increasing awareness that information relating to areas of contaminated groundwater and groundwater with special protections may not be readily available to well drillers, state environmental agencies or the general public. The intended effect of these amendments is to provide an easy reference that lists areas of contaminated groundwater and groundwater requiring special protections. The legal description of one of the existing listings also needs to be corrected. The circumstance which created the need for this amendment is a request from the DEQ to correct the legal description in question. The intended effect of this amendment is to accurately reflect the legal description of one of the areas of contaminated groundwater.

The rules amendments adopted by the OWRB in this rulemaking implement portions of 82 O.S., §§ 1085.2 and 1085.30, and 27A O.S., §§ 1-1-202 and 1-3-101. Rules related to these rules amendments are codified in OAC Title 785, Chapter 46.

CONTACT PERSON:

Derek Smithee, Water Quality Programs Division Chief, (405) 530-8800

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE OKLAHOMA WATER RESOURCES BOARD, 3800 NORTH CLASSEN BOULEVARD, OKLAHOMA CITY, OKLAHOMA, AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):

SUMMARY:

Please see the "**ANALYSIS**" above for a thorough explanation of the rules. The full text of the rules may be obtained by interested parties from the Oklahoma Water Resources Board, 3800 North Classen, Oklahoma City, Oklahoma 73118; phone 405/530-8800.

[OAR Docket #07-1178; filed 5-24-07]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 46. IMPLEMENATION OF OKLAHOMA'S WATER QUALITY STANDARDS

[OAR Docket #07-1179]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
785:46-1-2. Definitions [AMENDED]
Subchapter 3. Implementation of Narrative Toxics Criteria to Protect Aquatic Life Using Whole Effluent Toxicity (WET) Testing
785:46-3-3. Sampling for whole effluent toxicity testing [AMENDED]
Subchapter 9. Implementation of Criteria to Protect the Agriculture Beneficial Use
785:46-9-1. Applicability and scope [AMENDED]
785:46-9-2. Applicable mineral criteria [AMENDED]
785:46-9-3. Regulatory flows [AMENDED]
785:46-9-5. Reasonable potential [AMENDED]
Subchapter 15. Use Support Assessment Protocols
785:46-15-5. Assessment of Fish and Wildlife Propagation support [AMENDED]
785:46-15-8. Assessment of Agriculture support [AMENDED]
785:46-15-11. Assessment of Hydroelectric Power Generation support [REVOKED]
785:46-15-12. Assessment of Industrial and Municipal Process and Cooling Water support [REVOKED]
785:16-15-13. Assessment of Navigation support [REVOKED]
AUTHORITY:
Oklahoma Water Resources Board, 82 O.S., § 1085.30; 27A O.S., § 1-3-101; and 82 O.S., § 1085.2.
DATES:
Comment period:
November 15, 2006 through January 12, 2007
Public hearing:
January 12, 2007
Adoption:
March 13, 2007
Submitted to Governor:
March 21, 2007
Submitted to House:
March 21, 2007
Submitted to Senate:
March 21, 2007
Gubernatorial approval:
April 6, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 16, 2007
Final adoption:
May 16, 2007
Effective:
July 1, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:

Oklahoma Administrative Code ("OAC") Section 785:46-3-3, Sampling for Whole Effluent Toxicity Testing, has been amended. The reference to "instream" has been deleted since it appears to be grammatically unnecessary. The circumstance which created the need for this amendment is that staff from other state environmental agencies have alerted Oklahoma Water Resources Board ("OWRB") staff that this term may be construed by some persons to prevent application of water quality criteria to reservoirs. The intended effect of this amendment is to clarify that water quality criteria apply to all waters designated with the pertinent beneficial uses.

OAC 785:46-9-1, Applicability and Scope, and OAC 785:46-9-2, Applicable mineral criteria, have both been amended. The circumstance which created the need for these amendments is that in a separate rulemaking on OAC 785:45, the OWRB adopted amendments of OAC 785:45-5-13 which change how the subdivisions in the latter section are organized. There are references to 785:45-5-13 and its subdivisions in 785:46-9-1 and 785:46-9-2 which must be changed to correspond to the amendments of 785:45-5-13. The intended effect of the amendments of 785:46-9-1 and 785:46-9-2 is to correspond the references to the new lettering scheme of 785:45-5-13.

OAC 785:46-9-3, Regulatory flows, has been amended to update a reference to a publication. The circumstance which created the need for this amendment is that the reference to the Tortorelli publication in this section is now outdated. The intended effect of this amendment is to refer to the most recent version of this publication.

OAC 785:46-9-5, Reasonable potential, has been amended in two ways. First, the reference to "instream" has been deleted. The circumstance which created the need for this amendment is that staff from other state environmental agencies have alerted OWRB staff that this term may be construed by some persons to prevent application of water quality criteria to reservoirs. The intended effect of this amendment is to clarify that water quality criteria apply to all waters designated with the pertinent beneficial uses. Second, a typographical error has been corrected. The circumstance which created the need for this amendment is that a scrivener's error occurred when this section was amended in 2006. The screening values for chlorides and sulfates were erroneously listed as 200 instead of 250. The intended effect of this amendment is to correct this error to reflect the appropriate screening values.

OAC 785:46-15-5, Assessment of Fish and Wildlife Propagation support, has been amended in several ways. First, language addressing dissolved metals has been added. The circumstance which created the need for this amendment is a potential conflict between beneficial use support assessment results based upon total metals and results based upon dissolved metals. The intended effect of this amendment is to clarify how dissolved metals criteria are determined and to give preference to use support assessment results based upon dissolved metals where those conflict with the results based upon total metals. Next, language revisions have been added to clarify the applicability of acute and chronic criteria. The circumstance which created the need for this amendment is that waterbodies have been erroneously deemed impaired as result of beneficial use support assessments based upon larger data sets of toxic substances. The intended effect of this amendment is to provide separate decision processes for assessing beneficial use support with acute criteria and chronic criteria for toxic substances; to retain the established decision process for evaluating acute criteria; to add an assessment process based upon percent exceedance in combination with the number of events that concentration of a toxic substance parameter exceeds the chronic criterion; to eliminate partial support determinations; and to remove an inappropriate reference to OAC 785:45-5-12(f)(6)(G). Another set of amendments involve adding new language in 785:46-15-5 to establish protocols to determine whether the beneficial use of Fish and Wildlife Propagation is supported with respect to suspended and bedded sediments. The new language contains at least two terms which have been added to and defined in 785:46-1-2, Definitions. The circumstance which created the need for these related amendments is that sedimentation causes adverse impacts in Oklahoma's streams, and needs to be addressed in the implementation of Oklahoma's Water Quality Standards. The intended effect of these amendments is to provide a uniform methodology that will be used by all state environmental agencies to assess and regulate the impacts of sediments in Oklahoma's streams.

OAC 785:46-15-8, Assessment of Agriculture support, has been amended in a couple of ways. The first is to clarify which OAC 785:45 Appendix F mineral values to use when assessing lakes for Agriculture beneficial use support. The intended effect of this amendment is to provide clarification and guidance on how to assess lakes for Agriculture beneficial use support. Also in this section, language has been added addressing what to do if there is no value for a substance in OAC 785:45 Appendix F for any given waterbody segment. The intended effect of this amendment is to provide clarification and guidance on how to assess waterbodies for Agriculture beneficial use support when values in Appendix F are missing.

OAC Sections 785:46-15-11, Assessment of Hydroelectric Power Generation support, 785:46-15-12, Assessment of Industrial and Municipal Process and Cooling Water support, and 785:46-15-13, Assessment of Navigation support, have all been revoked. The circumstance which created the need for these amendments is that these uses are not dependent on water quality and, consequently, there are no criteria to protect these uses, nor protocols to determine whether these uses are supported. This creates unnecessary complications in other areas of water quality management, such as the State's list of uses that are not supported. The intended effect of these amendments, together with the revocation of related rules in OAC 785:45, is to

end the complications that arise from the unnecessary classifications of these uses in Oklahoma's Water Quality Standards and attempts to determine support of these uses.

The rules amendments adopted by the Oklahoma Water Resources Board in this rulemaking implement portions of 82 O.S., §§ 1085.2 and 1085.30, and 27A O.S., §§ 1-1-202 and 1-3-101. Rules related to these rules amendments are codified in OAC Title 785, Chapter 45.

CONTACT PERSON:

Derek Smithee, Water Quality Programs Division Chief, (405) 530-8800

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

785:46-1-2. Definitions

In addition to definitions of terms found in OAC 785:45-1-2, which are incorporated herein by reference, the following words, terms and notations, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise:

"7T2" means the seven-day maximum temperature likely to occur with a 50% probability each year. The 7T2 is calculated using a moving average of seven consecutive days for each year in a given record. These seven day receiving stream temperature values are ranked in descending order. An order number, m, is calculated based on the number of years of record, n, with a recurrence interval of 2 years, as m = (n+1)/2. The mth highest average temperature is the 7T2.

"A" means mean annual average flow.

"ACR" means acute to chronic ratio.

"Acute to chronic ratio" means LC50/NOEC. The NOEC is the highest concentration at which no effect on test organisms is observed over a relatively long period. Quarterly biomonitoring over the life of the permit is sufficient to determine the ACR if the NOEC and LC50 may be determined. If the ACR is unknown, a default value of 10 may be used for implementation purposes.

"Background concentration" means the ambient concentration of a given parameter upstream or upgradient from a facility, practice or activity which has not been affected by that facility, practice or activity.

"Beneficial use limitation" means a more stringent restriction than that required to protect the beneficial use. A prohibition on new point sources is an example of a beneficial use limitation.

"Board" means Oklahoma Water Resources Board.

"BOD" means biochemical oxygen demand.

"C" means maximum concentration on the mixing zone boundary.

"C_{95}" means the 95th percentile maximum likelihood concentration.

"C_b" means background concentration.

"C_e" means effluent concentration.

"cfs" means cubic feet per second.

"C_{mean}" means the geometric mean of all effluent concentrations analyzed for the toxicant.

"Ct" means the appropriate criterion listed in OAC 785:45.

"CBOD" means carbonaceous biochemical oxygen demand.

"Coefficient of variation" means standard deviation divided by the mean.

"Continuing Planning Process (CPP)" means the most recent edition of the document produced annually by the Oklahoma Department of Environmental Quality which describes water quality programs implemented within the State.

"Continuing toxicity" means a tendency to be toxic.

"Control" means test organisms exposed to 0% effluent as part of the whole effluent toxicity testing procedure.

"Cooling water reservoir" means a privately owned reservoir used in the process of cooling water for industrial purposes.

"CPP" means the Continuing Planning Process document.

"CV" means coefficient of variation.

"D" means diameter of the discharge pipe in feet.

"df" means dilution factor.

"Dilution capacity" means a measure of the ability of the receiving stream to dilute effluent, defined as the ratio of the regulatory effluent flow to the regulatory receiving stream flow.

"Dilution factor" means a measure of the minimum dilution that occurs on the mixing zone boundary.

"Discharge to a lake" means a discharge within the lake's normal pool elevation as listed in the Oklahoma Water Atlas, Oklahoma Water Resources Board Publication 135, May 1990, excluding discharges to lock and dam reservoirs.

"Discharge to a stream" means (1) any discharge outside the normal pool elevation of a lake as such elevation is listed in the Oklahoma Water Atlas, Oklahoma Water Resources Board Publication 135, May 1990, and (2) any discharge to a lock and dam reservoir, such as Webbers Falls Reservoir and Robert S. Kerr Reservoir.

"DO" means dissolved oxygen.

"Drainage area" means the area above the discharge drained by the receiving stream.

"Event mean concentration" means the flow-weighted average for a given storm event. The flow-weighted average is represented as the sum of the loads calculated for a series of storm samples divided by the sum of the discharges calculated for each of the storm samples.

"EPA" means the United States Environmental Protection Agency.

"HQW" means high quality waters as defined in OAC 785:45-3-2(b).

"Implementation Plan" means a Water Quality Standards Implementation Plan developed and promulgated by a state environmental agency as required by 27A O.S. § 1-1-202.

"Increased load" means the mass of pollutant discharged which is greater than the permitted mass loadings and concentrations, as appropriate, in the discharge permit effective

when the SWS, HQW, or ORW beneficial use limitation was assigned.

"Lake mixing zone" means a volume extending one hundred feet from the source for implementation purposes, unless otherwise specified in OAC 785:45.

"LC_{50}" means the lethal concentration as defined in OAC 785:45-1-2.

"LMFO" means licensed managed feeding operation as defined in 2 O.S. 9-202.

"Mean annual average flow" means the annual mean flow found in "Statistical Summaries", USGS publication no. 87-4205, or most recent version thereof, or other annual mean flow as approved by the Oklahoma Water Resources Board or the permitting authority.

"Monthly average level" means the concentration of a toxicant in the permit which may not be exceeded by the observed effluent concentration averaged over a calendar month.

"Naturally occurring condition" means any condition affecting water quality which is not caused by human influence, including, but not limited to, soils, geology, hydrology, climate, wildlife, and water flow with specific consideration given to seasonal and other natural variations.

"NLW" means nutrient-limited watershed as defined in OAC 785:45-1-2.

"NOEC" means no observed effect concentration.

"NPDES" means National Pollutant Discharge Elimination System.

"Normal pool elevation" means the elevations listed in the "Oklahoma Water Atlas", Oklahoma Water Resources Board publication no. 135, or most recent version thereof.

"ORW" means Outstanding Resource Waters as defined in OAC 785:45-3-2(a).

"Outfall" means a point source which contains all the effluent being discharged to the receiving water.

"OWQS" means Oklahoma Water Quality Standards.

"Permitting authority" means state environmental agency as defined or provided in Title 27A of the Oklahoma Statutes having jurisdiction as provided by law.

"Persistent toxicity" means toxicity due to effluent constituents which are not subject to decay, degradation, transformation, volatilization, hydrolysis, or photolysis.

"Q*" means dilution capacity.

"Q_e" means the regulatory effluent flow.

"Q_{el}" means long term average effluent flow.

"Q_{es}" means short term average effluent flow.

"Q_n" means the regulatory receiving stream flow.

"Reach" means a continuous stretch or expanse of a stream or river.

"Regulatory mixing zone" means the volume of receiving water described in 785:45-5-26.

"Reasonable potential factor" means the 95th percentile maximum likelihood estimator for a lognormal distribution.

"SS" means sample standard as defined in OAC 785:45-1-2.

"Storm event" means precipitation, after a minimum of 72 hours has elapsed since cessation of previous precipitation, in the watershed of a stream segment that produces a 30 percent rise in stream flow over the average flow of the preceding 72 hours resulting from surface run-off.

"Stream order" means the numerical order of a stream as classified by using Strahler's stream order system as described in Strahler. 1952, "Dynamic basis of geomorphology", Geological Society of America bulletin, 63:923-938.

"SWS" means Sensitive Public and Private Water Supplies.

"T'" means maximum temperature difference at the edge of the mixing zone boundary.

"T_a" means regulatory ambient temperature.

"T_c" means the temperature criterion.

"T_f" means the 95th percentile maximum observed effluent temperature.

"TDS" means total dissolved solids at 180°C.

"TMDL" means total maximum daily load.

"Total maximum daily load" means the sum of individual wasteload allocations for point sources, safety reserves, and loads from nonpoint source and natural backgrounds.

"Trophic State Index" means a numerical quantification of lake productivity. The Trophic State Index shall be determined by TSI = 9.81 x Ln(chlorophyll-a) + 30.6.

"TSI" means Trophic State Index.

"TSS" means total suspended solids.

"USGS" means United States Geological Survey.

"W" means canal width in feet.

"WET" means whole effluent toxicity.

"YMS" means yearly mean standard as defined in OAC 785:45-1-2.

SUBCHAPTER 3. IMPLEMENTATION OF NARRATIVE TOXICS CRITERIA TO PROTECT AQUATIC LIFE USING WHOLE EFFLUENT TOXICITY (WET) TESTING

785:46-3-3. Sampling for whole effluent toxicity testing

(a) Discharges with overlapping mixing zones may be combined, at the discretion of the permitting agency, and whole effluent toxicity tests may be required on the combined effluent. Samples shall be combined in proportion to the flow for each outfall. If some of the discharges are not toxic, combining discharges may allow intermittent ~~instream~~ toxicity if the discharge rates fluctuate. In these cases combined discharge testing will be disallowed. If the outfall originates from a lagoon with a retention time greater than 24 hours, composite samples may not be necessary. The permitting agency may determine that a grab sample near the discharge is sufficient.

(b) The toxicity test must be initiated within 36 hours after sample collection. No sample may be held for more than 72 hours prior to use.

SUBCHAPTER 9. IMPLEMENTATION OF CRITERIA TO PROTECT THE AGRICULTURE BENEFICIAL USE

785:46-9-1. Applicability and scope

Rules in this Subchapter prescribe the method for determining whether there is a reasonable potential to exceed the criteria identified in OAC 785:45-5-13~~(h)~~(g) and OAC 785:45 Appendix F for protection of the beneficial use of Agriculture. Included are criteria for chlorides, sulfates and total dissolved solids.

785:46-9-2. Applicable mineral criteria

(a) **General.** OAC 785:45 Appendix F contains yearly mean standards and sample standards for protection of the Agriculture beneficial use. Historical values for chlorides, sulfates and TDS for water quality segments identified in OAC 785:45 Appendix F will not be updated. Data from surrounding segments shall be used by the permitting authority to develop yearly mean standards and sample standards for those segments with inadequate historical data.

(b) **Segment averages.** Segment averages of yearly mean standards and sample standards or more appropriate determinations as prescribed in ~~(e)~~(d) and ~~(f)~~(e) of OAC 785:45-5-13 or (a) of 785:46-9-2 shall be the criteria for chlorides, sulfates and TDS to protect the Agriculture beneficial use.

785:46-9-3. Regulatory flows

(a) **General.** Six regulatory flows are required for implementation of yearly mean standards and sample standards. They include stream flows, regulatory flows for lakes and regulatory effluent flows.

(b) **Long term average flows for streams.** Mean annual average flow, A, will be used by the permitting authority for long term average flows to implement yearly mean standards. Mean annual average flows may be obtained from the USGS publication entitled "Statistical Summaries of Streamflow in Oklahoma through 1999" or "Statistical Summaries of Streamflow Records in Oklahoma and Parts of Arkansas, Kansas, Missouri and Texas through 1984"on streams with USGS gages. They may also be estimated on streams without gages using the Oklahoma Water Resources Board publication entitled "Estimation of Mean Annual Average Flows" (OWRB Technical Report 96-2).

(c) **Long term average flow for lakes.** Mean annual average discharge from the lake, A, shall be used to implement the Agriculture beneficial use.

(d) **Regulatory long term effluent flows.** If the permitting authority determines that sufficient data is available to calculate the mean annual effluent discharge, then such discharge shall be the long term effluent flow, Qel. If the permitting authority determines insufficient data is available to calculate the mean annual effluent discharge, then the design flow shall be the long term effluent flow, Qel.

(e) **Short term average flow for streams.** OAC 785:45-5-4(d) requires that short term average flow, Qs, be used to implement sample standards. The short term average flow is determined so that short term and long term wasteload allocations are equally likely to be more stringent, depending on the historical concentration distribution for a particular segment.

$$Q_s = 0.68A.$$

A is mean annual average stream flow.

(f) **Short term average flows for lakes.** Short term average flows for lakes are also determined by the formula in OAC 785:46-9-3(e). In this case A is the mean annual average lake discharge.

(g) **Short term average effluent flows.** If the permitting authority determines that sufficient data is available to calculate the highest monthly average discharge for industrial discharges, then such discharge shall be the short term average effluent flow, Q_{es}. If the permitting authority determines insufficient data is available to calculate the highest monthly average discharge for industrial discharges, then the design flow shall be the short term average effluent flow, Q_{es}.

785:46-9-5. Reasonable potential

(a) **General.** The need for a permit limit will be determined on a mineral constituent basis, after application of the reasonable potential equation specified in (b) of this Section, which considers assimilation capacity of the receiving water and effluent variability.

(b) **Reasonable potential equation.** OAC 785:45-5-13(d) requires that complete mixing of effluent and receiving water be taken into account in the reasonable potential equation. The use of mass balance to obtain wasteload allocations for complete mixing is codified at OAC 785:46-7-3(a). Therefore, the reasonable potential equation for mineral constituents is $C = (Q_uBC + Q_eC_{95}) / Q_u + Q_e)$, where $C_{95} = 2.13\ C_{mean}$, where C_{mean} is the geometric mean of all effluent concentrations analyzed for the mineral. If the geometric mean cannot be determined, an arithmetic mean may be used. If sufficient effluent concentration observations exist as determined by the permitting authority, then the permitting authority may compute the 95th percentile concentration and use it as C95, in accordance with OAC 785:46-5-3(b)(1).

(c) **Reasonable potential to exceed yearly mean standard.** $Q_u = A$ and $Q_e = Q_{el}$ in OAC 785:46-9-5(b) to obtain a long term average concentration ~~in stream~~ after complete mixing. If C is greater than the higher of the YMS or 700 milligrams per liter for TDS or ~~200~~ 250 milligrams per liter for chlorides and sulfates, there is a reasonable potential to exceed an Agriculture beneficial use criterion, and a permit limit is required.

(d) **Reasonable potential to exceed sample standard.** Q_u =0.68A and $Q_e = Q_{es}$ in OAC 785:46-9-5(b) to obtain a short term average concentration ~~in stream~~ after complete mixing. If C is greater than the higher of the SS or 700 milligrams per liter for TDS or ~~200~~ 250 milligrams per liter for chlorides and sulfates, there is a reasonable potential to exceed an Agriculture beneficial use criterion, and a permit limit is required.

SUBCHAPTER 15. USE SUPPORT ASSESSMENT PROTOCOLS

785:46-15-5. Assessment of Fish and Wildlife Propagation support

(a) **Scope.** The provisions of this Section shall be used to determine whether the beneficial use of Fish and Wildlife Propagation or any subcategory thereof designated in OAC 785:45 for a waterbody is supported.

(b) **Dissolved oxygen.**

(1) **Screening levels for DO in streams.**

(A) Screening levels for DO in habitat limited aquatic communities shall be 4.0 mg/L from April 1 through June 15 each year and 3.0 mg/L for the remainder of the year.

(B) Screening levels for DO in warm water aquatic communities shall be 4.0 mg/L from June 16 through October 15 each year and 5.0 mg/L for the remainder of the year.

(C) Screening levels for DO in cool water aquatic communities and trout fisheries shall be 5.0 mg/L from June 1 through October 15 each year and 6.0 mg/L for the remainder of the year.

(2) **Screening levels for DO in lakes.**

(A) If greater than 70% of the water column at any given sample site in a lake or an arm of a lake is less than 2 mg/L due to other than naturally occurring conditions, the Fish and Wildlife Propagation beneficial use shall be deemed to be not supported.

(B) If 50% or more, but not greater than 70%, of the water column at any given sample site in a lake or arm of a lake is less than 2 mg/L due to other than naturally occurring conditions, the Fish and Wildlife Propagation beneficial use shall be deemed to be partially supported.

(C) The screening level for surface DO in a lake or arm of a lake shall be 4 mg/L from June 16 through October 15 each year and 5.0 mg/L for the remainder of the year.

(3) **Support tests.**

(A) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to the DO criterion if no more than 10% of the samples from a waterbody are less than the screening level for DO prescribed in (b)(1) or (b)(2)(C) of this Section and such result is due to other than naturally occurring conditions.

(B) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be partially supported with respect to the DO criterion if greater than 10% but less than 25% of the samples from a waterbody are less than the screening level for DO prescribed in (b)(1) or (b)(2)(C) of this Section.

(C) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not supported with respect to the DO criterion if at least 25% of the samples from a waterbody are less than the screening level for DO prescribed in (b)(1) or (b)(2)(C) of this Section.

(c) **Toxicants.**

(1) Test for Full Support

(A) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to any individual toxicant parameter if no more than one of the sample concentrations from the waterbody exceeds the acute ~~or chronic~~ criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 785:45-5-12(f)(6)(D)~~,~~ and (E) ~~and (G)~~ and 785:45 Appendix G, Table 2.

(B) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to any individual toxicant parameter if not more than 1 sample concentration or not more than 10% of the sample concentrations from the waterbody exceeds the chronic criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 785:45-5-12(f)(6)(D), (E) and 785:45 Appendix G, Table 2.

(2) Test for Non-Support

(A) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be ~~partially~~ not supported with respect to any individual toxicant parameter if more than one ~~but not greater than 10%~~ of the sample concentrations from the waterbody exceed the acute ~~or chronic~~ criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 785:45-5-12(f)(6)(D)~~,~~ and (E) ~~and (G)~~ and 785:45 Appendix G, Table 2.

(B) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not supported with respect to any individual toxicant parameter if more than 10 % of the sample concentrations from the waterbody exceed chronic criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 785:45-5-12(f)(6)(D) and (E) and 785:45 Appendix G, Table 2

~~(3) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not supported with respect to any individual toxicant parameter if greater than 10% of the sample concentrations from that waterbody exceed the acute or chronic criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 785:45-5-12(f)(6)(D), (E) and (G) and 785:45 Appendix G, Table 2.~~

(d) **pH.**

(1) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to pH occurring other than by natural causes if no more than 10% of the sample concentrations from that waterbody fall outside the screening interval prescribed in 785:45-5-12(f)(3).

(2) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be partially supported with respect to pH occurring other than by natural causes if greater than 10% but less than 25% of the sample concentrations from that waterbody fall outside the screening interval prescribed in 785:45-5-12(f)(3).

(3) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not supported with respect to pH occurring other than by natural causes if at least 25% of the sample concentrations from that waterbody fall outside the screening interval prescribed in 785:45-5-12(f)(3).

~~(e) **Biological criteria.**~~

~~(1) If data demonstrate that an assemblage of fish or macro invertebrates from a waterbody is significantly degraded, according to 785:45-5-12(f)(5), from that expected for the subcategory of Fish and Wildlife Propagation designated in OAC 785:45 for that waterbody, then that subcategory may be deemed by the appropriate state environmental agency to be not supported.~~

~~(2) All physical assessments and biological collections shall be performed in accordance with the requirements set forth in OWRB Technical Report No. 99-3 entitled "Standard Operating Procedures for Stream Assessments and Biological Collections Related to Biological Criteria in Oklahoma".~~

~~(3) Evaluation of the biological collections shall include identification of fish samples to species level. Determinations of tolerance level shall be made according to Jester et al. 1992, "The Fishes of Oklahoma, Their Gross Habitats, and Their Tolerance of Degradation in Water Quality and Habitat", Proceedings of Oklahoma Academy of Sciences, 72:7-19.~~

~~(4) The determination of whether the use of Fish and Wildlife Propagation is supported in wadable streams in Oklahoma ecoregions shall be made according to all of the requirements of this subsection (e), the application of Appendix C of this Chapter, and the special provisions in subsections (h) through (m), where applicable, of this Section. Streams with undetermined use support status shall be subject to additional investigation that considers stream order, habitat factors and local reference streams before the use support determination is made.~~

(~~f~~e) **Turbidity.** The criteria for turbidity stated in 785:45-5-12(f)(7) shall constitute the screening levels for turbidity. The tests for use support shall follow the default protocol in 785:46-15-4(b).

(~~g~~f) **Oil and grease.**

(1) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to oil and grease if a visible sheen or bottom deposits of oil or grease are observed on that waterbody in 10% or less of the observations.

(2) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not supported with respect to oil and grease if a visible sheen or bottom deposits of oil or grease are observed on that waterbody in more than 10% of the observations.

(g) **Suspended and Bedded Sediments.**

(1) If a stream is supporting the biological criteria assigned to that stream as provided in (e) and (i) through (n) of this section, then that stream will be deemed to be supporting its assigned Fish and Wildlife Propagation beneficial use with respect to suspended and bedded sediments.

(2) If a stream is not supporting the biological criteria assigned to that stream as provided in (e) and (i) through (n) of this section, then a habitat assessment must be conducted using the habitat assessment protocols found in OWRB Technical Report TRWQ2001-1, "Unified Protocols for Beneficial Use Assignment for Oklahoma Wadable Streams." The results of the habitat assessment shall then be compared to either historical conditions or regional reference conditions in order to determine attainment with respect to suspended and bedded sediments in that stream.

(3) The method for establishing reference conditions shall meet the following requirements:

(A) a minimum of five (5) reference streams or reaches shall be assessed;

(B) all of the reference streams or reaches must be within the same ecoregion as the test stream;

(C) all of the reference streams or reaches must be streams with similar flow regimes no more than two (2) stream orders removed from the test stream; and

(D) the reference streams shall be selected from the least impacted streams in the ecoregion whose watersheds contain soils, vegetation, land uses, and topography typical of the watershed of the test stream(s).

(4) The Fish and Wildlife Propagation beneficial use will be considered to be not supported with respect to suspended and bedded sediments if any of the following habitat parameters deviate from the reference conditions by the specified amount:

(A) The total percent of clay, silt, and loose sand in the pool bottom substrate of the test stream is increased by more than 30% over the reference condition;

(B) Cobble embeddedness in the test stream is increased by 15% or more over the reference condition;

(C) The percentage of the length of the reach containing fresh (non-vegetated) point bars and/or islands in the test stream is 20 or more percentage points above that of the reference condition; or

(D) The percentage of the length of the reach dominated by pools of a depth of 0.5 meters or more in the test stream is less than 70% of that of the reference condition.

(5) If all of the habitat parameters identified in (h)(4) of this section deviate from the reference conditions by less than the amounts specified in (h)(4) of this section, then the Fish and Wildlife Propagation beneficial use is not impaired due to suspended and bedded sediments.

(h) **Metals.** The Fish and Wildlife Propagation beneficial use designated for a waterbody may be assessed using either total recoverable or dissolved metals. When available, the concentrations of dissolved metals shall be compared following the provisions of (c) of this subsection to the criteria in OAC 785:45 Appendix G converted to dissolved criteria by multiplying the total metal criterion listed in table 2 by the appropriate conversion factor listed in Table 3. Preference shall be given to the beneficial use determinations based upon dissolved metals.

(i) **Biological criteria.**

(1) If data demonstrate that an assemblage of fish or macro invertebrates from a waterbody is significantly degraded, according to 785:45-5-12(f)(5), from that expected for the subcategory of Fish and Wildlife Propagation designated in OAC 785:45 for that waterbody, then that subcategory may be deemed by the appropriate state environmental agency to be not supported.

(2) All physical assessments and biological collections shall be performed in accordance with the requirements set forth in OWRB Technical Report No. 99-3 entitled "Standard Operating Procedures for Stream Assessments and Biological Collections Related to Biological Criteria in Oklahoma".

(3) Evaluation of the biological collections shall include identification of fish samples to species level. Determinations of tolerance level shall be made according to Jester et al. 1992, "The Fishes of Oklahoma, Their Gross Habitats, and Their Tolerance of Degradation in Water Quality and Habitat", Proceedings of Oklahoma Academy of Sciences, 72:7-19.

(4) The determination of whether the use of Fish and Wildlife Propagation is supported in wadable streams in Oklahoma ecoregions shall be made according to all of the requirements of this subsection (e), the application of Appendix C of this Chapter, and the special provisions in subsections (~~h~~ i) through (~~m~~ o), where applicable, of this Section. Streams with undetermined use support status shall be subject to additional investigation that considers stream order, habitat factors and local reference streams before the use support determination is made. A finding of impairment for biocriteria due to any one of the parameters listed in this section shall trigger an evaluation of all likely causes, not precluding monitoring, assessment, and subsequent support determination of the Fish and Wildlife beneficial use for any of the other parameters in this section.

(~~h~~j) **Special provisions for Ouachita Mountains wadable streams.** The determination of whether the use of Fish and Wildlife Propagation is supported for wadable streams located in the Ouachita Mountains ecoregion shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Where designated, the subcategory of Warm Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 35 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 24 or less. If a score is 25 to 34 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(2) Where designated, the subcategory of Habitat Limited Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 27 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 18 or less. If a score is 19 to 26 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(~~i~~k) **Special provisions for Arkansas Valley wadable streams.** The determination of whether the use of Fish and Wildlife Propagation is supported for wadable streams located in the Arkansas Valley ecoregion shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Where designated, the subcategory of Warm Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 35 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 24 or less. If a score is 25 to 34 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(2) Where designated, the subcategory of Habitat Limited Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 27 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 18 or less. If a score is 19 to 26 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(~~j~~l) **Special provisions for Boston Mountains and Ozark Highlands wadable streams.** The determination of whether the use of Fish and Wildlife Propagation is supported for wadable streams located in the Boston Mountains and Ozark Highlands ecoregions shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Where designated, the subcategory of Cool Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 37 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 29 or less. If a score is 30 to 36 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(2) Where designated, the subcategory of Warm Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 31 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 22 or less. If a score is 23 to 30 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(~~k~~m) **Special provisions for Central Irregular Plains wadable streams.** The determination of whether the use of Fish and Wildlife Propagation is supported for wadable streams located in the Central Irregular Plains ecoregion shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Where designated, the subcategory of Cool Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 35 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 28 or less. If a score is 29 to 34 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(2) Where designated, the subcategory of Warm Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 30 or more.

Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 22 or less. If a score is 23 to 29 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(3) Where designated, the subcategory of Habitat Limited Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 25 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 16 or less. If a score is 17 to 24 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(~~l~~n) **Special provisions for Central Oklahoma - Texas Plains wadable streams.** The determination of whether the Warm Water Aquatic Community subcategory of the Fish and Wildlife Propagation beneficial use is supported for wadable streams located in the Central Oklahoma - Texas Plains ecoregion shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Such subcategory shall be deemed fully supported if the application of Appendix C produces a score of 26 or more.

(2) Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 19 or less.

(3) If the application of Appendix C produces a score of 20 to 25 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(~~m~~o) **Special provisions for Central Great Plains wadable streams.** The subcategory of Warm Water Aquatic Community of the beneficial use of Fish and Wildlife Propagation in the wadable streams located in the Central Great Plains ecoregion shall be deemed fully supported if the application of Appendix C of this Chapter produces a score of 22 or more. Such subcategory shall be deemed not supported for the streams in this ecoregion if the application of Appendix C produces a score of 18 or less. If the application of Appendix C produces a score of 19 to 21 inclusive, the issue of whether this subcategory is supported for the streams in this ecoregion shall be deemed undetermined. Provided, however, this subsection does not apply to the area bounded by State Highway 54 on the west, U.S. Highway 62 on the south, U.S. Highway 281 on the east and State Highway 19 on the north.

785:46-15-8. Assessment of Agriculture support

(a) **Scope.** The provisions of this Section shall be used to determine whether the beneficial use of Agriculture designated in OAC 785:45 for a waterbody is supported.

(b) **General support tests for chlorides, sulfates and TDS.**

(1) The Agriculture beneficial use designated for a waterbody shall be deemed to be fully supported with respect to chlorides, sulfates and TDS if the mean of all chlorides, sulfates and TDS sample concentrations from that waterbody do not exceed the yearly mean standard prescribed in Appendix F of OAC 785:45 and no more than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F of OAC 785:45. Provided, if the TDS sample concentrations are less than 700 mg/L and the chlorides and sulfates are each less than 250 mg/L, then the Agriculture beneficial use shall be deemed to be fully supported with respect to those substances.

(2) The Agriculture beneficial use designated for a waterbody shall be deemed to be partially supported with respect to chlorides, sulfates and TDS if the mean of all chlorides, sulfates and TDS sample concentrations from that waterbody does not exceed the yearly mean standard prescribed in Appendix F of OAC 785:45 and more than 10% but less than 25% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F of OAC 785:45.

(3) The Agriculture beneficial use designated for a waterbody shall be deemed to be not supported with respect to chlorides, sulfates and TDS if the mean of all chlorides, sulfates and TDS sample concentrations from that waterbody exceeds the yearly mean standard prescribed in Appendix F of OAC 785:45, or at least 25% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F of OAC 785:45, or both such conditions exist.

(c) **Use of site specific data.** If the appropriate state environmental agency determines that the stream segment averages prescribed in Appendix F of OAC 785:45 are not appropriate for the entirety of a given stream segment or there is no value listed in Appendix F for the stream segment average for the parameter of concern, then yearly mean standards and sample standards developed from site specific data may be used to assess whether the use of Agriculture is supported for that waterbody.

(d) **Use of data for lakes.**

(1) Lakes with one WBID segment. For support assessment in lakes with a single WBID segment, the segment averaged value prescribed in Appendix F to that same WQM segment shall be used.

(2) Lakes with multiple WBID segments. For support assessment in lakes with multiple WBID segments, each segment shall use the segment averaged value prescribed in Appendix F to that same WQM segment when available. If a WBID segment in a lake has no corresponding WQM segment data available in Appendix F, the segment averaged value prescribed in Appendix F to the WQM segment immediately downstream of the lake shall be used.

785:46-15-11. Assessment of Hydroelectric Power Generation support [REVOKED]

~~The Hydroelectric Power Generation beneficial use designated for a waterbody shall be deemed to be fully supported for the purpose of water quality reporting.~~

785:46-15-12. Assessment of Industrial and Municipal Process and Cooling Water support [REVOKED]

~~The Industrial and Municipal Process and Cooling Water beneficial use designated for a waterbody shall be deemed to be fully supported for the purpose of water quality reporting.~~

785:46-15-13. Assessment of Navigation support [REVOKED]

~~The Navigation beneficial use designated for a waterbody shall be deemed to be fully supported for the purpose of water quality reporting.~~

[OAR Docket #07-1179; filed 5-24-07]

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

[OAR Docket #07-1180]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Water and Sewer Program (Bond Proceed Loans and Emergency Grants) Requirements and Procedures
785:50-7-3. Evaluation procedures for grant applications [AMENDED]
785:50-7-5. Emergency grant priority point system [AMENDED]
Subchapter 8. Rural Economic Action Plan (REAP) Grant Program Requirements and Procedures
785:50-8-5. REAP grant priority point system [AMENDED]
AUTHORITY:
Oklahoma Water Resources Board, 82 O.S. § 1085.2; 82 O.S. §§ 1085.31, et seq.; 62 O.S. § 2003.
DATES:
Comment period:
January 2, 2007 through February 5, 2007
Public hearing:
February 5, 2007
Adoption:
March 13, 2007
Submitted to Governor:
March 21, 2007
Submitted to House:
March 21, 2007
Submitted to Senate:
March 21, 2007
Gubernatorial approval:
April 6, 2007
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 16, 2007
Final adoption:
May 16, 2007
Effective:
June 25, 2007
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The Oklahoma Water Resources Board ("OWRB") has adopted an amendment of Oklahoma Administrative Code ("OAC") Section 785:785:50-7-3 which clarifies that applications for emergency grants will not be approved nor funded after 180 days after the emergency ceases to exist.

The amendments of OAC 785:50-7-5 provide that a category 1 or 2 in the priority point system could include new construction to serve citizens with inadequate domestic use. Another amendment deletes language from the category 3 emergency about new service for domestic use.

The amendment of OAC 785:50-8-5 adds new language to provide that 20 points will be subtracted from a Rural Economic Action Plan ("REAP") application if a previous REAP grant to the same applicant remains unaudited, or if a refund from the applicant is due and unpaid, as of August 31 of the year in which a new application is filed.
CONTACT PERSON:
Dean Couch, General Counsel, (405) 530-8800

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2007:

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

785:50-7-3. Evaluation procedures for grant applications

(a) In evaluating a grant request under the water and sewer program, a determination shall be made as to whether an emergency situation exists. For the purposes of this determination, an emergency situation shall be a situation where the life, health or property of the persons served by the entity are endangered. ~~An emergency will be deemed no longer to exist, and a~~ A grant application based thereon will not be approved nor funded, after the passage of 180 days following the date the emergency ~~first arose or occurred, unless the Board finds, upon evidence satisfactory to the Board, that the emergency continues to exist as of the date of approval and the date of funding~~ ceased to exist.

(b) No emergency may be determined by the Board to exist absent an official declaration of emergency by the entity requesting the grant. The entity's declaration of emergency must be furnished to the Board and must set forth and describe, among other matters, the nature and circumstances of the emergency.

(c) In addition to determining whether an emergency situation exists, the Board shall, in evaluating a grant request, take into consideration the following:

(1) The needs of the area to be served by the project and the benefit of the project to the area in relation to the needs of other areas requiring state assistance;

(2) The availability of revenue to the political subdivision, from all sources, for the ultimate repayment of the cost of the project, including interest;

(3) Whether the political subdivision can reasonably finance the project without assistance from the state;

(4) The relationship of the project to the overall statewide water and sewage treatment needs; and

(5) Whether or not the applicant has taken all reasonable measures to limit waste and conserve water.

(d) Upon a determination that an emergency situation does exist, the priority point system set forth in 785:50-7-5 shall be utilized to review pending grant applications and grant applications filed after the effective date of these rules.

(e) For purposes of evaluating, approving and funding an application for a grant, eligible project costs shall include, in addition to those project costs described in 785:50-3-1:

(1) Architecture and/or engineer fees related to the project.

(2) Fees for soil testing.

(3) Fees for surveying.
(4) Payments to contractor(s) for construction of the improvements.
(5) Legal fees and expenses of counsel for the applicant which are related to the project.
(6) Services of full-time or part-time inspector.
(7) Administrative expenses shall not be eligible project costs.

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

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

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

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

(A) The emergency situation of the applicant.
(B) Whether or not the applicant can reasonably finance the project without assistance from the state.

(3) **Total priority points.** Total priority points will be calculated and awarded for individual projects. Therefore, eligible entities will be required to complete separate applications for each project for which grant funds are requested. Priority lists compiled and published by other Oklahoma State agencies and/or seniority dates of applications submitted shall be utilized to decide ties in point totals among applicants.

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

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

(A) P = Priority ranking
(B) E = Emergency ranking
(C) WR = Water and sewer rate structure
(D) I = Indebtedness per customer
(E) L = Amount of local contribution toward project
(F) MHI = Median household income
(G) FP = Applicant's ability to finance project
(H) AR = Amount of grant requested
(I) BP = Benefit of project to other systems
(J) AN = Application number

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

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

(i) **Category 1.** Total loss of a water supply or sewage system or loss of a major component of a system due to a natural or unforeseen disaster which could not have been prevented by the exercise of reasonable care by the applicant. Examples of such disasters may include but are not necessarily limited to: tornado; flood; fire; severe weather; landslide; sudden loss of a water supply system; sudden collapse of a major structural portion of a system; signs of imminent failure of a public water supply lake dam, spillway or outlet structure such as settlement or slumping of the crest, excessive seepage, slides, cracks or sloughs along the upstream and downstream slopes of the dam. Also included under this category is the construction of a new water system to serve areas where residents are supplied by domestic sources or domestic systems whose quantity does not supply the basic needs of the residents. In such cases where new or extended systems are proposed, the Board shall consider and determine whether an adequate population density is available to utilize the proposed system. Notwithstanding any other provision of this Chapter, if the density is preliminarily determined by Board staff to be inadequate for the applicant to feasibly provide operation and maintenance of the new or extended system, then the application will not be recommended for approval until the proper density, which will make the extension feasible, is achieved. Category 1 emergencies receive 50 points.

(ii) **Category 2.** Water or sewer emergencies which could not have been prevented by the exercise of reasonable care by the applicant and which

cause immediate danger or an imminent health hazard to the community or other nearby citizens. Such emergencies may include but are not necessarily limited to: users or systems whose water supply is deemed to be dangerous or unhealthy; systems whose supply source becomes contaminated by man-made pollution caused by a person other than the applicant; overflow of raw sewage into homes or streets due to structural failure in the collection mains and/or structural, mechanical, or electrical failure at a lift station due to disasters which could not have been prevented by the exercise of reasonable care by the applicant, including but not limited to tornado, flooding, fire, or landslides; sewage treatment systems which discharge raw or inadequately treated sewage effluent whose quality and/or quantity causes an immediate and imminent health or safety danger to a public water supply due to a structural, mechanical or electrical failure of a process unit(s) caused by disasters which could not have been prevented by the exercise of reasonable care by the applicant, including but not limited to tornado, flooding, fire, or landslides. Also included under this category is the construction of a new water system to serve areas where residents are supplied by domestic sources or domestic systems whose quality is dangerous or unhealthy as a consequence of circumstances that could not have been prevented by the exercise of reasonable care by the applicant. In such cases where new or extended systems are proposed, the Board shall consider and determine whether an adequate population density is available to utilize the proposed system. Notwithstanding any other provision of this Chapter, if the density is preliminarily determined by Board staff to be inadequate for the applicant to feasibly provide operation and maintenance of the new or extended system, then the application will not be recommended for approval until the proper density, which will make the extension feasible, is achieved. Category 2 emergencies receive 40 points.

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

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

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

(I) If the cost per 5000 gallons is $34 or greater, the applicant shall be given 10 points.

(II) If the cost per 5000 gallons is $31 to $33.99, the applicant shall be given 9 points.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(XI) If the cost per 5000 gallons is less than $17, the applicant shall be given 0 points.

(iii) **For Systems Providing Sewer Service Only:**

(I) If the cost per connection per month is $23 or greater, the applicant shall be given 10 points.

(II) If the cost of connection per month is $21 to $22.99, the applicant shall be given 9 points.

(III) If the cost of connection per month is $19 to $20.99, the applicant shall be given 8 points.

(IV) If the cost of connection per month is $17 to $18.99, the applicant shall be given 7 points.

(V) If the cost of connection per month is $15 to $16.99, the applicant shall be given 6 points.

(VI) If the cost of connection per month is $13 to $14.99, the applicant shall be given 5 points.

(VII) If the cost of connection per month is $11 to $12.99, the applicant shall be given 4 points.

(VIII) If the cost of connection per month is $10 to $10.99, the applicant shall be given 3 points.

(IX) If the cost of connection per month is $8 to $9.99, the applicant shall be given 2 points.

(X) If the cost of connection per month is $7 to $7.99, the applicant shall be given 1 point.

(XI) If the cost of connection per month is less than $7, the applicant shall be given 0 points.

(iv) The Board will deduct 3 points from the total of the Water and Sewer Rate Structure ranking for any system which charges a flat water rate (unmetered) without regard to the amount of water used, and 2 points for a decreasing block rate which lowers the cost per 1000 gallons for customers using larger amounts of water. No points will be added or subtracted for systems using a fixed rate per 1,000 gallons above the minimum. Two points will be added for systems using an increasing block rate. Entities who dedicate sales tax for water and/or sewer improvements will be awarded 1 additional point. Under the category the maximum number of points is 13 and the minimum is -3 points.

(C) **Indebtedness per customer (I).** The indebtedness per customer ranking is calculated by taking the applicant's monthly requirements for debt service on debt incurred for water and/or sewer system purposes and dividing it by the number of customers served.

(i) If the indebtedness per customer is $15.00 or greater, the applicant shall be given 10 points.

(ii) If the indebtedness per customer is $13.00 to $14.99, the applicant shall be given 9 points

(iii) If the indebtedness per customer is $11.00 to $12.99, the applicant shall be given 8 points.

(iv) If the indebtedness per customer is $10.00 to $10.99, the applicant shall be given 7 points.

(v) If the indebtedness per customer is $9.00 to $9.99, the applicant shall be given 6 points.

(vi) If the indebtedness per customer is $8.00 to $8.99, the applicant shall be given 5 points.

(vii) If the indebtedness per customer is $7.00 to $7.99, the applicant shall be given 4 points.

(viii) If the indebtedness per customer is $6.00 to $6.99, the applicant shall be given 3 points.

(ix) If the indebtedness per customer is $5.00 to $5.99, the applicant shall be given 2 points.

(x) If the indebtedness per customer is $4.00 to $4.99, the applicant shall be given 1 point.

(xi) If the indebtedness per customer is less than $4.00, the applicant shall be given 0 points.

(D) **Local participation (L).**

(i) The Board will not approve nor fund any grant application unless the applicant contributes at least fifteen percent (15%) of the total cost of the proposed project.

(ii) The local participation ranking is based on the percent of the total project cost which is locally funded through cash contributions, or incurrence of additional debt through a loan. Grant funds received through other agencies will not be counted as local funding. Points awarded for participation are as follows:

(I) If the percentage of the project cost locally funded is 90% or greater, the applicant shall be given 10 points.

(II) If the percentage of the project cost locally funded is at least 80% but less than 90%, the applicant shall be given 9 points.

(III) If the percentage of the project cost locally funded is at least 70% but less than 80%, the applicant shall be given 8 points.

(IV) If the percentage of the project cost locally funded is at least 60% but less than 70%, the applicant shall be given 7 points.

(V) If the percentage of the project cost locally funded is at least 50% but less than 60%, the applicant shall be given 6 points.

(VI) If the percentage of the project cost locally funded is at least 40% but less than 50%, the applicant shall be given 5 points.

(VII) If the percentage of the project cost locally funded is at least 30% but less than 40%, the applicant shall be given 4 points.

(VIII) If the percentage of the project cost locally funded is at least 25% but less than 30%, the applicant shall be given 3 points.

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

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

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

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

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

(ii) Points are awarded as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The FP ranking gives a standardized account of the amount the existing water/sewer rates would have to be raised in order for the applicant to finance the project through a loan. A standard interest rate and term of 10% for 25 years is assume. The cost per customer per month is calculated using the following formula: FP equals the product of AR multiplied by (0.1102), divided by the product of (12) multiplied by (C), Where:

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

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

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

(IV 12) = Number of months per year.

(V C) = Number of customers

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

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

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

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

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

(IV) If the ability to finance the project is $5.00 to $5.99, the applicant shall be given 9 points.

(V) If the ability to finance the project is $4.00 to $4.99, the applicant shall be given 8 points.

(VI) If the ability to finance the project is $3.00 to $3.99, the applicant shall be given 7 points.

(VII) If the ability to finance the project is $2.00 to $2.99, the applicant shall be given 6 points.

(VIII) If the ability to finance the project is $1.75 to $1.99, the applicant shall be given 5 points.

(IX) If the ability to finance the project is $1.50 to $1.75, the applicant shall be given 4 points.

(X) If the ability to finance the project is $1.25 to $1.49, the applicant shall be given 3 points.

(XI) If the ability to finance the project is $1.00 to $1.24, the applicant shall be given 2 points.

(XII) If the ability to finance the project is $0.75 to $0.99, the applicant shall be given 1 point.

(XIII) If the ability to finance the project is less than $0.75, the applicant shall be given 0 points.

(G) **Amount of grant requested (AR).**

(i) Points under this category for amount of grant requested are distributed as follows:

(I) $95,001 to $100,000: -5
(II) $90,001 to $95,000: -4
(III) $85,001 to $90,000: -3
(IV) $80,001 to $85,000: -2
(V) $75,001 to $80,000: -1
(VI) $70,001 to $75,000: 0
(VII) $65,001 to $70,000: +1
(VIII) $60,001 to $65,000: +2
(IX) $55,001 to $60,000: +3
(X) $50,000 to $55,000: +4
(XI) $45,001 to $50,000: +5
(XII) $40,001 to $45,000: +6
(XIII) $35,001 to $40,000: +7
(XIV) $30,001 to $35,000: +8
(XV) $25,001 to $30,000: +9
(XVI) $25,000 or less: +10

(ii) If a project exceeds $75,000 and the amount of funds needed over and above the OWRB grant request are being secured through a loan from OWRB, then there will be no deduction of points under this category.

(H) Project benefit to other systems (BP). If the applicant's project will benefit other adjacent systems as well as applicant's, or result in or lead to consolidation of systems, an additional five (5) priority points will be included in the total of priority points assigned to the application.

(I) Number of grants. Since it is anticipated that entities who have received emergency grants might submit additional grant applications for approval, points will be deducted from such applications according to the following schedule; provided, points shall not be deducted from such any emergency grant which was funds 10 or more years prior to the date of Board action on the pending application and which has been subjected to a Board audit:

(i) 1 prior grant = 5 reduction points
(ii) 2 prior grants = 8 reduction points
(iii) 3 prior grants = 10 reduction points
(iv) 4 prior grants = 12 reduction points
(v) 5 or more prior grants = 14 reduction points

(c) **Priority formula for school districts.**

(1) School districts, created under Article V of the 1971 School Code, 70 O.S. 1981, §5-101 et seq., are political subdivisions of the State, and therefore are eligible for financial assistance under the Board's program.

(2) In evaluating and prioritizing grant applications from school districts similar criteria to those applied to municipalities, towns and rural water districts will be utilized.

(3) In developing a priority formula for school district applicants, again, the two primary statutory criteria are:

(A) The emergency situation of the school district.

(B) Whether the school district can reasonably finance the emergency project without the Board's assistance.

(4) The emergency aspect of each project is ranked with a maximum of 50 points being given to the most serious situations and a minimum of 10 points to the least serious. The emergency categories and points given for each are the same as those listed in (b)(2) of this Section.

(5) The school district's financial situation is given an maximum of 66 points and is derived by analyzing the following:

(A) Local tax levies
(B) Bonded indebtedness
(C) Local contribution
(D) Median household income within the school district's geographical area
(E) Applicant's ability to finance project
(F) Amount of grant requested
(G) Application number

(6) Priority lists compiled and published by other Oklahoma state agencies shall be utilized to assess the seriousness of the emergency.

(7) Using the previously mentioned analysis, the following formula has been devised to rank school districts' grant applications: P = E + LT + BI + L + MHI + FP + AR - AN, Where:

(A) P = Priority ranking total points
(B) E = Emergency ranking
(C) LT = Local tax levies
(D) BI = Bonded indebtedness
(E) L = School's contribution toward the project
(F) MHI = median household income of population within a school district
(G) FP = Applicant's ability to finance project
(H) AR = Amount of grant requested
(I) AN = Application number

(8) The criteria E, MHI, FP, AR and AN are the same as that set forth in (b) of this section. LT, BI and L are explained as follows:

(A) **Local tax levies (LT).** Points awarded under this category for local tax levies are based on the total amount of miles levied, as follows:

(i) 95 to 100,00 mills = 13 points
(ii) 90 to 94.99 mills = 11 points
(iii) 85 to 89.99 mills = 10 points
(iv) 80 to 84.99 mills = 8 points
(v) 70 to 79.99 mills = 6 points
(vi) 60 to 69.99 mills = 4 points
(vii) 55 to 59.99 mills = 2 points
(viii) 50 to 54.99 mills = 1 point
(ix) 45 to 49.99 mills = 0 points

(x) 40 to 44.99 mills = -1 points

(xi) Less than 40 mills = -2 points

(B) **Bonded indebtedness (BI).**

(i) Priority points for Bonded Indebtedness are as follows: Percentage of Indebtedness Points

(I) 95% to 100% of debt limitation = 10 points

(II) 90% to 94.99% of debt limitation = 8 points

(III) 80% to 89.99% of debt limitation = 7 points

(IV) 75% to 79.99% of debt limitation = 6 points

(V) 70% to 74.99% of debt limitation = 5 points

(VI) 65% to 69.99 of debt limitation = 4 points

(VII) 60% to 64.99% of debt limitation = 3 points

(VIII) 55% to 59.99% of debt limitation = 2 points

(IX) 50% to 54.99% of debt limitation = 1 point

(X) 45% to 49.99% of debt limitation = 0 points

(XI) 40% to 44.99% of debt limitation = -1 point

(XII) 30% to 39.99% of debt limitation = -2 points

(XIII) Less than 30% of debt limitation = -3 points

(ii) A deduction of one (1) point from the indebtedness ranking total will be made for applicants with 75% of existing debts financed at rates of 5% or less, and one (1) point will be added if 75% of existing debts are financed at rates greater than 10%.

(C) **Local participation (L).**

(i) In order to achieve the maximum benefit from available grant funds, the Board will not approve nor fund any grant application unless the applicant contributes at least fifteen percent (15%) of the total cost of the proposed project.

(ii) The local participation ranking is based on the percent of the total project cost which is locally funded through cash contributions or incurrence of additional debt through a loan. Points awarded are as follows:

(I) If the percentage of the project cost locally funded is 90% or greater, the applicant shall be given 10 points.

(II) If the percentage of the project cost locally funded is at least 80% but less than 90%, the applicant shall be given 9 points.

(III) If the percentage of the project cost locally funded at least 70% but less than 80%, the applicant shall be given 8 points.

(IV) If the percentage of the project cost locally funded at least 60% but less than 70%, the applicant shall be given 7 points.

(V) If the percentage of the project cost locally funded at least 50% but less than 60%, the applicant shall be given 6 points.

(VI) If the percentage of the project cost locally funded is at least 50% but less than 60%, the applicant shall be given 5 points.

(VII) If the percentage of the project cost locally funded is at least 40% but less than 40%, the applicant shall be given 4 points.

(VIII) If the percentage of the project cost locally funded is at least 25% but less than 30%, the applicant shall be given 3 points.

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

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

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

(iii) Under the Ability to Finance Project (FP) category the Number of Customers (C) as previously discussed will be replaced by the Number of Families within a school district. Points awarded under the FP category are the same as discussed and shown in (b) of this Section.

SUBCHAPTER 8. RURAL ECONOMIC ACTION PLAN (REAP) GRANT PROGRAM REQUIREMENTS AND PROCEDURES

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

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

(1) **General description.** The priority system consists of a mathematical equation rating the qualified entities and the proposed project in accordance with the requirements of state law by means of a formula awarding points for each criterion used in the evaluation. The maximum point total under the system is one hundred fifteen (115). The Board may consider each month, and in order from the highest rating, those applications awarded point ratings of 40 or more priority cots. If the Board determines that the qualified entity with the highest point rating cannot promptly proceed with the project due to delays, including but not limited to those caused by legal problems, engineering problems, feasibility problems or availability of other funding sources, the Board may pass over consideration of such application then proceed to consider in order the next highest rated application. Applications which are bypassed shall retain their ratings and thus remain eligible for further consideration. Applications preliminarily determined by Board staff to have point ratings of 39 or fewer shall be deemed denied; provided, such applications

may be reevaluated if the applicant submits additional information showing changed circumstances within 120 days after the date of staff's determination, and such information improves the applicant's preliminary point rating.

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

(A) There shall be a higher priority for any city or town with a population less than one thousand seven hundred fifty (1,750) according to the latest federal decennial census than for any jurisdiction with a greater population according to the census; and

(B) *Among other cities or towns, those municipalities having relatively weaker fiscal capacity shall have a priority for project funding in preference to other municipalities* [62:2003]. In order to give a priority evaluation to each applicant, the Board shall evaluate all applications according to the fiscal capacity criteria set forth in this Section.

(3) **Total priority points.** Total priority points will be calculated and awarded for individual projects. Therefore, qualified entities will be required to complete separate applications for each project for which grant funds are requested. Priority lists compiled and published by other Oklahoma State agencies and/or seniority dates of applications submitted shall be utilized to decide ties in point totals among qualified entities.

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

(1) **Formula.** The following formula has been devised to rank grant applications: T = P + WR + I + MHI + FP + N + AR + BP + PG, Where:

(A) T = Total of priority points
(B) P = Population
(C) WR = Water and sewer rate structure
(D) I = Indebtedness per customer
(E) MHI = Median household income
(F) FP = Applicant's ability to finance project
(G) N = Need
(H) AR = Amount of grant requested
(I) BP = Project benefit to other systems
(J) PG = Previous grant assistance

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

(A) **Population (P).** Municipalities which have a population of less than 1,750 according to the latest federal decennial census shall be given 55 priority points. Rural water or sewer districts which have less than 525 non-pasture customers shall be given 55 points.

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

(i) For systems providing water service only, points are figured according to the same scale set forth in Section 50-7-5(b)(2)(B)(i).

(ii) For systems providing both water and sewer services, points are figured according to the same scale set forth in Section 50-7-5(b)(2)(B)(ii).

(iii) For systems providing sewer service only, points are figured according to the same scale set forth in Section 50-7-5(b)(2)(B)(iii).

(iv) The Board will deduct 3 points from the total of the Water and Sewer Rate Structure ranking for any system which charges a flat water rate (unmetered) without regard to the amount of water used, and 2 points for a decreasing block rate which lowers the cost per 1000 gallons for customers using larger amounts of water. No points will be added or subtracted for systems using a fixed rate per 1,000 gallons above the minimum. Two points will be added for systems using an increasing block rate. Entities who dedicate sales tax for water and/or sewer improvements will be awarded 1 additional point. Under this category the maximum number of points is 13 and the minimum is -3 points.

(C) **Indebtedness per customer (I).** The indebtedness per customer ranking is calculated by taking the applicant's monthly requirements for debt service on debt incurred for water and/or sewer system purposes and dividing it by the number of customers served.

(i) If the indebtedness per customer is $15.00 or greater, the applicant will be given 10 points.

(ii) If the indebtedness per customer is $13.00 to $14.99, the applicant will be given 9 points.

(iii) If the indebtedness per customer is $11.00 to $12.99, the application will be given 8 points.

(iv) If the indebtedness per customer is $10.00 to $10.99, the application will be given 7 points.

(v) If the indebtedness per customer is $9.00 to $9.99, the applicant will be given 6 points.

(vi) If the indebtedness per customer is $8.00 to $8.99, the applicant will be given 5 points.

(vii) If the indebtedness per customer is $7.00 to $7.99, the applicant will be given 4 points.

(viii) If the indebtedness per customer is $6.00 to $6.99, the applicant will be given 3 points.

(ix) If the indebtedness per customer is $5.00 to $5.99, the applicant will be given 2 points.

(x) If the indebtedness per customer is $4.00 to $4.99, the applicant will be given 1 point

(xi) If the indebtedness per customer is $4.00, the applicant will be given 0 points.

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

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

(ii) Points for this MHI criterion are awarded according to the scale set forth in Section 50-7-5(b)(2)(E)(ii).

(E) **Ability to finance project (FP).**

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

(ii) The FP ranking gives a standardized account of the amount the existing water/sewer rates would have to be raised in order for the applicant to finance the project through a loan. A standard interest rate and term of 10% for 25 years is assumed. The cost per customer per month is calculated using the following formula: FP = AR (0.1102)/(12)(C), Where:

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

(II) AR = Amount of grant requested.

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

(IV 12) = Number of months per year.

(V C) = Number of customers

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

(iv) Points in the FP ranking, based upon the cost per customer per month calculated as set forth in (ii) of this subparagraph, are awarded as follows:

(I) If the FP is $10.00 or greater, the applicant shall be given 12 points.

(II) If the FP is $8.00 to $9.99, the applicant shall be given 11 points.

(III) If the FP is $6.00 to $7.99, the applicant shall be given 10 points

(IV) If the FP is $5.00 to $5.99, the applicant shall be given 9 points.

(V) If the FP is $4.00 to $4.99, the applicant shall be given 8 points.

(VI) If the FP is $3.00 to $3.99, the applicant shall be given 7 points.

(VII) If the FP is $2.00 to $2.99, the applicant shall be given 6 points.

(VIII) If the FP is $1.75 to $1.99, the applicant shall be given 5 points.

(IX) If the FP is $1.50 to $1.74, the applicant shall be given 4 points.

(X) If the FP is $1.25 to $1.49, the applicant shall be given 3 points.

(XI) If the FP is $1.00 to $1.24, the applicant shall be given 2 points.

(XII) If the FP is $0.75 to $0.99, the applicant shall be given 1 point.

(XIII) If the FP is less than $0.75, the applicant shall be given 0 points.

(F) **Need (N).** An applicant who is subject to an enforcement order issued by a governmental agency with environmental jurisdiction shall be given 5 priority points for a proposed project which will remedy the violation out of which the order arouse if the order specifies a project construction start date which is on or before June 30 of the Board's current fiscal year for funding REAP grants.

(G) **Amount of grant requested (AR).** Points under this category for amount of grant requested are determined as follows:

(i) If the AR is $140,001 to $150,000, the applicant shall be given -5 points.

(ii) If the AR is $130,001 to $140,000, the applicant shall be given -4 points.

(iii) If the AR is $120,001 to $130,000, the applicant shall be given -3 points.

(iv) If the AR is $110,001 to $120,000, the applicant shall be given -2 points.

(v) If the AR is $100,001 to $110,000, the applicant shall be given -1 point.

(vi) If the AR is $100,000, the applicant shall be given 0 points.

(vii) If the AR is $80,000 to $99,999, the applicant shall be given 1 point.

(ix) If the AR is $60,000 to $79,999, the applicant shall be given 2 points.

(x) If the AR is $40,000 to $59,999, the applicant shall be given 3 points.

(xi) If the AR is $20,000 to $39,999, the applicant shall be given 5 points.

(xii) Any portion of an AR that is more than $150,000 shall be denied.

(H) **Project benefit to other systems (BP).** If the applicant's project will benefit other adjacent systems as well as applicant's or result in or lead to consolidation of systems, an additional five (5) priority points will be included in the total of priority points assigned to the application.

(I) **Previous grant assistance (PG).** No qualified entity shall receive more than $150,000 in REAP grant assistance in any twelve (12) month period. For purposes of this subparagraph a political subdivision and all its public trusts and similar subordinate entities together shall be treated as one and the same qualified entity; provided, rural water or sewer districts shall not be construed to be subordinate entities of counties unless the effect would be to make multiple grants to substantially the same entity and/or service area. If a qualified entity has been approved for or received one (1) or more REAP grants from the Board in the past, points shall be deducted from the application according to all of the following provisions that apply:

(i) If the qualified entity has been approved for or received one (1) REAP grant in the preceding twelve (12) month period, the application will be given -8 points.

(ii) If the qualified entity has been approved for or received more than one (1) REAP grant in the preceding twelve (12) month period, the application will be given -10 points for each REAP grant so received.

(iii) If the qualified entity has been approved for or received one (1) REAP grant more than

twelve (12) months in the past, the application will be given -5 points.

(iv) If the qualified entity has been approved for or received two (2) REAP grants more than twelve (12) months in the past, the application will be given -8 points.

(v) If the qualified entity has been approved for or received three (3) REAP grants more than twelve (12) months in the past, the application will be given -10 points.

(vi) If the qualified entity has been approved for or received four (4) REAP grants more than twelve (12) months in the past, application will be given -12 points.

(vii) If the qualified entity has been approved for or received five (5) or more REAP grants more than twelve (12) months in the past, the application will be given -14 points.

(viii) If the qualified entity has received a previous REAP grant that remains un-audited or for which any refund has not been paid as of August 31st, the application will be given -20 points for each such grant.

[OAR Docket #07-1180; filed 5-24-07]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 10. SPORT FISHING RULES

[OAR Docket #07-1020]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
Subchapter 1. Harvest and Possession Limits
800:10-1-3. Additional definitions [AMENDED]
800:10-1-4. Size limits on fish [AMENDED]
800:10-1-5. Bag limits on fish [AMENDED]
800:10-1-7. Possession limit [AMENDED]
Subchapter 3. Methods of Taking
800:10-3-3. Additional definitions [AMENDED]
800:10-3-4. General: hook and line, rod and reel [AMENDED]
Subchapter 5. Area Restrictions and Special Fees
800:10-5-3. Designated trout areas [AMENDED]
AUTHORITY:
Title 29 O.S., Section 3-103, 4-110, 4-120, 6-302, 6-303; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.
DATES:
Comment period:
Novebmer 15, 2006 - January 12, 2007
Public Hearings:
Public hearings were held at the following locations:
Fisheries & Wildlife Pubic Hearings (unless otherwise noted)
Date: January 8, 2007
Time: 6:30 p.m. - 9:30 p.m.
Durant - State Fish Hatchery, 2021 Caddo Hwy
Lawton - Lawton Public Library, 110 SW 4th St.
Okmulgee - East Central Electric, Public Meeting Room, 2001 South Wood Drive (Hwy 75)
Date: January 8, 2007
Time: 6:00 p.m. - 9:00 p.m.
Muskogee - Northeastern State University Campus Auditorium, 2400 West Shawnee
Date: January 9, 2007
Time: 6:30 p.m. - 9:30 p.m.
Ada - Pontotoc County Vo-Tech Center, 601 W. 33rd Street (Wildlife Hearing Only)
Altus - Altus Public Library, 421 N. Hudson St.
Broken Bow - Broken Bow Public Library, 404 N. Broadway
Enid - Central Fire Station, 410 West Garriott
Oklahoma City - Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Auditorium
Tishomingo - Tishomingo Community Center, Fairgrounds, 816 E. 6th (Fisheries Hearing Only)
Tulsa - Tulsa Technology Center Riverside Campus, Alliance and Conference Center Building, 801 E. 91st St., Aud. Rm A150
Date: January 9, 2007
Time: 6:00 p.m. - 9:00 p.m.
Sallisaw - Indian Capital Vo-Tech, North Meeting Room, 401 Houser Ave.
Adoption:
March 5, 2007
Submitted to Governor:
March 9, 2007
Submitted to House:
March 9, 2007
Submitted to Senate:
March 9, 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:
January 1, 2008
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 1. Harvest and Possession Limits
800:10-1-3. Additional definitions [AMENDED]
Gubernatorial approval:
October 9, 2006
Register publication:
24 Ok Reg 226
Docket number:
06-1382
Superseded rules:
Subchapter 1. Harvest and Possession Limits
800:10-1-4. Size limits on fish [AMENDED]
800:10-1-5. Bag limits on fish [AMENDED]
Subchapter 5. Area Restrictions and Special Fees
800:10-5-3. Designated trout areas [AMENDED]
Gubernatorial Approval:
December 21, 2006
Register publication:
24 Ok Reg 609
Docket number:
07-101
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rule amendments in Subchapter 1 will: 1) add the new Lower Illinois River PFHA in the definition of Department Fishing Areas; 2) place a 20-inch minimum size limit and one fish per day bag limit on rainbow trout in a 0.5 mile portion (from the USGS stream gauge station downstream to the gravel pit county road) of the Lower Illinois River PFHA trout stream and the Evening Hole/Lost Creek portion of the Lower Mountain Fork River trout stream (also will eliminate the 20-inch minimum size limit, one fish per day bag limit on rainbow trout in the portion of stream from Rough Branch Creek downstream to the reregulation dam); 3) establish a 0.5 mile catch and release only portion of the Blue River PFHA trout stream from November 1 through February 29; 4) reduce the minimum size limit on walleye at Lake Altus-Lugert to 14-inches; 5) reduce the minimum size limit to 14-inches and increase the daily bag limit to six (6) fish per day on black bass at Lake Arcadia and; 6) delete the limit on the number of shad a person can have in possession while on the water, increase the possession limit on the number of shad that can be legally transported via land-based transportation from 150 to 200, and prohibit the sale, offer to sell,

or transport from Oklahoma with the intent to sell, shad taken from waters of this state.

The rule amendments in Subchapter 3 will: 1) change the definition of a legal bowfishing arrow to an arrow with one (1) point having no more than four (4) barbs and; 2) allow the use of gaff hooks to land paddlefish taken while bowfishing.

The rule amendments in Subchapter 5 will: 1) establish artificial flies and lures, barbless hooks only areas on portions of the Blue River PFHA trout stream and the Lower Mountain Fork River trout stream (within the Evening Hole/Lost Creek area) and eliminate the artificial flies and lures, barbless hooks only designation on that portion of the Lower Mountain Fork River trout stream from the mouth of Rough Branch Creek downstream to the reregulation dam and; 2) establish an artificial flies and lures, barbless hooks only area on a 0.5 mile portion (from the USGS stream gauge station downstream to the gravel pit county road) of the Lower Illinois River PFHA trout stream, except that single barbed hooks, size 3/0 or larger may be used only when fishing with natural bait.

CONTACT PERSON:

Barry Bolton, Assistant Chief of Fisheries Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK 73105. Phone: 405/521-3721. Rhonda Hurst, APA Liaison, phone: 405/522-6279.

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. HARVEST AND POSSESSION LIMITS

800:10-1-3. Additional definitions

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

"Department fishing areas" means lakes American Horse, Burtschi, Chambers, Dahlgren, Elmer, Etling, Fugate, Hall, Jap Beaver, Nanih Waiya, Ozzie Cobb, Raymond Gary, Schooler, Vanderwork, Vincent, Watonga, Wayne Wallace ~~and~~, the Blue River Public Fishing and Hunting Area and the Lower Illinois River Public Fishing and Hunting Area - Simp and Helen Watts Management Unit.

"No culling" means fish caught and placed on a stringer or otherwise held in possession (live well, basket, ice chest, etc.) cannot be released.

"Total length" means measured from the tip of the snout to the end of the tail, with the fish laid flat on the rule with mouth closed and tail lobes pressed together.

"Close To Home" fishing waters means bodies of water designated as such under a cooperative fisheries management agreement between ODWC and participating cities and/or municipalities. "Close to Home" fishing waters shall be designated in the Oklahoma Department of Wildlife Conservation Oklahoma Fishing Guide which is published annually.

800:10-1-4. Size limits on fish

There are no length and/or size limit restrictions on any game or nongame fish, except as follows:

(1) All black bass (largemouth, spotted and smallmouth) less than fourteen (14) inches in total length must be returned to the water unharmed immediately after being taken from these waters:

(A) **Lakes and Reservoirs** - Adair Recreation Area, Altus-Lugert, Arcadia, Carl Albert, Carl Blackwell, Copan, Draper, Eufaula, Ft. Cobb, Ft. Gibson, Foss, Grand including all tributaries to state line, Greenleaf, Hefner (applies to largemouth and spotted bass only), Heyburn, Hudson, Hugo, Kaw, Keystone, Oologah, Optima, Overholser (including tailwaters and downstream to NW 10th St. bridge), Sardis, Sooner, Taft, Texoma, Thunderbird, Tom Steed, Waurika and Wister (Wister Lake boundaries are US Highway 271 bridge on Fourche Maline River, US Highway 59 bridge on Poteau River and the low water dam, one-half mile above county road bridge number 156, on Holson Creek).

(B) **McClellan-Kerr Arkansas River Navigation System** - All lakes, cutoffs and oxbows from the Oklahoma-Arkansas line to the Port of Catoosa, including R.S. Kerr, Webbers Falls, W.D. Mayo, Chouteau and Newt Graham Reservoir.

(C) **Department of Wildlife Conservation fishing areas** - Lakes Burtschi, Chambers, Elmer, Etling, Fugate, Jap Beaver, Ozzie Cobb, Schooler, Vincent, Watonga, Wayne Wallace, Dahlgren, and all the ponds and streams within the following Department WMA's, Atoka, Beaver River, Bolen Hollow, Gruber/Cherokee, Cookson, Ellis Co., Ft. Gibson, James Collins, Lexington, Okmulgee, (excluding the Deep Fork River), Pushmataha, Robbers Cave, Sandy Sanders, Spavinaw, Stringtown, the Blue River Public Fishing Area and all ponds and lakes in the Ouachita National Forest.

(2) All black bass (largemouth, spotted and smallmouth) between thirteen (13) and sixteen (16) inches in total length must be returned unharmed immediately after being taken from lakes Birch, Chimney Rock (W.R. Holway), Arbuckle, Lone Chimney, Okmulgee, Vanderwork and Hall.

(3) All largemouth and smallmouth bass between thirteen (13) and sixteen (16) inches in total length must be returned unharmed immediately after being taken from Broken Bow Lake (downstream from the slab at the Narrows), Tenkiller Lake (downstream from Horseshoe Bend boat ramp), and from Lake Elmer Thomas.

(4) All crappie (Pomoxis sp.) less than 10 inches in total length must be returned to the water unharmed immediately after being taken from Lakes Arbuckle, Tenkiller, Hudson, Texoma, Ft. Gibson, including all tributaries and upstream to Markham Ferry Dam and Grand Lake, including all tributaries to state line.

(5) All flathead catfish (Pylodictis olivaris) less than 20 inches in total length must be returned to the water unharmed immediately after being taken statewide.

(6) All walleye, sauger, and saugeye (sauger x walleye hybrid) less than 18 inches in total length must be returned to the water unharmed immediately after being taken statewide, except at Altus-Lugert, Ellsworth, Foss, Fort

Cobb, Lawtonka and Murray lakes where walleye, sauger and saugeye less than 14 inches in total length must be returned to the water unharmed immediately and at Great Salt Plains Reservoir and tailwater where the size limit does not apply and in the Illinois River below Tenkiller Dam and the Arkansas River from Keystone Dam downstream to the Oklahoma state line where all sauger less than 16 inches must be returned to the water unharmed immediately.

~~(7) All black bass (largemouth, spotted, and smallmouth) less than twenty-two (22) inches in total length must be returned to the water immediately after being taken from Lake Arcadia.~~

(~~8~~7) All black bass (largemouth, spotted, and smallmouth) between sixteen (16) and twenty-two (22) inches in total length must be returned to the water immediately after being taken from McGee Creek Lake, Lake Nanih Waiya, Lake Raymond Gary, Dripping Springs Lake and Crowder Lake (Washita County).

(~~9~~8) All largemouth and smallmouth bass less than fourteen (14) inches in total length must be returned to the water unharmed immediately after being taken from Skiatook Lake and Pine Creek Reservoir.

(~~10~~9) All rainbow trout less than twenty (20) inches in total length must be returned to the water immediately after being taken from the lower Mountain Fork River trout stream from the Lost Creek water control structure downstream to the first Highway 259 Scenic bridge, including Evening Hole and the Lost Creek stream channel, and from the State Park Dam downstream to the ~~Re-regulation Dam.~~ mouth of Rough Branch Creek and in the lower Illinois River trout stream from the USGS stream gauge downstream to the gravel pit county road. All brown trout less than twenty (20) inches in total length must be returned to the water immediately after being taken from the lower Mountain Fork River from Broken Bow Dam downstream to the U. S. Highway 70 bridge, and from the lower Illinois River trout stream from Tenkiller Dam downstream to the U. S. Highway 64 bridge.

(~~11~~10) All blue catfish and channel catfish less than twelve (12) inches in total length must be returned to the water unharmed immediately after being taken from Texoma Lake.

(~~12~~11) All smallmouth bass less than eighteen (18) inches in total length must be returned to the water unharmed immediately after being taken from Lake Hefner.

(~~13~~12) All smallmouth bass between nine (9) and twelve (12) inches in total length must be returned to the water unharmed immediately after being taken from Baron Fork Creek, Flint Creek, Illinois River upstream from the Baron Fork Creek confluence, Lee Creek, and Little Lee Creek. Possession of smallmouth bass between nine (9) and twelve (12) inches in total length at these streams is prohibited.

(~~14~~13) All smallmouth bass less than twelve (12) inches in total length must be returned to the water unharmed immediately after being taken from Glover River from the confluence with the Little River upstream to the "Forks of the Glover River". Possession of smallmouth bass less than twelve (12) inches in total length at this stream is prohibited.

800:10-1-5. Bag limits on fish

No person shall, during any one day, take, attempt to take, kill, or harvest more than:

(1) Six (6) largemouth, smallmouth, and/or spotted bass or six in aggregate, except at Lake Hefner where the limit on smallmouth bass is one (1) fish 18 inches or longer, in "Close To Home" fishing water where all largemouth bass caught must be returned to the water unharmed immediately after being taken (no harvest allowed), at Texoma Reservoir where the limit is five (5), ~~at Lake Arcadia the limit is three (3),~~ at Lake Konawa, McGee Creek Lake, Lake Nanih Waiya, Dripping Springs Lake, Lake Raymond Gary and Crowder Lake (Washita County) the limit is six (6) of which only one (1) may be twenty-two (22) inches or longer, at Broken Bow, Skiatook and Tenkiller lakes where the limit on spotted bass is fifteen (15) per day, in Baron Fork Creek, Flint Creek, Illinois River upstream from the Baron Fork Creek confluence, Lee Creek, and Little Lee Creek where the aggregate limit is six (6), of which only one (1) smallmouth bass may be twelve (12) inches or longer, and in the Glover River from the confluence with the Little River upstream to the "Forks of the Glover River" where the aggregate limit is six (6), of which only three (3) may be smallmouth bass.

(2) Fifteen (15) channel and/or blue catfish, or fifteen (15) in aggregate, except at all U.S. Forest Service and State Park lakes (not including Lake Murray) and Department of Wildlife Management Area ponds and all Department of Wildlife Conservation fishing areas, in "Close To Home" fishing waters and all waters within the Wichita Mountains National Wildlife Refuge, where the limit is six (6). For scuba divers with spearguns, the limit is three (3) per day or three (3) in aggregate from May 1 through August 31, annually.

(3) Thirty-seven (37) crappie (Pomoxis sp.) except at Blue River Public Fishing and Hunting Area where the limit is six (6) and at lakes Arbuckle, Tenkiller, Hudson, Ft. Gibson including all tributaries and upstream to Markham Ferry Dam and Grand Lake including all tributaries to state line where the limit is fifteen (15).

(4) Six (6) rainbow trout - possession limit of twelve (12) after first day, except in the lower Mountain Fork River trout stream from the Lost Creek water control structure downstream to the first Highway 259 Scenic bridge, including Evening Hole and the Lost Creek stream channel, and from the State Park Dam downstream to the ~~Re-regulation Dam~~ mouth of Rough Branch Creek, and in the lower Illinois River trout stream from the USGS stream gauge downstream to the gravel pit county road where the limit is one (1) rainbow trout per day twenty (20) inches or longer in total length (no culling); and in the Blue River from its entry onto the Plaster Wildlife Management Unit/Landrum Wilderness downstream approximately $\frac{1}{2}$ mile to a marker cable where all trout

caught must be released immediately from November 1 to March 1 (thereafter, statewide trout bag limit applies).

(5) Six (6) brown trout, except in the lower Mountain Fork River trout stream below Broken Bow dam downstream to the U. S. Highway 70 bridge, and in the lower Illinois River trout stream from Tenkiller Dam downstream to US Highway 64 bridge where the limit is one (1) fish per day twenty (20) inches or longer in total length.

(6) One (1) Northern pike.

(7) One (1) muskellunge.

(8) Five (5) walleye, sauger and/or saugeye, or five (5) in aggregate.

(9) Fifteen (15) striped bass of which only five (5) may be twenty (20) inches or longer, except in the discharge area of Sooner Reservoir where the daily bag limit is five (5) and at Great Salt Plains Reservoir where the daily bag is twenty (20) of which only five (5) may be twenty (20) inches or longer (no culling).

(10) Ten (10) striped bass and/or striped bass hybrids or ten (10) in aggregate of which only two (2) may be twenty (20) inches or longer in Texoma Reservoir and five (5) striped bass and/or striped bass hybrids or five (5) in aggregate in the Red River below Denison Dam (no culling). This paragraph shall become effective September 1, 1996.

(11) Ten (10) flathead catfish, except in Lake Texoma where the daily limit is five (5), and for noodlers and scuba divers the daily limit is three (3) from May 1 through August 31, annually.

(12) Twenty (20) striped bass hybrids and/or white bass, or twenty (20) in aggregate, of which only five (5) may be twenty (20) inches or longer in lakes Altus-Lugert, Birch, Canton (Canton Lake boundaries are from State Highway 281 to one thousand (1,000) feet below Canton Dam), Carl Blackwell, Foss, Ft. Cobb, Great Salt Plains, Konawa, Ft. Supply, Tom Steed, Sooner and Waurika, including tailwaters and Grand including all tributaries to stateline and below Grand River Dam (Pensacola Dam) downstream to State Highway 82 bridge and Oologah Lake including upstream on all tributaries to stateline and downstream below the dam to the mouth of the Caney River.

(13) Five (5) striped bass hybrids of which only two (2) may be 20 inches or longer in Skiatook Lake.

(14) Five (5) striped bass hybrids in Lake Carl Etling.

(15) Five (5) striped bass hybrid and/or white bass in Optima Reservoir and the discharge area of Sooner Reservoir.

(16) Twenty-five (25) white bass in Lake Texoma.

(17) One (1) paddlefish (Polydon spathula) per day, statewide. The catch and release of paddlefish is permitted year round by use of rod and reel, trotline and throwlines. Paddlefish must be released immediately unless kept for the daily limit. Paddlefish taken by bow and arrow, gigs, spears or spearguns shall not be released. Paddlefish caught and placed on a stringer or otherwise held in possession must be tagged immediately and cannot be released (no culling). Each person must keep their own paddlefish distinctly separate from paddlefish taken by other fishermen. Each cleaned paddlefish, or its meat, eggs, or carcass, must also be tagged and kept separate from all other cleaned paddlefish or its parts. Tagged means plainly labeled with the taker's first and last name, address, and fishing license number. Paddlefish or their parts must remain tagged until the person in possession of the paddlefish or paddlefish parts has reached their residence. Persons fishing trotlines or throwlines must release all paddlefish on their lines, except the one (1) paddlefish held in possession for their daily limit, before leaving the trotline or throwline. Fishermen must cease snagging when they have taken their daily limit of paddlefish into possession.

(18) Release of striped bass and/or striped bass hybrids caught and placed on a stringer, in a live well or otherwise held in possession is prohibited statewide (no culling).

(19) Other fish do not have bag or possession limits.

800:10-1-7. Possession limit

(a) No resident or nonresident shall have in their possession, in the field, more than one (1) daily bag limit listed in 800:10-1-5 and 800:10-1-6. Nonresidents shall not have more than two (2) daily bag limits in their possession at any time other than in the field, except for paddlefish which can be four (4) daily bag limits. "In the Field" means while fishing, or while in a boat, or on the bank or in the immediate vicinity of any river, creek, stream, lake or pond, or while transporting or carrying the fish from the waters described above to camp or from such waters to the final destination.

(b) ~~No person shall take and/or export out of state via land based transportation more than one hundred and fifty (150) nongame fish, including shad, for personal use as bait.~~No person may possess with intent to transport or transport via land based transportation more than 200 non-game fish, including shad, for personal use as bait. The sale, offer for sale, transport from Oklahoma with intent to sell or offer to sell shad taken from waters of this state is prohibited.

SUBCHAPTER 3. METHODS OF TAKING

800:10-3-3. Additional definitions

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

"Bow and arrow" when used for bowfishing means a long bow only (any bow except a crossbow) and an arrow having no more than ~~three (3) points with not more than two (2)~~one (1) point with no more than four (4) barbs~~ on each point~~.

"Foul hooked" means a fish hooked other than inside the mouth.

"Gaff hook" means a handheld hook or handheld pole with a hook attached and may only be used in the landing of a fish, other than paddlefish, already hooked by other legal hook and line methods.

"Gig" means a hand-held fish spearing device mounted at the end of a shaft containing not more than three (3) points and not more than two (2) barbs on each point.

"Grabhook" means a handheld hook or handheld pole, or rope, with a single hook attached used in the initial taking of a fish.

"Jugline" means a vertical line suspended from a nonmetallic or nonglass floating device which is drifting free or anchored, having no more than five (5) hooks per line and limited to twenty (20) such juglines per person.

"Limbline" means a line attached to a limb, branch or other natural object having no more than two (2) hooks attached per line and limited to twenty (20) such limblines per person.

"Noodling" means the taking of fish by use of hands only.

"Snagging" means the dragging of one (1) single hook or one (1) treble hook through the water attached to a hand-held line or fishing rod and line for the purpose of impaling fish.

"Yo-Yo" means any mechanical fishing device which automatically recoils when a fish strikes and is limited to no more than twenty (20) such devices per person.

"Unattended" means not within visual observing distance.

800:10-3-4. General: hook and line, rod and reel

(a) All waters of the state are open to taking game and nongame fish by hook and line attached to a pole or rod and reel, trotline, throwline, or other hook and line methods, except where closed by other provisions in this Chapter.

(b) No person may use more than seven (7) poles or rods while fishing, unless provided otherwise by other provisions in this Chapter.

(c) The use of "Gaff Hooks", or the use of any other technique or device that severely injures the fish, to assist in landing paddlefish, is prohibited, except while bowfishing.

SUBCHAPTER 5. AREA RESTRICTIONS AND SPECIAL FEES

800:10-5-3. Designated trout areas

(a) **Designated trout areas and seasons.** The following are the designated trout areas and trout seasons at each area:

(1) The Illinois River and its tributaries from the Tenkiller Ferry Reservoir Dam downstream to the Highway 64 Bridge near Gore, trout season is year-round.

(2) Blue River, within boundaries of the Blue River Public Fishing & Hunting Area (includes Landrum Wilderness Area and Plaster Wildlife Management Unit), trout season is from November 1 through March 31 of the following year; season is annual.

(3) Lake Watonga located within the boundaries of Roman Nose State Park, trout season is from the November 1 through March 31 of the following year; season is annual.

(4) The lower Mountain Fork River and tributaries from Broken Bow Dam downstream to U.S. Highway 70 bridge, excluding that portion from the mouth of Rough Branch Creek downstream to the ~~reregulation~~ Re-regulation dam. However, while fishing in this portion of the Mountain Fork River, a valid annual trout license is required to have trout in possession. Trout season is year-round.

(5) The North Fork of the Red River from Altus-Lugert Dam downstream to the low water dam at State Highway 44A, trout season is from November 1 through March 15 of the following year; season is annual.

(6) Lake Carl Etling located within the boundaries of Black Mesa State Park, trout season is from November 1 through April 30 of the following year; season is annual,

(7) The Fourche Maline River from Carlton Lake Dam downstream to the Robbers Cave State Park boundary a distance of approximately one and one-quarter ($1\frac{1}{4}$) miles, trout season is from November 1 through March 15 of the following year; season is annual.

(8) Lake Pawhuska trout season is from November 1 through March 31 of the following year; season is annual.

(b) **Trout license requirement.** It shall be unlawful for any person, regardless of residency, age or disability, to fish in "Designated Trout Areas" during trout seasons without having secured from the Department of Wildlife Conservation or its authorized agent, a special, annual trout license. The special trout license shall be in addition to the regular fishing license requirements. The special trout license requirement shall apply only during the November 1 through March 31 special trout season on the Blue River, annually on the Illinois River and Mountain Fork River, from November 1 through March 31 on Lake Watonga, from November 1 through March 15 below Altus-Lugert Dam, from November 1 through April 30 on Lake Carl Etling, from November 1 through March 15 in the Fourche Maline River from Carlton Lake Dam downstream to the Robbers Cave State Park boundary, and from November 1 through March 31 on Lake Pawhuska. All persons possessing trout caught downstream of the Robbers Cave State Park boundary or in tributaries to the designated trout stream are also required to have a trout license during the season; no exceptions.

(c) **General; area restrictions.** The following rules apply to designated trout areas and ~~that portion of the Mountain Fork River from the mouth of Rough Branch Creek downstream to the reregulation dam:~~to specified locations within certain designated trout areas:

(1) It shall be unlawful to take or attempt to take fish from these areas during trout seasons except with rod and reel or pole and line; only one (1) rod and reel or pole and line per person is allowed.

(2) Once a trout is reduced to possession by being placed on a stringer or in the creel of any type, said trout must count toward day's limit and cannot be released.

(3) ~~Fishing in the Mountain Fork River below Broken Bow dam from the old Park dam downstream to the reregulation dam is restricted to artificial flies and lures only and barbless hooks only.~~Fishing in the lower Mountain Fork River trout stream below Broken Bow dam from the Lost Creek water control structure downstream to the first Highway 259 Scenic bridge, including Evening Hole and the Lost Creek stream channel, and from the State Park Dam downstream to the mouth of Rough Branch Creek, is restricted to artificial flies and lures only and barbless hooks only.

(4) Fishing in the lower Illinois River trout stream below Tenkiller dam from the USGS stream gauge downstream to the gravel pit county road is restricted to artificial flies and lures only and barbless hooks only, except that single barbed hooks, size 3/0 or larger, may be used only when fishing with natural bait.

(5) Fishing in the Blue River from its entry onto the Plaster Wildlife Management Unit/Landrum Wilderness Area downstream approximately $\frac{1}{2}$ mile to a marker cable is restricted to artificial flies and lures only and barbless hooks only during the period November 1 to March 1, annually.

[OAR Docket #07-1020; filed 5-15-07]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 10. SPORT FISHING RULES

[OAR Docket #07-1019]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
Subchapter 5. Area Restrictions and Special Fees
800:10-5-2. Department fishing areas [AMENDED]
AUTHORITY:
Title 29 O.S., Section 3-103, 4-110, 4-120, 6-302, 6-303; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.
DATES:
Comment period:
November 15, 2006 - January 12, 2007
Public Hearings:
Public hearings were held at the following locations:
Fisheries & Wildlife Pubic Hearings (unless otherwise noted)
Date: January 8, 2007
Time: 6:30 p.m. - 9:30 p.m.
Durant - State Fish Hatchery, 2021 Caddo Hwy
Lawton - Lawton Public Library, 110 SW 4th St.
Okmulgee - East Central Electric, Public Meeting Room, 2001 South Wood Drive (Hwy 75)
Date: January 8, 2007
Time: 6:00 p.m. - 9:00 p.m.
Muskogee - Northeastern State University Campus Auditorium, 2400 West Shawnee
Date: January 9, 2007
Time: 6:30 p.m. - 9:30 p.m.
Ada - Pontotoc County Vo-Tech Center, 601 W. 33rd Street (Wildlife Hearing Only)
Altus - Altus Public Library, 421 N. Hudson St.
Broken Bow - Broken Bow Public Library, 404 N. Broadway
Enid - Central Fire Station, 410 West Garriott
Oklahoma City - Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Auditorium
Tishomingo - Tishomingo Community Center, Fairgrounds, 816 E. 6th (Fisheries Hearing Only)
Tulsa - Tulsa Technology Center Riverside Campus, Alliance and Conference Center Building, 801 E. 91st St., Aud. Rm A150
Date: January 9, 2007
Time: 6:00 p.m. - 9:00 p.m.
Sallisaw - Indian Capital Vo-Tech, North Meeting Room, 401 Houser Ave.
Adoption:
March 5, 2007
Submitted to Governor:
March 9, 2007
Submitted to House:
March 9, 2007
Submitted to Senate:
March 9, 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:
Superseded rules:
Subchapter 5. Area Restrictions and Special Fees
800:10-5-2. Department fishing areas [AMENDED]
Gubernatorial approval:
October 9, 2006
Register publication:
24 Ok Reg 226
Docket number:
06-1382
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The rule amendments in Subchapter 5 will: 1) add the Arcadia Conservation Education Area (ACEA) in the rules governing public use on Department Fishing Area (allows walk-in access to Arcadia Lake from the property, prohibits unauthorized camping and restricts unsanctioned fishing in educational training ponds); 2) prohibit overnight camping on the Lower Illinois River PFHA; 3) extend hunting seasons on Department owned lakes and access areas (only those open to hunting) to the period from September 1 through spring turkey season each year; 4) add "low-point" beer to language that places restrictions on possession and consumption of intoxicating beverages, except in camping and parking areas, on Department Fishing Areas; 5) clarify an existing rule prohibiting controlled and dangerous substance possession on Department Fishing Areas; 6) move the hunting regulations specified for Department lakes from the Wildlife rules into the Fisheries rules to eliminate duplication.
CONTACT PERSON:
Barry Bolton, Assistant Chief of Fisheries Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK 73105. Phone: 405/521-3721. Rhonda Hurst, APA Liaison, phone: 405/522-6279.

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. AREA RESTRICTIONS AND SPECIAL FEES

800:10-5-2. Department fishing areas

The following rules and restrictions govern public use on all Department Fishing Areas, including:

(1) **Department owned lakes and access areas.** The following rules apply:

(A) Camping is permitted, but limited to three (3) days duration at all areas, except at the Kiamichi River Access Area and the Lower Illinois River Public Fishing and Hunting Area - Simp and Helen Watts Management Unit where no overnight camping is permitted and at Lakes Watonga, Carl Etling, Wayne Wallace, and the Illinois River Access Areas where camping shall be limited to fourteen (14) consecutive

days. Camping is permitted only in designated camping areas.

(B) Boats and motors are permitted. All boats and motors must comply with existing state boat regulations and boat operators must obey Oklahoma State Boat Laws. All boats must be operated at no-wake speed (six '6' miles per hour or less) and may not be left on the water or the areas longer than the limit on camping.

(C) Water skiing is prohibited.

(D) Disposal of trash, refuse and debris is prohibited, except in designated trash containers. This includes organic and inorganic materials.

(E) Commercial concessions and private developments on Department property are prohibited. Soliciting, advertising or promoting any commercial or private activity is prohibited. The use of these areas for any commercial operation in any way is prohibited.

(F) Dogs must be kept on a leash at all times, except when used to hunt with, during legal open hunting seasons on those areas where hunting is permitted.

(G) Boat houses, ramps, docks and other facilities may not be constructed on Department property without specific approval of the Oklahoma Wildlife Conservation Commission.

(H) It shall be unlawful to drive, occupy or park any motor driven vehicle, including automobiles, trucks, mini bikes, motorcycles, etc., except on maintained roads, (unless posted as "no parking zones"), designated parking areas, and designated camping areas. It shall be unlawful to operate any vehicle in a manner to create a public nuisance or to park in a "no parking zone." Operators must be licensed drivers.

(I) Cutting or defacing of trees and vegetation shall be prohibited. Removal of any vegetation, soil, rocks, water or minerals is prohibited except under written approval of the Department Director.

(J) Vandalism, theft, and damage to State property is prohibited.

(K) No person shall use threatening, abusive, or indecent language, participate in a disorder assemblage, nor publicly appear nude or intoxicated on any lands owned or managed by the Oklahoma Department of Wildlife Conservation.

(L) After 10:00 p.m., and until 5:00 a.m., all Department fishing areas will be restricted to fishing and fishing related activities only, and hunting if permitted by Commission.

(M) Swimming is not permitted unless a designated swimming area is established by the Wildlife Conservation Commission.

(N) ~~All forms of hunting are~~Hunting is permitted on the following lakes: ~~Lakes Vincent,~~ Hall, Jap Beaver, Burtschi, ~~Dahlgren,~~ Nanih Waiya, Ozzie Cobb, Schooler, Evans-Chambers, American Horse~~,~~ and Vanderwork ~~during open hunting seasons which occur~~ during the period of September 1 through ~~March 1~~Spring Turkey Season, including migratory bird seasons. Hunting regulations and restrictions for lakes Dahlgren and Vincent are the same as those listed for Lexington WMA (Dahlgren) and Ellis County WMA (Vincent). The following lakes are closed to hunting or taking of wildlife by any means: Elmer, Etling, Raymond Gary, Watonga, and Wayne Wallace. Hunting is restricted to shotguns or archery only. ~~, long bow and arrows only, except rifles are also permitted for the taking of deer on Lake Vincent area (area within boundary fence) during the deer gun season.~~ These lakes are closed to antlerless deer harvest, except during archery season. Hunting and shooting other than that provided above is prohibited. The Director may designate "closed areas" for purposes of safety and/or security.

(O) Fishing is permitted in accordance with provisions provided in OAC 800:10, Subchapter 1. The Director may designate "closed areas" for purposes of safety and/or security.

(P) No person may fish with more than two (2) poles, except during trout seasons at "Designated Trout Areas" where no person may fish with more than one (1) pole.

(Q) Trotlines, throwlines, limblines, juglines, nets, seines, yo-yo's, spearguns, and the taking of any fish by noodling and the taking of bait minnows by any method is prohibited, except cast nets may be used to take bait for personal use at Lake Carl Etling.

(R) No person shall possess, consume or use any intoxicating beverage or low-point beer, as defined in Title 37, except in camping and parking areas on any lands or waterways subject to the control of the Oklahoma Department of Wildlife Conservation except U.S. Forest Service regulations shall apply to Black Kettle, Ouachita, Rita Blanca and Tiak Wildlife Management Areas.

(S) No person shall possess, consume, use or manufacture any controlled or dangerous substance, as defined in Title 63 on any lands or waterways subject to the control of the Oklahoma Department of Wildlife Conservation.

(2) **Blue River Public Fishing and Hunting Area.** The following rules apply:

(A) Hunting shall be permitted during regular hunting seasons and is restricted to shotgun and long bow and arrow only. No other use or other firearms are permitted.

(B) Blue River PFHA is closed to all except emergency traffic from 10:00 p.m. to 6:00 a.m. throughout the year.

(C) Fishing is permitted in accordance with provisions provided in OAC 800:10, Subchapter 1.

(D) Trotlines, throwlines, noodling, limblines, spearguns, juglines, nets, seines, and yo-yo's are prohibited throughout the year.

(E) No person may fish with more than two (2) poles, except only one (1) pole and line or rod and reel is permitted during the designated trout season.

(F) The following special rules pertain to the Carl R.and Ruth Walker Landrum Wilderness and Plaster Wildlife Management Unit:

(i) no camping

(ii) areas closed from 10:00 p.m. to 6:00 a.m.

(iii) no swimming

(iv) walk-in access only (except where wheelchair access is provided).

(G) The Blue River Campground Area is closed to swimming, effective January 1, 1990, unless suitable agreement can be reached between the Department and an acceptable second party who would be responsible for managing a designated swimming area for a three month season, annually. The Department will assume no cost or liability for development and operation of a designated swimming area.

(H) Effective July 1, 2000 the following rules apply to camping at the Blue River Campground Area:

(i) Camping is restricted to 14 days in a 30 consecutive day period. The Area Manager may grant extensions by issuing a permit for camping beyond the 14 day limit. Such extensions shall be based upon degree of area use, anticipated weekend or holiday occupancy and recreation season. Extensions shall be requested 48 hours prior to the requested date of the extension.

(ii) Camping is permitted only in designated camping areas.

(iii) No person shall leave a vehicle, camper, tent or any personal property unattended for more than a 48-hour period without approval of the Area Manager.

(iv) If property must be removed, it will be at owners expense and liability. The unauthorized placement of camping equipment or other items on a campsite and/or personal appearance without overnight occupancy at a campsite for the purpose of reserving a designated campsite for future occupancy is prohibited.

(I) Each person, not otherwise exempt by statute, entering or using the Blue River Public Fishing and Hunting Area shall be required to have a "Blue River Conservation Passport" in their possession while in the area. The Wildlife Commission hereby establishes and assesses an annual fee for the Passport which shall be one dollar ($1.00) above the cost of an annual resident fishing license. No fishing or hunting privileges of any kind are provided or implied with the Passport.

(3) **Arcadia Conservation Education Area**

(A) Walk-in fishing permitted on all parts of the lake shoreline. No fishing in any ponds or wetland areas unless part of an ODWC sanctioned education event.

(B) Camping prohibited except as authorized by ODWC.

[OAR Docket #07-1019; filed 5-15-07]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 15. COMMERCIAL HARVEST RULES; AQUATIC SPECIES

[OAR Docket #07-1021]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
Subchapter 7. Commercial Mussel Harvest
800:15-7-3. General; operating provisions [AMENDED]
AUTHORITY:
Title 29 O.S., Section 3-103, 4-129; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.
DATES:
Comment period:
Novebmer 15, 2006 - January 12, 2007
Public Hearings:
Public hearings were held at the following locations:
Fisheries & Wildlife Pubic Hearings (unless otherwise noted)
Date: January 8, 2007
Time: 6:30 p.m. - 9:30 p.m.
Durant - State Fish Hatchery, 2021 Caddo Hwy
Lawton - Lawton Public Library, 110 SW 4th St.
Okmulgee - East Central Electric, Public Meeting Room, 2001 South Wood Drive (Hwy 75)
Date: January 8, 2007
Time: 6:00 p.m. - 9:00 p.m.
Muskogee - Northeastern State University Campus Auditorium, 2400 West Shawnee
Date: January 9, 2007
Time: 6:30 p.m. - 9:30 p.m.
Ada - Pontotoc County Vo-Tech Center, 601 W. 33rd Street (Wildlife Hearing Only)
Altus - Altus Public Library, 421 N. Hudson St.
Broken Bow - Broken Bow Public Library, 404 N. Broadway
Enid - Central Fire Station, 410 West Garriott
Oklahoma City - Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Auditorium
Tishomingo - Tishomingo Community Center, Fairgrounds, 816 E. 6th (Fisheries Hearing Only)
Tulsa - Tulsa Technology Center Riverside Campus, Alliance and Conference Center Building, 801 E. 91st St., Aud. Rm A150
Date: January 9, 2007
Time: 6:00 p.m. - 9:00 p.m.
Sallisaw - Indian Capital Vo-Tech, North Meeting Room, 401 Houser Ave.
Adoption:
March 5, 2007
Submitted to Governor:
March 9, 2007
Submitted to House:
March 9, 2007
Submitted to Senate:
March 9, 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:
Superseded rules:
Subchapter 7. Commercial Mussel Harvest
800:15-7-3. General; operating provisions [AMENDED]
Gubernatorial approval:
August 24, 2006
Register publication:
24 Ok Reg 109
Docket number:
06-1313
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
These rule amendments will: 1) require mussel harvesters to notify local game wardens of commercial mussel harvest operations; 2) modify some reporting procedures, including a requirement for mussel dealers to list mussels purchased by species and; 3) define how mussel dealers calculate their dollar value of purchased shells in order to determine severance fee payments to ODWC. These changes are identical to the amended rule initially adopted by the Oklahoma Wildlife Conservation Commission on February 6, 2006, but inadvertently transcribed in error and subsequently published (containing errors) in the Oklahoma Register. The rule was subsequently corrected and is currently effective as an emergency rule which was adopted by the Commission on July 10, 2006.
CONTACT PERSON:
Barry Bolton, Assistant Chief of Fisheries Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK 73105. Phone: 405/521-3721. Rhonda Hurst, APA Liaison, phone: 405/522-6279.

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, 1007:

SUBCHAPTER 7. COMMERCIAL MUSSEL HARVEST

800:15-7-3. General; operating provisions

Operating provisions for commercial mussel harvesting shall be in accordance with 29 O. S., Section 4-129 and the following:

(1) **Harvest methods.** It shall be unlawful to take any mussels except by hand only, with or without, the use of diving equipment. No power dredge, crowfeet, common dredge, scrapes or rakes may be used in the taking of mussels.

(2) **Size limit.** It shall be unlawful for anyone to take or possess mussels or shells smaller than the size limits provided in 29 O.S., Section 4-129(D). All undersized mussels shall be immediately returned to the water from which they were taken.

(3) **Season and time of day.** The season shall be open throughout the year from January 1 through December 31. Commercial mussel pickers may harvest from daylight to dark on weekdays only. No mussels shall be harvested except during daylight hours, from sunrise until sunset, Monday through Friday. No mussels shall be harvested at any time on Saturdays or Sundays or the following state holidays: Memorial Day, Independence Day, or Labor Day.

(4) **Reporting.** Each Commercial Mussel Picker shall notify the local game warden ~~in each area~~ where he plans to harvest mussel shells at least one day prior to mussel harvest and ~~shall give~~ inform the game warden ~~the day and area where he plans to~~when and where the mussel harvester plans to harvest mussel shells. Each Commercial Mussel Dealer must keep accurate records of all mussels purchased within and exported from the State of Oklahoma. These records shall be available for inspection by any agent of the Department at any time. A copy of each mussel purchase transaction must be given to the seller (picker) by the buyer (dealer) at the time of sale on forms provided by the Department. A copy of all mussel purchase transactions and mussel exports shall be submitted to the Department as follows:

(A) Each Commercial Mussel Dealer shall complete and submit to the Department a true and accurate purchase ~~record~~ report for each mussel purchase transaction. Each purchase ~~record~~ report must contain:

(i) the buyer's (Dealer's) name and license number;

(ii) seller's (picker's) name and license number;

(iii) the total pounds of mussels purchased by species;

(iv) the total amount paid to pickers for these mussels by species; and

(v) the price per pound by species for the transaction.

(B) A ~~copy of each transaction along with a monthly summary~~ Monthly Mussel Dealers Summary Report must be mailed to the Department by the 15th of ~~each~~the following month by each Commercial Mussel Dealer and include copies of each purchase transaction and sales receipts from all sales transactions between the Mussel Dealer and the mussel exporter, wholesaler or mussel buying company during that month.

(C) Each Commercial Mussel Dealer must supply to the Department shipping bills of lading of all mussels exported from the state during the monthly reporting period. A copy of the shipping bill of lading must accompany all mussel shell shipments from the state.

(D) The shipping bill of lading must contain:

(i) Person, firm or corporation's name transporting mussels out of Oklahoma;

(ii) Person, firm or corporation's name(s) that sold or otherwise provided the mussels to be transported out of Oklahoma;

(iii) Date of shipment;

(iv) Total pounds, live weight, of mussels in the shipment;

(v) Total pounds, dry weight, of mussels in the shipment;

(vi) The mussel harvest season, species legal for harvest and all mussel size restrictions in the state where the mussels were harvested;

(vii) Origin of shipment;

(viii) Destination of shipment; and

(ix) Total purchase price (amount paid to pickers), live weight, of mussels in shipment.

(E) Each commercial mussel dealer must supply to the Department an annual Mussel Dealers summary report of all mussels purchased within and exported from the State of Oklahoma. This report shall contain:

(i) total pounds of mussels purchased, by species;

(ii) total purchase value of mussels ~~purchased~~ paid to pickers, by species;

(iii) total pounds of mussels exported from Oklahoma, by species;

(iv) total sale price of mussels exported from Oklahoma during the year.

(5) **Severance fee.** Any person who purchases and~~/or~~ exports mussels from the State of Oklahoma shall pay the Department a severance fee amount of 1/8 (12.5%) of the dollar value of purchased shells. For the purpose of this rule, the "dollar value of purchased shells" shall be the value of the mussel shells purchased from the Mussel Dealer by a mussel exporter, wholesaler or mussel shell buying company. Payment shall be computed ~~from the monthly purchase records~~ on the Monthly Mussel Dealer Summary form (as described in ~~(A) of paragraph (4)~~ (4)(B)of this subsection) and paid by the 15th of the following month. ~~The purchase price of the mussel shells purchased by the Commercial Mussel buyer shall be based on fair market value at time of purchase.~~

[OAR Docket #07-1021; filed 5-15-07]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 25. WILDLIFE RULES

[OAR Docket #07-1022]

RULEMAKING ACTION:

PERMANENT Final Adoption

RULES:

Subchapter 3. Hunting on Corps of Engineers Land
800:25-3-3. Areas open to archery only [AMENDED]
Subchapter 7. General Hunting Seasons
Part 13. Deer
800:25-7-50. General provisions for deer [AMENDED]
800:25-7-55. Deer-Youth Gun Season [AMENDED]
Part 15. Furbearers
800:25-7-60. Dates and legal furbearers [AMENDED]
800:25-7-61. Bag limits [AMENDED]
800:25-7-62. Open areas [AMENDED]
800:25-7-63. License requirements and fees [AMENDED]
800:25-7-64. General provisions for furbearers [AMENDED]
Part 19. Seasons on Areas Owned or Managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service
800:25-7-81. Altus-Lugert WMA [AMENDED]
800:25-7-81.3. Arcadia Conservation Education Area [NEW]
800:25-7-91. Cherokee GMA [AMENDED]
800:25-7-93. Cookson WMA [AMENDED]
800:25-7-94.7. Drummond Flats WMA [NEW]
800:25-7-120.1. Lower Illinois River Public Fishing and Hunting Area - Simp and Helen Watts Management Unit [NEW]
800:25-7-126. Mountain Park WMA [AMENDED]
800:25-7-131. Optima NWR [AMENDED]
800:25-7-131.2. Osage WMA - Western Wall Unit [AMENDED]
800:25-7-133.2. Ozark Plateau NWR [NEW]
800:25-7-133.3. Ozark Plateau WMA [NEW]
800:25-7-145. Spavinaw GMA [AMENDED]
800:25-7-153. Washita NWR [AMENDED]
800:25-7-154. Waurika WMA [AMENDED]
Part 21. Department Fishing Lakes Area
800:25-7-165. General provisions [REVOKED]
800:25-7-166. Dates and open and closed areas [REVOKED]
Subchapter 9. Controlled Hunts
Part 1. Guidelines
800:25-9-3. Applications and instructions [AMENDED]
800:25-9-5. Permit and fees [AMENDED]
800:25-9-7. Schedule of hunts [AMENDED]
Subchapter 19. Oklahoma Endangered Species
800:25-19-6. Species listing [AMENDED]
Subchapter 29. Oklahoma Deer Management Assistance Program
800:25-29-2. Qualifications and procedures [AMENDED]
Subchapter 38. Wildlife Rehabilitation License and Rules [NEW]
800:25-38-1. Purpose [NEW]
800:25-38-2. Licensing and Possession of Wildlife [NEW]
800:25-38-3. License Fees and Renewals [NEW]
800:25-38-4. Endangered or Threatened Wildlife and Migratory Birds [NEW]
800:25-38-5. Cats and Bears [NEW]
800:25-38-6. Veterinarian of Record [NEW]
800:25-38-7. Facility Requirements [NEW]
800:25-38-8. Confining Wildlife [NEW]
800:25-38-9. Disposition of Wildlife [NEW]
800:25-38-10. Records [NEW]
800:25-38-11. Costs and Liability [NEW]
800:25-38-12. Revocation of License [NEW]

AUTHORITY:

Title 29 O.S., Section 3-103, 4-110, 4-120, 5-401, 6-302, 6-303; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

DATES:

Comment period:

November 15, 2006 - January 12, 2007

Public Hearings:

Public hearings were held at the following locations:

Fisheries & Wildlife Pubic Hearings (unless otherwise noted)

Date: January 8, 2007
Time: 6:30 p.m. - 9:30 p.m.

Durant - State Fish Hatchery, 2021 Caddo Hwy

Lawton - Lawton Public Library, 110 SW 4th St.

Okmulgee - East Central Electric, Public Meeting Room, 2001 South Wood Drive (Hwy 75)

Date: January 8, 2007
Time: 6:00 p.m. - 9:00 p.m.

Muskogee - Northeastern State University Campus Auditorium, 2400 West Shawnee

Date: January 9, 2007
Time: 6:30 p.m. - 9:30 p.m.

Ada - Pontotoc County Vo-Tech Center, 601 W. 33rd Street (Wildlife Hearing Only)

Altus - Altus Public Library, 421 N. Hudson St.

Broken Bow - Broken Bow Public Library, 404 N. Broadway

Enid - Central Fire Station, 410 West Garriott

Oklahoma City - Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Auditorium

Tishomingo - Tishomingo Community Center, Fairgrounds, 816 E. 6th (Fisheries Hearing Only)

Tulsa - Tulsa Technology Center Riverside Campus, Alliance and Conference Center Building, 801 E. 91st St., Aud. Rm A150

Date: January 9, 2007

Time: 6:00 p.m. - 9:00 p.m.
Sallisaw - Indian Capital Vo-Tech, North Meeting Room, 401 Houser Ave.
Adoption:
March 5, 2007
Submitted to Governor:
March 9, 2007
Submitted to House:
March 9, 2007
Submitted to Senate:
March 9, 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:
Superseded rules:
Subchapter 7. General Hunting Season
Part 19. Season on Areas Owned or Managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service
800:25-7-133.2. Ozark Plateau NWR [NEW]
800:25-7-133.3. Ozark Plateau WMA [NEW]
Gubernatorial Approval:
April 20, 2006
Register publication:
23 Ok Reg 1634
Docket number:
06-835
Superseded rules:
Subchapter 7. General Hunting Seasons
Part 19. Seasons on Area Owned or Managed by the Oklahoma Department of Wildlife Conservation and U.S. Fish and Wildlife Services
800:25-7-120.3. Lower Illinois River Public Fishing and Hunting Area - Simp and Helen Watts Management Unit [NEW]
Gubernatorial Approval:
October 9, 2006
Register publication:
24 Ok Reg 228
Docket number:
06-383
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed rules will establish guidelines for Wildlife Rehabilitators; reduce the combined season buck limit; allow a buck to be taken during the youth season; remove firearm and hunting hour restrictions on several Wildlife Management Areas; create a river otter season; allow mountain lions to be taken; establish rules for new Management Areas; increase antlerless season length for DMAP cooperators; delete unnecessary or redundant language; and require website application for controlled hunts.
CONTACT PERSON:
Alan Peoples, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK 73105. Phone: 405/521-2739. Rhonda Hurst, APA Liaison, phone: 405/522-6279.

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. HUNTING ON CORPS OF ENGINEERS LANDS

800:25-3-3. Areas open to archery only

The following areas are open to archery only:

(1) Birch Lake: A 450-acre unit in the Birch cove, Outlet Park and Twin cove areas.

(2) Kaw Lake:

(A) A 400-acre unit in the Washunga Bay Area.

(B) A 600-acre unit in the McFadden Cove Area and below the dam embankment access road.

(C) A 236-acre unit in the Osage cove Area open from December 1 to December 31.

(D) A 60-acre unit south of Kaw City and west of Pioneer Park.

(3) Fort Gibson:

(A) A 515-acre unit on the south side of Mallard Bay.

(B) A 360-acre unit on the north side of the mouth of North Bay.

(C) A 50-acre unit south of Jackson Bay Area.

(D) A 150-acre area on the northeast end of Ranger Creek.

(E) A 488-acre unit on the south side of Whitehorn Cove Concession, open Dec 1 - 31 only.

(F) A 150-acre unit in the NW 1/4 of Section 29, T18N, R19E.

(G) A 320-acre unit South of North Bay and North of Wagoner City Park.

(H) A 140-acre unit North of Long Bay and South of Wagoner City Park.

(I) A 70-acre area on the upper end of Pryor Creek adjacent to the east side of State Highway 69.

(J) A 36-acre area in Sec 6, T16N, R20E.

(K) A 77-acre area on the north shore of Ranger Creek.

(L) A 166-acre area west of Taylor Ferry South park in Sec 20 & 21, T17N, R19E.

(4) Copan Lake:

(A) A 50-acre unit north of Copan Point Park.

(B) A 50-acre unit north of the Post Oak area.

(C) A 5-acre unit west of Post Oak Park between the old and new Hwy 10.

(D) A 340-acre unit north of the Washington Cove Park.

(5) Heyburn Lake: A 120-acre unit on the south side of the Dam Site Area and west of the outlet channel.

(6) Skiatook Lake:

(A) A 138-acre unit in the Osage Park Area.

(B) A 200-acre unit area below Skiatook Dam extending to the south to Tall Chief Cove Area.

(7) Hulah Lake: A 40-acre unit south of the Hulah State Park office.

(8) Eufaula Lake: October 1 - February 28:

(A) A 150-acre unit in Gentry Creek.

(B) A 435-acre unit in the Belle Starr South Recreation Area from December 1 - February 28.

(9) Pine Creek Lake:

(A) A 200-acre unit north of Highway 3 and south of the old highway.

(B) A 120-acre unit west of Little River Park.

(10) Fort Supply: A 183-acre unit in the south portion of Fort Supply Park.

(11) Arcadia Conservation Education Area: (Open by ODWC sanctioned controlled hunt through the City of Edmond Game and Fish Commission only.)

(A) A 500-acre unit $\frac{1}{2}$ mile North of Memorial Road on Midwest Boulevard

(B) 230-acre unit at Douglas and 150th street.

SUBCHAPTER 7. GENERAL HUNTING SEASONS

PART 13. DEER

800:25-7-50. General provisions for deer

The following general hunting provisions apply to the taking of deer:

(1) **Bonus deer.** The bonus deer designation includes all controlled deer hunts on public and private lands. A permit awarded by drawing is required for all bonus deer hunts in addition to a bonus deer tag. Hunters may hunt only in that area specified on their bonus deer permit. The bonus deer tag is valid for only the designated controlled hunt. Deer taken during a bonus hunt do not count against the statewide deer limit.

(2) **Hunting hours.** The hunting hours shall be one-half hour before sunrise to one-half hour after sunset.

(3) **Antlered deer.** An antlered deer is any deer, regardless of sex, with at least three inch antler length above the natural hairline on either side.

(4) **Tagging and checking.** The following provisions apply to the tagging and checking of deer:

(A) Persons taking a deer shall securely attach their name and license number immediately to the carcass.

(B) Before the deer is transported from the hunt area, all deer must be checked at the nearest hunter check station or with an authorized Department employee where the deer will be tagged with a carcass tag.

(C) Evidence of sex (head) must not be removed from the carcass until the carcass has been checked. However, carcasses may be checked in quartered with the sex organs naturally attached and head accompanying the carcass. Deer tags must remain with the carcass through processing and/or storage at commercial processing or storage facilities.

(D) Upon harvesting a deer all annual license/permit holders will be required to complete the "Record of Game" Section on the back of the license form.

(5) No more than six (6) deer per individual may be taken statewide by anyone regardless of seasons hunted. This limit may include no more than ~~three (3)~~two (2) antlered deer regardless of seasons hunted.

(6) **Legal Means of Taking:** Telemetric radio tracking devices for archery are legal, however, thermal tracking devices or detecting units are prohibited.

800:25-7-55. Deer-Youth Gun Season

(a) **Age Requirements.** All youth under 18 years of age and eligible to purchase an antlerless or antlered youth deer gun permit. All participants, while hunting, are required to be accompanied by an adult, 18 years or older. The adult shall not hunt, except that the adult may archery hunt with valid licenses while accompanying the youth hunter. The adult hunter accompanying the youth hunter shall not possess any rifle, shotgun, or pistol.

(b) **Dates.** The dates for the youth season shall be a Friday, Saturday, and Sunday as published in the current Oklahoma Hunting Guide and Regulations.

(c) **Open Areas.** The season is open statewide.

(d) **Bag Limit.** One (1) antlerless deer and one (1) antlered deer. An unfilled antlerless or antlered youth deer gun permit shall be valid during the regular deer gun season in designated ~~antlerless~~ zones.

(e) **Legal means of taking.** All rifles (conventional or muzzleloader), handguns, shotguns or bows legal during the deer gun season shall also be legal during the youth deer season.

PART 15. FURBEARERS

800:25-7-60. Dates and legal furbearers

The following dates apply to the taking of legal furbearers:

(1) **Dates and legal furbearers.** The dates for the taking of furbearers shall be December 1 - January 31 [Title 29 O.S., Section 5-405], except bobcat which season is December 1 - February 28, and those legal furbearers are as follows: Badger, bobcat, gray fox, mink, muskrat, opossum, raccoon, red fox, river otter and weasel.

(2) **Open year-round.** The season for taking beaver, striped skunk, nutria and coyote is open year-round. Taking of mountain lion is allowed when the mountain lion is committing or about to commit depredation or when acting in a manner as to constitute a health or safety hazard or other nuisance. In the event a mountain lion is taken, an ODWC employee must be notified immediately and the intact carcass including the hide must be presented to ODWC within 24 hours for collection of biological information.

800:25-7-61. Bag limits

The following daily and season bag limits apply to the taking of legal furbearers:

(1) Daily bag limits:

(A) Bobcat - no bag limit.

(B) Gray fox - 2 per licensee.

(C) Raccoon - 10 per licensee.

(D) Red fox - 1 per licensee.

(E) Badger, beaver, coyote, mink, muskrat, nutria, opossum, river otter, spotted skunk, striped skunk, and weasel - no daily bag limit.

(2) Season bag limits:

(A) Bobcat - 20 per licensee.

(B) Gray fox/Red fox combined - 6 per licensee, no more than 2 may be red fox.

(C) Raccoon - 40 per licensee.

(D) Badger, beaver, coyote, mink, muskrat, nutria, opossum, striped skunk and weasel - no bag limit.

(E) River otter - 2 per licensee.

800:25-7-62. Open areas

The following provisions apply to areas which furbearers can be legally taken or are closed to harvest:

(1) **Open statewide.** Badger, beaver, bobcat, coyote, mink, muskrat, nutria, opossum, raccoon, red fox, striped skunk and weasel are open to harvest statewide.

(2) **Closed statewide.** Black bear, ~~mountain lion, river otter [Title 29 O.S., Section 5-405, Part B],~~ ringtail, spotted skunk, and swift fox are closed to harvest statewide.

(3) **Open East of Interstate 35.** Gray fox can be taken East of I-35 only.

(4) River otter may be taken in Adair, Atoka, Cherokee, Choctaw, Coal, Haskell, Latimer, LeFlore, McCurtain, McIntosh, Muskogee, Pittsburg, Pushmataha and Sequoyah counties.

800:25-7-63. License requirements and fees

A special ~~Bobcat-Raccoon-Gray/Red Fox License~~ Bobcat-Raccoon-River Otter-Gray/Red Fox License is required for all who take these species by any means. Holders of an Oklahoma Department of Wildlife Conservation lifetime hunting or lifetime combination license, senior citizen hunting or senior citizen combination license are exempt. No individual may purchase more than one special license. This license is valid through seasons currently in effect for bobcat, raccoon, river otter, gray fox and red fox. Said fee for Oklahoma resident is $9.00 plus $1.00 vendor fee, non-resident is $50.00 plus $1.00 vendor fee.

800:25-7-64. General provisions for furbearers

The following general provisions apply to the taking of furbearers:

(1) **Sale of carcass.** The skinned carcass of any legal furbearer or predator may be sold, offered or displayed for sale or bartered at any time. The sale of scent glands from furbearers or predators is permitted.

(2) **Bobcat and River Otter export tag.**

(A) No bobcat or river otter pelt may be held in possession after 10 working days after the close of furbearer season by the taker or buyer, sold, purchased or bartered within Oklahoma, nor taken out of Oklahoma without having first affixed a permanent tag to the pelt, and no one may possess any Oklahoma bobcat or river otter pelt without a permanent tag affixed to the pelt. This tag shall serve as an export tag.

(B) The tag must be affixed by an authorized employee of the Oklahoma Department of Wildlife Conservation, a designated agent, or a private tagging station. Private tagging station may charge $0.75 per tag fee.

(C) It is the responsibility of the possessor of the bobcat or river otter pelt, not the Department, to ensure that the pelt is legally tagged.

(D) No untagged bobcat or river otter harvested in another state may be possessed in Oklahoma.

(3) **Possession of carcasses or hides.**

(A) It shall be illegal to possess live animals, carcasses or raw furs of swift fox, ~~river otter, mountain lion,~~ bear, ringtail, or spotted skunk, unless proven that each carcass or hide was taken legally outside of the State of Oklahoma.

(B) Proof of legality or origin for carcasses or green hides shall be a tag or other marking device attached to or imprinted on each and every hide in such a way that it cannot be removed intact. The tag or marking must be the official method used by the issuing agency. If any identification is not required by the issuing agency, a hunting or trapping license appropriate to the species taken is required as proof.

(4) **Night hunting of coyotes.** It shall be unlawful to hunt, take or attempt to take coyotes within the period of dark to daylight with the aid of any artificial light and/or any sight dog. Persons hunting at night must first obtain permission from the County Game Ranger. Anyone hunting at night must use a shotgun, utilizing size 6 shot or smaller.

PART 19. SEASONS ON AREAS OWNED OR MANAGED BY THE OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION AND THE U.S. FISH AND WILDLIFE SERVICE

800:25-7-81. Altus-Lugert WMA

The following hunting and trapping seasons apply to the Altus-Lugert WMA. Unless otherwise provided, firearms are restricted to ~~.22 caliber~~ rimfire ammunition or ~~and~~ shotguns.

(1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.

(2) Pheasant: Closed season.

(3) Prairie Chicken: Closed season.

(4) Turkey-Fall:

(A) Archery: Same as statewide season dates, either-sex.

(B) Gun: Same as statewide season dates, 1 tom limit.

(5) Turkey-Spring: Same as statewide dates, 1 tom limit.

(6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season

(7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season

(8) Crow: Same as statewide season dates.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Same as statewide season dates.

(11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.

(12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season
(13) Deer-archery: Same as statewide season dates.
(14) Deer-primitive firearms: Same as statewide season dates.
(15) Deer-gun: Same as statewide season dates, except closed the last seven days and closed to antlerless hunting. Shotgun only.
(16) Trapping: Open to water sets and live box traps only.
(17) Pursuit with hounds: Same as statewide dates, except closed during first nine days of deer gun season.
(18) Predator/furbearer calling: Same as statewide dates, except closed during first nine days of deer gun season.
(19) Waterfowl: Same as statewide dates, except closed during first nine days of deer gun season.

800:25-7-81.3. Arcadia Conservation Education Area

The following hunting and trapping seasons apply to the Arcadia Conservation Education Area:
(1) Quail: Closed season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Closed except through ODWC sanctioned controlled hunts.
(B) Gun: Closed season.
(5) Turkey - Spring: Closed except through ODWC sanctioned controlled hunts.
(6) Squirrel: Closed except through ODWC sanctioned controlled hunts.
(7) Rabbit: Closed except through ODWC sanctioned controlled hunts.
(8) Crow: Closed season.
(9) Dove: Closed season.
(10) Rail and gallinule: Closed season.
(11) Common snipe: Closed season.
(12) Woodcock: Closed season.
(13) Deer-archery: Closed except through ODWC sanctioned controlled hunts.
(14) Deer-primitive firearms: Closed season.
(15) Deer-gun: Closed season.
(16) Trapping: Closed season.
(17) Pursuit with hounds: Closed season.
(18) Predator/furbearer calling: Closed season.
(19) Waterfowl: Closed except through ODWC sanctioned controlled hunts.

800:25-7-91. Cherokee GMA

The following hunting and trapping seasons apply to the Cherokee GMA: Unless otherwise provided, firearms are restricted to ~~.22 rimfire and~~ rimfire ammunition or shotguns with pellets.
(1) Quail: Open January 1 through January 31, except when statewide season closes prior to January 31.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Open Saturday through Friday prior to statewide primitive season and the Monday following the close of deer gun season through January 15.
(B) Gun: Closed season.
(5) Turkey - Spring: Open to special hunt permittees. Permits will be issued by drawing, except the last 14 days of the statewide season will be open to the general public, 1 tom limit.
(6) Squirrel: Open August 1 through August 31 and January 1 through January 31, except when statewide season closes prior to January 31.
(7) Rabbit: Open January 1 through January 31, except when statewide season closes prior to January 31.
(8) Crow: Open January 1 through January 31, except when statewide season closes prior to January 31.
(9) Dove: Closed season.
(10) Rail and gallinule: Closed season.
(11) Common snipe: Open January 1 through January 31, except when statewide season closes prior to January 31.
(12) Woodcock: Open January 1 through January 31, except when statewide season closes prior to January 31.
(13) Deer - archery: Open Saturday through Friday prior to statewide primitive season and the Monday following the close of deer gun season through January 15.
(14) Deer - primitive firearms: Controlled hunts only.
(15) Deer - gun: controlled hunts only.
(16) Trapping: Open the first day of the statewide season that follows the deer gun season through January 31.
(17) Pursuit with hounds: Open the first day of the statewide season that follows the deer gun season through January 31.
(18) Predator/furbearer calling: Open the first day of the statewide season that follows the deer gun season, through January 31.
(19) Waterfowl: Open January 1 through January 31, except when statewide season closes prior to January 31.

800:25-7-93. Cookson WMA

The following hunting and trapping seasons apply to the Cookson WMA: Unless otherwise provided, firearms are restricted to ~~.22 rimfire and~~ rimfire ammunition or shotguns with pellets.
(1) Quail: Open January 1 through January 31, except when statewide season closes prior to January 31.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey-Fall:
(A) Archery: Open Saturday through Friday prior to statewide primitive season and the Monday following the close of deer gun season through January 15.
(B) Gun: Closed season.
(5) Turkey - Spring: Open to special hunt permittees. Permits will be issued by drawing except the last 14 days of the statewide season will be open to the general public - 1 tom limit.

(6) Squirrel: Open August 1 through August 31 and January 1 through January 31, except when statewide season closes prior to January 31.
(7) Rabbit: Open January 1 through January 31, except when statewide season closes prior to January 31.
(8) Crow: Open January 1 through January 31, except when statewide season closes prior to January 31.
(9) Dove: Closed season.
(10) Rail and gallinule: Closed season.
(11) Common snipe: Open January 1 through January 31, except when statewide season closes prior to January 31.
(12) Woodcock: Open January 1 through January 31, except when statewide season closes prior to January 31.
(13) Deer - archery: Open Saturday through Friday prior to statewide primitive season and the Monday following the close of deer gun season through January 15.
(14) Deer - primitive firearms: Controlled hunts only.
(15) Deer - gun: Controlled hunts only.
(16) Trapping: Open January 1 through January 31, except when statewide season closes prior to January 31.
(17) Pursuit with hounds: Open to special permittees only. Permits will be issued by drawing.
(18) Predator/furbearer calling: Open January 1 through January 31, except when statewide season closes prior to January 31.
(19) Waterfowl: Open January 1 through January 31, except when statewide season closes prior to January 31.

800:25-7-94.7. Drummond Flats WMA

The following hunting and trapping seasons apply to the Drummond Flats WMA: All shotgun hunting restricted to federally approved nontoxic shot.
(1) Quail: Same as statewide season dates.
(2) Pheasant: Same as statewide season dates.
(3) Prairie Chicken: Closed season.
(4) Turkey-Fall:
(A) Archery: Same as statewide season dates, either-sex.
(B) Gun: Closed season.
(5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
(6) Squirrel: Same as statewide season dates.
(7) Rabbit: Same as statewide season dates.
(8) Crow: Same as statewide season dates.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide season dates.
(12) Woodcock: Same as statewide season dates.
(13) Deer-archery: Same as statewide season dates.
(14) Deer-primitive firearms: Closed season.
(15) Deer-gun: Closed Season.
(16) Trapping: Closed Season.
(17) Pursuit with hounds: Same as statewide season dates.
(18) Predator/furbearer calling: Same as statewide season dates.
(19) Waterfowl: Same as statewide dates, except closed at 1:00 PM daily.

800:25-7-120.1. Lower Illinois River Public Fishing and Hunting Area - Simp and Helen Watts Management Unit

The following hunting and trapping seasons apply to the Lower Illinois River Public Fishing and Hunting Area - Simp and Helen Watts Management Unit: All hunting is restricted to shotguns with pellets or archery equipment only.
(1) Quail: Same as statewide season dates.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey-Fall:
(A) Archery: Same as statewide season dates, either-sex.
(B) Gun: Closed season.
(5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
(6) Squirrel: Same as statewide season dates.
(7) Rabbit: Same as statewide season dates.
(8) Crow: Same as statewide season dates.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide season dates.
(12) Woodcock. Same as statewide season dates.
(13) Deer-archery: Same as statewide season dates.
(14) Deer-primitive firearms: Same as statewide season dates.
(15) Deer-gun: Same as statewide season dates.
(16) Trapping: Same as statewide season dates.
(17) Pursuit with hounds: Same as statewide season dates.
(18) Predator/furbearer calling: Same as statewide season dates.
(19) Waterfowl: Same as statewide season dates.

800:25-7-126. Mountain Park WMA

The following hunting and trapping seasons apply to the Mountain Park WMA: Unless otherwise provided, firearms are restricted to ~~.22 caliber rimfire and~~ rimfire ammunition or shotguns with pellets.
(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey-Fall:
(A) Archery: Same as statewide season dates.
(B) Gun: Closed season.
(5) Turkey-Spring: ~~Closed season.~~Same as statewide season dates. 1 tom limit.
(6) Squirrel: Same as statewide season dates.
(7) Rabbit: Same as statewide season dates.
(8) Crow: Same as statewide season dates.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide season dates.

(12) Woodcock: Same as statewide season dates.
(13) Deer-archery: Same as statewide season dates.
(14) Deer-primitive firearms: Closed season.
(15) Deer-gun: Closed season.
(16) Trapping: Open to water sets and live box traps only.
(17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
(18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
(19) Waterfowl: Same as statewide season dates.

800:25-7-131. Optima NWR

The following hunting and trapping seasons apply to the Optima NWR: Hunting is restricted to shotgun or bow and arrow only.

(1) Quail: Same as statewide season dates~~, except closed during first nine days of deer gun season and hunting hours close at 4:30 PM daily~~.
(2) Pheasant: Same as statewide season dates~~, except closed during first nine days of deer gun season. Hunting hours close at 4:30 p.m. daily~~.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates, except closed during first nine days of deer gun season, either-sex.
(B) Gun: Closed season.
(5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
(6) Squirrel: Closed season.
(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season .
(8) Crow: Closed season.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: closed season.
(11) Common snipe: Closed season.
(12) Woodcock: Closed season.
(13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.
(14) Deer - primitive firearms: Closed season.
(15) Deer - gun: Closed season.
(16) Trapping: Closed season.
(17) Pursuit with hounds: Closed season.
(18) Predator/furbearer calling: Closed season.
(19) Waterfowl: Closed season.

800:25-7-131.2. Osage WMA - Western Wall Unit

The following hunting and trapping seasons apply to the Osage WMA Western Wall ~~Primitive Area~~Unit. Unless otherwise provided, firearms are restricted to ~~.22 rimfire and~~ rimfire ammunition or shotguns with pellets.

(1) Quail: Same as statewide season dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates, except closed from the opening day of deer primitive season through deer gun season.
(B) Gun: Closed season.
(5) Turkey - Spring: Same as statewide season dates, one (1) tom limit.
(6) Squirrel: Same as statewide season dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.
(7) Rabbit: Same as statewide season dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.
(8) Crow: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(9) Dove: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(10) Rail and gallinule: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(11) Common snipe: Same as statewide season dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.
(12) Woodcock: Same as statewide season dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.
(13) Deer - archery: Same as statewide season dates, except closed from the opening day of deer primitive season through the first nine (9) days of deer gun season.
(14) Deer - primitive firearms: Controlled hunts only.
(15) Deer - gun: Controlled hunts only.
(16) Trapping: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(17) Pursuit with hounds: Same as statewide season dates, except closed from opening day of deer archery season through deer gun season and spring turkey season.
(18) Predator/furbearer calling: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(19) Waterfowl: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

800:25-7-133.2. Ozark Plateau NWR

The following hunting and trapping seasons apply to the Ozark Plateau NWR:

(1) Quail: Same as statewide season dates.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates, either-sex.
(B) Gun: Closed season.

(5) Turkey - Spring: Same as statewide season dates, one (1) tom limit.
(6) Squirrel: Same as statewide season dates.
(7) Rabbit: Same as statewide season dates.
(8) Crow: Same as statewide season dates.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide season dates.
(12) Woodcock: Same as statewide season dates.
(13) Deer - archery: Same as statewide season dates.
(14) Deer - primitive firearms: Same as statewide season dates.
(15) Deer - gun: Same as statewide season dates.
(16) Trapping: Same as statewide season dates.
(17) Pursuit with hounds: Same as statewide season dates, except closed from opening day of deer archery season through the first 9 days of deer gun season. In addition, closed during spring turkey season.
(18) Predator/furbearer calling: Same as statewide season dates.
(19) Waterfowl: Same as statewide season dates.

800:25-7-133.3. Ozark Plateau WMA

The following hunting and trapping seasons apply to the Ozark Plateau WMA:
(1) Quail: Same as statewide season dates.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates, either-sex.
(B) Gun: Closed season.
(5) Turkey - Spring: Same as statewide season dates, one (1) tom limit.
(6) Squirrel: Same as statewide season dates.
(7) Rabbit: Same as statewide season dates.
(8) Crow: Same as statewide season dates.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide season dates.
(12) Woodcock: Same as statewide season dates.
(13) Deer - archery: Same as statewide season dates.
(14) Deer - primitive firearms: Same as statewide season dates.
(15) Deer - gun: Same as statewide season dates.
(16) Trapping: Same as statewide season dates.
(17) Pursuit with hounds: Same as statewide season dates, except closed from opening day of deer archery season through the first 9 days of deer gun season. In addition, closed during spring turkey season.
(18) Predator/furbearer calling: Same as statewide season dates.
(19) Waterfowl: Same as statewide season dates.

800:25-7-145. Spavinaw GMA:

The following hunting and trapping seasons apply to the Spavinaw GMA: Unless otherwise provided, firearms are restricted to ~~.22 rimfire and~~ rimfire ammunition or shotguns with pellets.
(1) Quail: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates, except closed from the opening day of deer primitive season through deer gun season.
(B) Gun: Closed season.
(5) Turkey - Spring: Same as statewide season dates, one (1) tom limit.
(6) Squirrel: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(7) Rabbit: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(8) Crow: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(9) Dove: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(10) Rail and gallinule: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(11) Common snipe: Same as statewide season dates, except closed from opening day of archery season through deer gun season.
(12) Woodcock: Same as statewide season dates, except closed from opening day of archery season through deer gun season.
(13) Deer - archery: Same as statewide season dates, except closed from the opening day of deer primitive season through deer gun season.
(14) Deer - primitive firearms: Controlled hunts only.
(15) Deer - gun: Controlled hunts only.
(16) Trapping: Same as statewide season dates, except closed from the opening day of archery season through deer gun season.
(17) Pursuit with hounds: Same as statewide season dates, except closed from opening day of deer archery season through deer gun season and spring turkey season.
(18) Predator/furbearer calling: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(19) Waterfowl: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

800:25-7-153. Washita NWR

The following hunting and trapping seasons apply to the Washita NWR: All shotgun hunting restricted to federally approved nontoxic shot.

(1) Quail: Same as statewide season dates~~, except closed during first nine days of deer gun season~~.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Closed season.
(B) Gun: Closed season.
(5) Turkey - Spring: Closed season.
(6) Squirrel: Closed season.
(7) Rabbit: Same as statewide season dates, except closed during first nine days of the deer gun season. Contact refuge for special restrictions.
(8) Crow: Closed season.
(9) Dove: Closed season.
(10) Rail and gallinule: Closed season.
(11) Common snipe: Closed season.
(12) Woodcock: Closed season.
(13) Deer - archery: Closed season.
(14) Deer - primitive firearms: Closed season.
(15) Deer - gun: Closed season.
(16) Trapping: Closed season.
(17) Pursuit with hounds: Closed season.
(18) Predator/furbearer calling: Closed season.
(19) Waterfowl: Controlled Hunts. Bonus hunt permit required. Consult bonus hunt regulations.

800:25-7-154. Waurika WMA

The following hunting and trapping seasons apply to the Waurika WMA: Unless otherwise provided, firearms are restricted to ~~.22 caliber rimfire and~~ rimfire ammunition or shotguns with pellets.

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates.
(B) Gun: Closed season.
(5) Turkey - Spring: ~~Controlled hunts only.~~Same as statewide season dates. 1 tom limit.
(6) Squirrel: Same as statewide season dates.
(7) Rabbit: Same as statewide season dates.
(8) Crow: Same as statewide season dates.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide season dates.
(12) Woodcock: Same as statewide season dates.
(13) Deer - archery: Same as statewide season dates.
(14) Deer - primitive firearms: Controlled hunts only.
(15) Deer - gun: Closed season.
(16) Trapping: Open to water sets and live box traps only.
(17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
(18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
(19) Waterfowl: Same as statewide season dates.

PART 21. DEPARTMENT FISHING LAKES AREA

800:25-7-165. General provisions [REVOKED]

~~All hunting on Oklahoma Department of Wildlife Conservation fishing lakes that are designated as open for hunting are restricted to shotgun or bow and arrow only. These fishing lake areas are closed to antlerless deer harvest, except during archery season.~~

800:25-7-166. Dates and open and closed areas [REVOKED]

~~(a) The following lakes are open to hunting during the period of September 1 - March 1: American Horse, Burtschi, Evans Chambers, Hall, Jap Beaver, Nanih Waiya, Ozzie Cobb, Schooler and Vanderwork.~~
~~(b) The following lakes are closed to hunting or taking of wildlife by any means: Elmer, Etling, Raymond Gary, Watonga and Wayne Wallace.~~

SUBCHAPTER 9. CONTROLLED HUNTS

PART 1. GUIDELINES

800:25-9-3. Applications and instructions

The following is the application and instructions for participating in controlled hunts:

(1) The number of names allowed per application will be determined for each hunt annually.
(2) Those persons who are drawn for elk hunts in 1985 or any year thereafter shall be disqualified from participating in elk hunts for a period of ten (10) years from the year of selection. Those persons who are drawn for antelope hunts in 1992 and any year thereafter shall be disqualified from participating in antelope hunts for a period of ten (10) years from the year of selection. Those persons drawn for an elk hunt or antelope hunt in 2002 or any year thereafter shall be disqualified from participating in the elk or antelope hunt for the remainder of their lifetime, except for Cimarron and Texas County landowners antelope permits.
(3) Minimum age for participating in controlled hunts unless otherwise specified is 14 years (except special youth hunts) with Hunter Safety Certification. Minimum age shall be 18 years for hunts on the Wichita Mountains NWR. Proof of certification and age are required at check-in upon entering hunt areas.
(4) Applications and instructions for permits will be available annually~~ from hunting and fishing license dealers throughout the state,~~ on the Department's website or by writing the Oklahoma Department of Wildlife Conservation, P.O. Box 53465, Oklahoma City, Oklahoma 73152.

(5) Applicants must provide the personal data requested and specifying the category and hunt numbers desired.

(6) Persons may enter each category once. Any applicants appearing on more than one application in any one category may be disqualified from all current hunts and may be barred from participating in all hunt drawings for a period of five (5) years.

(7) Nonambulatory hunt applicants must provide certification of a medical doctor that the applicant has single or double amputation of legs or have paralysis of the lower half of the body with involvement of both legs, usually due to disease of or injury to the spinal cord.

800:25-9-5. Permit and fees

The following is the permit process and fee information for participation in controlled hunts:

(1) Applicants must ~~send~~pay a $5.00 application fee ~~with the application~~ to be entered in controlled hunt drawings. The fee is nonrefundable and there are no exemptions.

(2) An internet access fee may also be applied.

(3) Successful applicants in a controlled hunt must obtain the appropriate deer, antelope or elk licenses, in addition, nonresidents must obtain a $50.00 special hunt permit. .

(4) Successful hunt applicants must obtain their permits within two weeks of notification of selection by sending a money order or certified check for the required amount to the Oklahoma City office of the Department of Wildlife Conservation or pay appropriate fees through the Controlled Hunt Web Application. Envelopes will be provided each successful applicant for this purpose. No personal checks or cash will be accepted by mail. Applicants wishing to claim their permits at the Oklahoma City office in person may use cash. Those applicants selected for antelope hunts must purchase their tags and permit at the designated check-in site. Oklahoma Department of Wildlife Conservation issued resident lifetime hunting or lifetime combination license holder will not be charged a fee for their permits or tags, however, Federal fees are required to be paid.

(5) Both residents and nonresidents participating in controlled hunts on the Deep Fork NWR, Little River NWR, Tishomingo National Wildlife Refuge, Sequoyah NWR, Washita NWR, Wichita Mountains National Wildlife Refuge, Salt Plains National Wildlife Refuge and McAlester Army Ammunition Plant will be required to pay a Federal Area User Fee as established by the respective Federal area. Controlled youth hunt participants at Washita NWR are exempt from the user fee.

(6) Prior to applying for Oklahoma Department of Wildlife Conservation controlled hunts, applicants must purchase an Oklahoma hunting license during the current calendar year of the controlled hunt drawings.

(7) Applicants must provide personal data requested and specify the category and hunt number desired.

800:25-9-7. Schedule of hunts

A complete schedule of available controlled hunts will be ~~distributed~~ posted annually ~~in application brochures~~through the Department's website. Restrictions pertaining to method of take, number of permits, dates, locations and other harvest restrictions will be included in this brochure.

SUBCHAPTER 19. OKLAHOMA ENDANGERED SPECIES

800:25-19-6. Species listing

(a) The following are classified as endangered species:

(1) Cave crayfish *(Cambarus tartants).*

(2) Neosho mucket *(Lampsilis rafinesqueana).*

(3) Longnose Darter *(Percina nasuta).*

(b) The following are classified as threatened species:

(1) Arkansas River shiner *(Notropis girardi).*

(2) Blackside darter *(Percina maculata).*

(c) The following are classified as Category I species:

(1) Mountain plover *(Charadrius montanus).*

(2) Long-billed curlew *(Numenius americanus).*

(3) Ferruginous hawk *(Buteo regalis).*

(4) Golden eagle *(Aquila chrysaetos).*

(5) Prairie falcon *(Falco mexicanus).*

(6) Rich Mountain Slitmouth snail *(Stenotrema pilsbryi).*

(d) The following are classified as Category II mammal species:

(1) Black-tailed prairie dog *(Cynomys ludovicianus).*

(2) Desert shrew *(Notiosorex crawfordi).*

(3) Eastern harvest mouse *(Reithrodontomys humulis).*

(4) Golden mouse *(Ochrotomlvs nutalli).*

(5) Hog-nosed skunk *(Conepatus mesoleucus).*

(6) Keen's myotis *(M. Keenii).*

(7) Long-tailed weasel *(Mustela frenata).*

(8) Meadow jumping mouse *(Zapus hudsonius).*

(9) Mexican free-tailed bat *(Tadarida brasiliensis).*

~~(10) Mountain lion *(Felis concolor).*~~

(~~11~~10) Rafinesque's big-eared bat *(Plecotus rafinesquii).*

(~~12~~11) Rice rat *(Oryzomys palustris).*

(~~13~~12) Ringtail *(Bassariscus astutus).*

~~(14) River otter *(Lutra canadensis).*~~

(~~15~~13) Seminole bat *(Lasiurus seminolus).*

(~~16~~14) Small-footed myotis *(M. leibii).*

(~~17~~15) Southern myotis *(Myotis austroriparius).*

(~~18~~16) Swift fox *(Vulpes velox).*

(~~19~~17) Texas Kangaroo rat *(Dipodomys elator).*

(~~20~~18) Western big-eared bat *(Plecotus townsendii pallescens).*

(~~21~~19) Woodchuck *(Marmota monax).*

(e) The following are classified as Category II bird species:

(1) Bachman's sparrow *(Aimophila aestivalis).*

(2) Barn owl *(Tyto alba).*

(3) Bell's vireo *(Vireo bellii).*

(4) Burrowing owl *(Athene cunicularia).*

(5) Migrant loggerhead shrike *(Lanius ludovicianus migrans).*
(6) Snowy plover *(Charadrius alewndrinus).*
(7) Swainson's hawk *(Buteo swainsoni).*

(f) The following are classified as Category II reptile species:
(1) Alligator snapping turtle *(Macroclemys temminckii).*
(2) Desert massasauga *(Sistrurus catenatus edwardsii).*
(3) Earless lizard *(Holbrookia maculata).*
(4) Gulf crayfish snake *(Regina rigida sinicola).*
(5) Louisiana milk snake *(Lampropeltis triangulum amaura).*
(6) Map turtle (*Graptemys geographica).*
(7) Northern scarlet snake *(Cemophora coccinea copei).*
(8) Round-tailed horned lizard *(Phrynosoma modestrum).*
(9) Texas garter snake *(Thamnophis sirtalis annectens).*
(10) Texas horned lizard *(Phrynosoma cornutum).*
(11) Texas longnosed snake *(Rhinocheilus lecontei tessellatus).*
(12) Western mud snake *(Farancia abacura reinwardtii).*

(g) The following are classified as Category II amphibian species:
(1) Four-toed salamander *(Hemidactylium scutatum).*
(2) Grotto salamander *(Typhlotriton spelaeus).*
(3) Mole salamander *(Ambystoma talpoideum).*
(4) Oklahoma salamander *(Eurycea tynerensis).*
(5) Ouachita dusky salamander *(Desmognathus brimleyorum).*
(6) Rich Mountain salamander *(Plethodon ouachitae).*
(7) Ringed salamander *(Ambystoma annulatum).*
(8) Squirrel treefrog *(Hyla squirella).*
(9) Three-toed amphiuma *(Amphiuma tridactylum).*
(10) Westem bird-voiced treefrog *(Hyla a. avivoca).*
(11) Western lesser siren *(Siren intermedia nettingi).*

(h) The following are classified as Category II fish species:
(1) Alabama shad *(Alosa alabamae).*
(2) Alligator gar *(Atractosteus spathula).*
(3) Arkansas River speckled chub *(Platygobio [Hybopsis] aestivalis tetranemus).*
(4) Arkansas darter *(Etheostoma cragini).*
(5) Black buffalo *(Ictiobus niger).*
(6) Blue Sucker *(Cycleptus elongatus).*
(7) Bluehead shiner *(Notropis hubbsi).*
(8) Bluntface shiner *(Cyptinella camura).*
(9) Brown bullhead *(Ictalurus nebulosus).*
(10) Chain pickeral *(Esox niger).*
(11) Colorless shiner *(Notropis perpallidus).*
(12) Crystal darter *(Ammocrypta asprella).*
(13) Cypress minnow *(Hybognathus hayi).*
(14) Flathead chub *(Platygobio [Hybopsis gracilis).*
(15) Goldstripe darter *(Etheostoma parvipinne).*
(16) Harlequin darter *(Etheosoma histrio).*
(17) Ironcolor shiner *(Notropis chalybaeus).*
(18) Kiamichi shiner *(Notropis ortenburgeri).*
(19) Mooneye *(Hiodon tergisus).*
(20) Mountain madtom *(Noturus eletherus).*
(21) Pallid shiner *(Notropis amnis).*
(22) Plains topminnow *(Fundulus sciadicus).*
(23) Redbreast sunfish *(Lepomis auritus).*
(24) Ribbon shiner *(Lythurusfumeus).*
(25) River darter *(Percina shumardi).*
(26) Shorthead redhorse *(Moxostoma macrolepidotum).*
(27) Shovelnose sturgeon *(Scaphirhynchus platorynchus).*
(28) Southern brook lamprey *(Ichthyomyzon gagei).*
(29) Spotfin shiner *(Cyprinella spiloptera).*
(30) Stonecat *(Noturus flavus).*
(31) Taillight shiner *(Notropis maculatus).*
(32) Wichita Mountains spotted bass *(Micropterus punctulatus wichitae).*

(I) The following are classified as Category II invertebratespecies:
(1) Bowman cave amphipod *(Stygobromus bowmani).*
(2) Oklahoma cave amphipod *(Allocrangonyx pellucidus).*
(3) Prairie mole cricket *(Gryllotalpa major).*
(4) Regal fritillary butterfly *(Speyeria idalia).*
(5) Rich Mountain slitmouth snail *(Stenotrema pilsbryi).*
(6) Scalesshell mussel *(Leptodea leptodon).*
(7) Spectacle-case mussel *(Quadrula cylindrica).*
(8) Western fanshell mussel *(Cyprogenia aberti).*

SUBCHAPTER 29. OKLAHOMA DEER MANAGEMENT ASSISTANCE PROGRAM

800:25-29-2. Qualifications and procedures

The following are the qualifications and procedures for participating in the Deer Management Assistance Program (DMAP):

(1) **Minimum acreage.** The minimum acreage is 1000 acres, although all reasonable requests will be evaluated. Applicants with less than 1000 acres will be allowed to form a cooperative with adjacent landowners to meet the minimum requirements.

(2) **Application procedure.** Landowners wishing to enroll lands in DMAP will submit to the Department an application on forms provided by the Department by May 15 annually. The application will include a complete legal description of the property to be enrolled. Following review in Oklahoma City, applications will be forwarded to appropriate ODWC personnel for an on site inspection. Following inspection, if deer harvest objectives can be met with the current number of antlerless hunting days available, the request will be denied and the application fee refunded. If not, the recommended number of tags needed will be determined and the applicant will be notified of approval by September 1st.

(3) **Season length.** Deer seasons on properties enrolled in DMAP shall be concurrent with the deer archery,

primitive firearms season (with only ~~weapons~~ equipment defined under legal means of take for such seasons), deer gun season and ~~extend seven (7) additional days following the end of the statewide deer gun season,~~ extending through the entire month of December and any special antlerless deer gun season regardless of zone.

SUBCHAPTER 38. WILDLIFE REHABILITATION LICENSE AND RULES

800:25-38-1. Purpose

This subchapter is designed to set forth requirements for the possession, care, and disposition of wildlife held for rehabilitation. This subchapter also sets forth the requirements for obtaining a license to rehabilitate wildlife.

800:25-38-2. Licensing and Possession of Wildlife

No person shall possess any injured, sick, young or other wildlife for the purpose of rehabilitation without a Wildlife Rehabilitation License issued by the Oklahoma Department of Wildlife Conservation. However, individuals may transport injured, sick or young wildlife, immediately upon discovery of such animal, to a person licensed to rehabilitate wildlife without this license.

800:25-38-3. License Fees and Renewals

The Fee for a Wildlife Rehabilitation License shall be Ten dollars ($10) annually and the license shall be valid from July 1 to June 30 of the following year. All applications, whether new or renewals, must be accompanied by a Wildlife Inspection Form completed and signed by the county Game Warden.

800:25-38-4. Endangered or Threatened Wildlife and Migratory Birds

Any person licensed for the rehabilitation of wildlife shall immediately contact the Oklahoma Department of Wildlife - Law Division or their local Game Warden when they receive any species of wildlife that is currently on the Endangered or Threatened Species List. Also no person licensed to rehabilitate wildlife may possess any migratory bird without the appropriate federal permits.

800:25-38-5. Cats and Bears

No person licensed to rehabilitate wildlife may possess any cat or bear that can grow to fifty (50) pounds or more unless such person has facilities to confine such animals as described in 800:25-27-2 (f) prior to receiving any such animals.

800:25-38-6. Veterinarian of Record

Any person licensed to rehabilitate wildlife, in addition to other requirements, must have a veterinarian of record and a signed agreement with that veterinarian to assist, if needed, in the care of any wildlife. This must be done prior to the license being approved.

800:25-38-7. Facility Requirements

Persons applying for a Wildlife Rehabilitation License must have facilities capable of housing and caring for wildlife prior to receiving the license. This shall include cages, source of food and medical supplies (if needed) and adequate protection from the weather. Determination of adequate facilities shall be made by the county Game Warden at the time of inspection.

800:25-38-8. Confining Wildlife

All animals possessed by persons licensed to rehabilitate wildlife must be **at all times** confined to the property described in the license application. The **only** exceptions are for transporting such wildlife to a veterinarian for care or transportation of wildlife to a release site.

800:25-38-9. Disposition of Wildlife

All animals possessed by persons licensed to rehabilitate wildlife must be released back into the wild immediately upon the animals recovery from injuries or when the animal has reached the appropriate age for release. Wildlife may not be released on private property without the consent of the property owner. All wildlife that is unable to be rehabilitated as determined by the veterinarian of record shall be disposed of in a manner to ensure safe and effective euthanasia. Euthanasia of wildlife will be performed under the guidelines of the American Veterinary Medicine Association and shall be done within ten (10) days of the determination that the animal is unsuitable for release. No wildlife received under this section may be kept as a pet. Rare exceptions may be made **only** for Threatened, Endangered or Species of Concern with written approval from the Director for an approved captive breeding program.

800:25-38-10. Records

All persons licensed to rehabilitate wildlife must keep records of all wildlife they possess and shall keep those records for a minimum of five (5) years. Records should indicate the species of animal, date received, reason for having animal (injured, sick or young), and the disposition of each animal (released or euthanasia) and the date such action was taken.

800:25-38-11. Costs and Liability

Any person licensed to rehabilitate wildlife does so on a strictly voluntary basis. The Oklahoma Department of Wildlife Conservation will not pay for nor reimburse license holders for any cost they incur while caring for wildlife and will not be responsible for any damages, injury or expenses incurred for the care of wildlife being held under the authority of a Wildlife Rehabilitation License. The 'Release of Responsibility' form must be signed by the applicant before a license will be approved.

800:25-38-12. Revocation of License

Any person licensed to rehabilitate wildlife that is convicted of violating any of the provisions of this section or is found to not be taking proper care of the wildlife may have their license revoked and will not be eligible to receive a renewal of their license for a minimum of one (1) year.

[OAR Docket #07-1022; filed 5-15-07]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 30. DEPARTMENT OF WILDLIFE LANDS MANAGEMENT

[OAR Docket #07-1023]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
Subchapter 1. Use of Department Managed Lands
800:30-1-2. Use restrictions [AMENDED]
800:30-1-4. Camping [AMENDED]
800:30-1-8. Language, disorderly assemblage, noise or other disruptive acts [AMENDED]
800:30-1-12. Landfills and disposal sites [REVOKED]
800:30-1-20. Restricted public use areas [AMENDED]
AUTHORITY:
Title 29 O.S., Section 3-103, 4-110, 4-120, 5-401, 6-302, 6-303; Article XXVI, Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.
DATES:
Comment period:
November 15, 2006 - January 12, 2007
Public Hearings:
Public hearings were held at the following locations:
Fisheries & Wildlife Pubic Hearings (unless otherwise noted)
Date: January 8, 2007
Time: 6:30 p.m. - 9:30 p.m.
Durant - State Fish Hatchery, 2021 Caddo Hwy
Lawton - Lawton Public Library, 110 SW 4th St.
Okmulgee - East Central Electric, Public Meeting Room, 2001 South Wood Drive (Hwy 75)
Date: January 8, 2007
Time: 6:00 p.m. - 9:00 p.m.
Muskogee - Northeastern State University Campus Auditorium, 2400 West Shawnee
Date: January 9, 2007
Time: 6:30 p.m. - 9:30 p.m.
Ada - Pontotoc County Vo-Tech Center, 601 W. 33rd Street (Wildlife Hearing Only)
Altus - Altus Public Library, 421 N. Hudson St.
Broken Bow - Broken Bow Public Library, 404 N. Broadway
Enid - Central Fire Station, 410 West Garriott
Oklahoma City - Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Auditorium
Tishomingo - Tishomingo Community Center, Fairgrounds, 816 E. 6th (Fisheries Hearing Only)
Tulsa - Tulsa Technology Center Riverside Campus, Alliance and Conference Center Building, 801 E. 91st St., Aud. Rm A150
Date: January 9, 2007
Time: 6:00 p.m. - 9:00 p.m.
Sallisaw - Indian Capital Vo-Tech, North Meeting Room, 401 Houser Ave.
Adoption:
March 5, 2007
Submitted to Governor:
March 9, 2007
Submitted to House:
March 9, 2007
Submitted to Senate:
March 9, 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:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed rules will allow public use of a new Conservation Education Area; restrict the use of "low-point beer" and clarify rules on controlled or dangerous substance possession on Department properties; allow fishing and angler camping on a Department Lake, and delete unnecessary language.
CONTACT PERSON:
Alan Peoples, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, OK 73105. Phone: 405/521-2739. Rhonda Hurst, APA Liaison, phone: 405/522-6279.

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. USE OF DEPARTMENT MANAGED LANDS

800:30-1-2. Use restrictions

The following restrictions apply to Oklahoma Department of Wildlife managed lands:

(1) **Wildlife Management Areas.** All lands owned, licensed, leased or under the management of the Wildlife Division of the Oklahoma Department of Wildlife Conservation, except for the McCurtain County Wilderness Area, are designated Wildlife Management Areas (WMA) to accurately reflect the overall objectives for these lands and the results of management activities conducted thereon. Depending on the specific management objectives, all or parts of any particular wildlife management area may also be designated as a public hunting area, game management area or migratory bird refuge, or wetland development unit.

(2) **Public Hunting Areas.** On a Public Hunting Area (PHA portion), all legal forms of wildlife harvest are permitted under statewide hunting, fishing and furbearer regulations unless specific regulations for the area indicate otherwise.

(3) **Game Management Areas.** A Game Management Area (GMA portion) is closed to all wildlife harvest, except as specifically permitted by Commission action.

(4) **Migratory Bird Refuges.** A designated Migratory Bird Refuge or Waterfowl Refuge Portion (WRP) is closed to all public use and access during the period of October

15 - January 31, except as specifically permitted by Commission action or special hunt permittee's on days of their hunt unless specifically noted otherwise. In addition, unless otherwise provided, all shotgun hunting is restricted to federally approved nontoxic shot and the possession of lead shot is prohibited.

(5) **Wetland Development Units.** Areas designated as Wetland Development Units (WDU) are open for hunting as published annually in the Oklahoma Waterfowl Regulations booklet or the Oklahoma Hunting Regulations booklet. Shooting hours for waterfowl are $\frac{1}{2}$ hour before official sunrise until 1 p.m. daily. Unless otherwise provided, all shotgun hunting is restricted to federally approved nontoxic shot and the possession of lead shot is prohibited.

(6) **Wilderness Area.** On the Wilderness Area, there shall be no public entry except by persons possessing prior written permission from the Director of the Department of Wildlife Conservation or his designated representatives; Department employees; or by the Oklahoma Board of Agriculture, Division of Forestry personnel engaged in fire protection or suppression activities. The self-guided nature trail on the McCurtain County Wilderness Area does not fall under these restrictions.

(7) **Closed areas.** Closed areas within larger management units may not be open to specific types of hunting or other activities on a year-round basis. Other uses may be permissible according to the above priorities insofar as they do not conflict with the specific objectives assigned to these closed areas. Those areas are:

(A) An 80-acre portion of Canton WMA described as N/2 NE/4 of Section 3, T19N, R14W; Dewey County. Prairie Dog Refuge -closed to prairie dog hunting.

(B) All recreation areas located on National Forest lands including Cedar Lake, Billy Creek and Winding Stair in the Ouachita WMA, Kulli and Bokohoma in the Ouachita WMA, Skipout, Spring Creek and Dead Indian in Black Kettle WMA are closed to hunting.

(C) That portion of the Corps of Engineer's Lock and Dam 17 (Chouteau) project under license to the Oklahoma Department of Wildlife Conservation in Sections 4, 9, and 10, T16N, R18E, Wagoner County; all licensed lands lying south and west of the center of the Navigation Channel, as described by the Corps of Engineer's, and north of the paved road leading to Lock and Dam 17 are closed to all hunting and access (Vann's Lake Refuge). Except for special hunt permittees on the days of their hunt and non-hunting public use that is permitted year-round on the Jean Pierre Chouteau Hiking Trail and the Vann's Lake Marsh Trail. Fishing is permitted west of new Highway 69 between June 1 and February 1 and east of old Hwy 69 year-round. It shall be further unlawful to enter the "Vann's Lake Refuge" at any time with a firearm, except for special hunt permittee's on the days of their hunt.

(D) A parcel described at Lots 9-10-12-13 and the SW/4 of the SW/4 of Section 6 T26N, R8W, Grant County known as the Van Osdol Wildlife Management Area.

(E) The following described lands at Robbers Cave Wildlife Management Area are closed to all hunting: That portion of Sections 18 and 19 lying west of Coon Creek Road and the Northeast quarter and the North half of the Southeast quarter of Section 25.

(8) **Conservation Education Area.** The primary purpose of the conservation education area is conservation education. All activities are strictly regulated by ODWC.

800:30-1-4. Camping

(a) Camping is limited to a maximum of 14 days, except at areas open only to hunter camping for special season. Camping on these areas is limited to 2 days longer than the period which the camper (hunter) is authorized to hunt.

(b) All dogs or other pets must be kept on a leash or otherwise confined while in a camping area.

(c) No overnight camping is permitted on the following areas unless otherwise authorized by the Department:

(1) Altus-Lugert WMA.

(2) Arcadia Conservation Education Area - Any authorized camping must have education or conservation purpose.

(~~2~~3) Canton WMA (refuge portion).

(~~3~~4) Cherokee (GMA portion).

(~~4~~5) Chickasaw NRA (Arbuckle).

(~~5~~6) Fort Gibson WMA

(~~6~~7) Heyburn (refuge portion).

(~~7~~8) Hulah (refuge portion).

(~~8~~9) Hugo WMA (refuge portion).

(~~9~~10) Major County Lands.

(~~10~~11) McCurtain County Wilderness.

(~~11~~12) Okmulgee WMA (GMA portion).

(~~12~~13) Sparrowhawk WMA.

(~~13~~14) Spavinaw Hills WMA (GMA portion).

(~~14~~15) Tenkiller WMA.

(~~15~~16) Van Osdol WMA.

(~~16~~17) Waurika WMA (refuge portion).

(~~17~~18) Wister WMA (refuge portion).

(~~18~~19) Gist WMA

(~~19~~20) Red Slough WMA

(d) Only hunter and fishermen camping is permitted, and only in designated camping areas on:

(1) Atoka WMA (includes PHA portion).

(2) Beaver River WMA.

(3) Candy WMA.

(4) Canton WMA (except refuge portion).

(5) Cherokee WMA (PHA portion).

(6) Copan WMA.

(7) Ellis County WMA.

(8) Eufaula WMA.

(9) Fobb Bottom WMA

(10) Fort Cobb WMA.

(11) Fort Supply WMA.

(12) Heyburn WMA (except refuge portion).

(13) Hickory Creek WMA.
(14) Hugo WMA (except refuge portion).
(15) Hulah WMA.
(16) James Collins WMA.
(17) John Dahl WMA (camping is permitted only during hunting seasons).
(18) Kaw WMA.
(19) Lexington WMA.
(20) McClellan-Kerr Navigation System WMA on Lock and Dams 15,16, and 17.
(21) Mountain Park WMA.
(22) Okmulgee WMA (PHA portion, i.e, the area north and east of the Deep Fork River).
(23) Optima WMA.
(24) Ouachita WMA (Homer L. Johnston portion), camping permitted during deer and turkey seasons in designated camping areas.
(25) Packsaddle WMA, camping permitted only during open hunting seasons.
(26) Pushmataha WMA.
(27) Sandy Sanders WMA.
(28) Skiatook WMA.
(29) Spavinaw WMA (PHA portion), camping permitted only during open hunting seasons on area.
(30) Texoma-Washita Arm WMA.
(31) Tishomingo WMA.
(32) Broken Bow WMA.
(33) Cooper WMA.
(34) Osage WMA (Rock Creek Unit).

(e) Hunter camping is permitted only in designated camping areas and only during specified hunting seasons at:
(1) Robbers Cave WMA, camping only during open deer and turkey seasons.
(2) Cookson Hills WMA, hunter camping only during special deer seasons.
(3) Osage WMA (Western Wall Primitive Area), camping only during controlled hunts.

(f) Hunter and fishermen camping is permitted only within fifty yards of roads designated as open for public use at:
(1) Broken Bow WMA.
(2) Gary Sherrer WMA, camping permitted only during open hunting season on area.
(3) Keystone WMA.
(4) Love Valley WMA.
(5) Oologah WMA.
(6) Pine Creek WMA.
(7) Stringtown WMA, camping permitted only during open hunting season on area.
(8) Wister WMA, (except refuge portion).
(9) Deep Fork WMA.

(g) Camping permitted in accordance with U.S. Forest Service regulations at:
(1) Ouachita WMA (Ouachita National Forest), except Homer L. Johnston Unit.
(2) Tiak WMA (Ouachita National Forest).
(3) Black Kettle WMA (Cibola National Forest) - Black Kettle National Grasslands.
(4) Rita Blanca (Cibola National Forest) - Rita Blanca National Grasslands.

(h) Camping is permitted in designated camping areas only at McGee Creek WMA.

(i) Quiet shall be maintained in all camping areas between the hours of 11:00 p.m. and 7:00 a.m. Excessive noise during such times which unreasonably disturbs persons is prohibited.

800:30-1-8. Language, disorderly assemblage, noise or other disruptive acts

(a) No person shall use threatening, abusive or indecent language, participate in a disorderly assemblage, nor publicly appear nude or intoxicated on any lands owned or managed by the Oklahoma Department of Wildlife Conservation.

(b) No person shall possess, consume or use any intoxicating beverage or low-point beer, ~~except at camping and parking areas~~ as defined in Title 37, ~~Section 163.1 O.S. or controlled dangerous substance as defined in Title 63, Section 2-101 O.S.~~ except in camping and parking areas on any lands or waterways subject to the control of the Oklahoma Department of Wildlife Conservation except U.S. Forest Service regulations shall apply to the Black Kettle, Ouachita, Rita Blanca and Tiak Wildlife Management Areas.

(c) Any act or conduct by any person which interferes with, impedes or disrupts the use of Department managed lands or impairs the safety of another person is prohibited. Individuals who are boisterous, rowdy, disorderly or otherwise disturb the peace on Department managed lands or waters may be requested to leave.

(d) The operation or use of any audio or other noise producing device including, but not limited to radios, televisions, or musical instruments and motorized equipment, including vessels or vehicles, in such a manner as to reasonably annoy or endanger persons at any time or exceed state or local laws governing noise levels from motorized equipment is prohibited.

(e) No person shall possess, consume, use or manufacture any controlled or dangerous substance, as defined in Title 63, on any land or waterways subject to the control of the Oklahoma Department of Wildlife Conservation.

800:30-1-12. Landfills and disposal sites [REVOKED]

~~Use of Department operated landfills or disposal sites by persons Other than Department employees or individuals operating under Department authorization is prohibited.~~

800:30-1-20. Restricted public use areas

(a) The following Wildlife Management Areas are closed to all non-hunting activities except hunter camping (areas where camping is allowed) during the period October 1 - February 15: Beaver River, Canton, Lexington, except fishing and angler camping is permitted at Lake Dahlgren, Okmulgee, and Ellis County except fishing and angler camping is permitted at Lake Vincent, Fort Supply and Sandy Sanders.

(b) The following Wildlife Management Areas are closed to all non-hunting activities except hunter camping (on areas where camping is allowed) during the period October 1 -

January 31and spring turkey season: Atoka, Cherokee, Cookson, James Collins, McGee Creek, Osage, Pushmataha, and Spavinaw.

(c) The following areas are open to non-hunting activities during the daylight hours only August 1-31: Cherokee GMA, Cookson WMA.

(d) Lake Dahlgren shall be closed to all other activities during Lexington Wildlife Management Area designated controlled hunt dates.

(e) The following Conservation Education Areas are closed to all non-hunting and non-fishing activities during the period of October 1 - January 15 unless authorized by ODWC; camping and fires of any kind are not permitted unless authorized by ODWC: Arcadia Conservation Education Area.

[OAR Docket #07-1023; filed 5-15-07]

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

1:2007-23.

EXECUTIVE ORDER 2007-23

I, Brad Henry, Governor of the State of Oklahoma, by the authority vested in me pursuant to Sections 1 and 2 of Article VI of the Oklahoma Constitution, hereby encourage all Appointing Authorities to adopt measures that encourage employees to eat better, move more, and be tobacco free.

Obesity has become a national epidemic. Over the past ten years, the number of those who are overweight and obese in Oklahoma has increased at an alarming rate to more than sixty percent of our population. Overweight and obese individuals cost the nation between $69 billion and $117 billion per year in medical expenses. In Oklahoma alone, the cost of obesity-attributable medical expenses is a staggering $854 million per year.

Lack of physical activity significantly contributes to being overweight and obese. There are a number of serious health-related problems attributable to being overweight and obese such as high blood pressure, high total cholesterol or high levels of triglycerides, Type 2 diabetes, coronary heart disease, stroke, gallbladder disease, osteoarthritis, sleep apnea and respiratory problems, some cancers and depression.

Physical Activity is key to a healthy weight and lowering the risk of various chronic diseases. Each day presents an opportunity for activity such as walking for at least thirty minutes a day. I encourage state employees to utilize their daily break times to participate in physical activity to improve physical and mental well-being, thereby meeting the minimum national recommendations of thirty minutes of moderate physical activity a day.

Eating nutritious foods also leads to a healthy weight, thereby reducing the risk of developing many diseases related to obesity. Most employees eat at least one of their meals at work. Setting policies within the workplace will help state employees to make better food choices despite busy schedules. For example, offer only healthy beverages at mid morning or afternoon meetings where food is not necessary. If food is served, offer fresh fruits and vegetables and/or other healthy options to employees.

Along with physical activity and nutrition, being tobacco free will contribute to a healthier Oklahoma. Tobacco use is the leading preventable cause of death in the United States and in Oklahoma. Smoking-attributable productivity costs in Oklahoma average over $1.4 billion, and this monetary figure does not include expenses due to cigarette caused burns or secondhand smoke-related deaths. About one in four Oklahoma adults smoke, while most want to quit smoking. Tobacco free workplaces protect employees' health, lower health care costs, increase productivity and morale, and reduce absenteeism.

State agencies are encouraged to use the agency's health plan to help employees and their families quit tobacco use; actively support and promote the Oklahoma Tobacco Helpline (1-800-QUIT-NOW); and implement and maintain tobacco free workplaces polices and other initiatives.

State government, as the largest employer in the State of Oklahoma, must lead the way in building a culture of health for a Strong and Healthy Oklahoma where we work. I encourage all Appointing Authorities to adopt measures that encourage employees to eat better, move more, and be tobacco free. State government employees are encouraged to utilize the *Guide to a Strong and Healthy Oklahoma*, the Strong and Healthy Oklahoma website (www.strongandhealthy.ok.gov), the *Guidelines for a Healthy Workforce*, and the OKHealth Program.

This Executive Order shall be distributed to all members of the Governor's Cabinet, which shall cause the provisions of this Order to be implemented.

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 23 day of May, 2007.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #07-1232; filed 5-25-07]

1:2007-24.

EXECUTIVE ORDER 2007-24

I, Brad Henry, Governor of the State of Oklahoma, by the authority vested in me pursuant to Sections 1 and 2 of Article VI of the Oklahoma Constitution, in observation of Memorial Day, hereby direct the appropriate steps be taken to fly the American and Oklahoma flags at the State Capitol Building at half-staff from 8:00 a.m. until 5:00 p.m. on Monday, May 28, 2007, to honor those Americans who gave their lives for the freedom we enjoy today.

This executive order shall be forwarded to the Director of Central Services who shall cause the provisions of this order to be implemented at the State Capitol Building.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 23 day of May 2007.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #07-1233; filed 5-25-07]

1:2007-25.

EXECUTIVE ORDER 2007-25

I, Brad Henry, Governor of the State of Oklahoma, by the authority vested in me pursuant to Sections 1 and 2 of Article VI of the Oklahoma Constitution, hereby establish the Governor's Advisory Council on Latin American and Hispanic Affairs. This Executive Order shall replace Executive Order 96-26 of August 9, 1996.

The Council shall consist of not less than five (5) nor more than twenty (20) representatives of the Latin American and Hispanic community of the State of Oklahoma. Additional members of the Council representing State Government from appropriate Cabinet areas including, but not limited to, Health and Human Services, Safety and Security, Human Resources and Administration and Education may be designated by the Governor as deemed necessary to serve in a nonvoting ex-officio capacity. All members shall be appointed by the Governor and shall serve at his pleasure. Members of the Council shall elect officers to serve on the Council.

The Commission shall:

1. Expand opportunities for Oklahoma Hispanics in education, employment, health, housing, culture and recreation;

2. Make concerted efforts toward increasing statewide public awareness of problems surrounding Hispanics by gathering and distributing relevant statistical data and other economic information;

3. Conduct special studies and programs as to the best methods of serving the needs of Hispanics in the labor market;

4. Cooperate in the efforts of state departments and agencies, and with public and private organizations, in understanding and serving the needs of the Oklahoma Hispanic community;

5. Advise the Governor on the development and implementation of policies, plans and programs relating to the special needs of Hispanics;

6. Gather and disseminate information and conduct public hearings, conferences and special studies on problems and programs concerning Hispanics;

7. Coordinate, assist and cooperate with the efforts of state agencies to serve the needs of Hispanics, especially in the areas of culture, education, employment, health, housing and recreation;

8. Develop, coordinate and assist other public and private organizations with understanding problems concerning Hispanics;

9. Propose new programs and evaluate existing programs concerning Hispanics;

10. Evaluate legislation concerning Hispanics;

11. Stimulate public awareness of the problems of Hispanics by conducing community education programs;

12. Conduct training programs for community leadership;

13. Coordinate with the Department of Education in advising and assisting school districts concerning Hispanic issues; and

14. Secure appropriate recognition of Hispanic accomplishments and contributions to this state.

This Council shall meet at least quarterly as called by the chairman. Support and assistance for each meeting shall be provided by the Office of Personnel Management.

This Executive Order shall be forwarded to the Director of the Office of Personnel Management who shall cause the provisions of this order to be implemented at the State Capitol Building.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 25 day of May 2007.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #07-1229; filed 5-29-07]