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Notices of Rulemaking Intent

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

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

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

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

[OAR Docket #08-1002]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

Subchapter 1. General Provisions
252:100-1-3. Definitions [AMENDED]
252:100-1-4. Units, abbreviations and acronyms [AMENDED]
Subchapter 5. Registration, Emission Inventory and Annual Operating Fees
252:100-5-1.1. Definitions [AMENDED]
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252:100-8-2. Definitions [AMENDED]
252:100-8-4. Requirements for construction and operating permits [AMENDED]
Part 7. Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas
252:100-8-30. Applicability [AMENDED]
252:100-8-31. Definitions [AMENDED]
252:100-8-33. Exemptions [AMENDED]
252:100-8-37. Innovative control technology [AMENDED]
252:100-8-38. Actuals PAL [AMENDED]
Part 9. Major Sources Affecting Nonattainment Areas
252:100-8-50. Applicability [AMENDED]
252:100-8-50.1. Incorporation by reference [AMENDED]
252:100-8-51. Definitions [AMENDED]
252:100-8-51.1. Emissions reductions and offsets [AMENDED]
252:100-8-52. Applicability determination for sources in attainment areas causing or contributing to NAAQS violation [AMENDED]
252:100-8-53. Exemptions [AMENDED]
252:100-8-54.1. Ozone and PM-10 precursors [NEW]
252:100-8-55. Source obligation [AMENDED]
252:100-8-56. Actuals PAL [AMENDED]
Subchapter 9. Excess Emission Reporting Requirements
252:100-9-1. Purpose [AMENDED]
252:100-9.1.1. Applicability [NEW]
252:100-9-2. Definitions [AMENDED]
252:100-9-3.1. Excess emission reporting requirements [AMENDED AND RENUMBERED TO 252:100-9-7]
252:100-9-3.3. Demonstration of cause [AMENDED AND RENUMBERED TO 252:100-9-8]
252:100-9-7. Excess emission reporting requirements [NEW]
252:100-9-8. Affirmative defenses [NEW]
Subchapter 33. Control of Emission of Nitrogen Oxides
252:100-33-1.1. Definitions [AMENDED]
252:100-33-1.2. Applicability [AMENDED]
252:100-33-2. Emission limits [AMENDED]

SUMMARY:

Staff is proposing to amend the definitions sections in OAC 252:100-1-3, 252:100-1-4 and 252:100-5-1.1 to remove redundant definitions.

The Department is proposing revisions to OAC 252:100-8 that will correct errors in the existing rule; make changes required by revisions to the federal rule published in the *Federal Register* on November 29, 2005, May 1, 2007, and June 13, 2007; and resolve a conflict between OAC 252:100-8-4(b)(8) and 252:100-8-7.1(d) regarding permit renewal and expiration.

The Department is proposing to amend OAC 252:100-9, Excess Emission Reporting Requirements, to clarify its requirements and make them more compatible with EPA guidelines.

The Department is proposing to revise OAC 252:100-33 to resolve issues regarding emission standards for direct-fired fuel burning equipment, standards for fuel burning equipment that uses more than one type of fuel, and equipment with technological limitations.

AUTHORITY:

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

COMMENT PERIOD:

Written comments on the proposed rulemakings will be accepted prior to and at the hearing on July 16, 2008. 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 one (1) day prior to the Council meeting and provide hard copy written responses to the comments to the Council and the public at that Council meeting. Oral comments may be made at the July 16, 2008, hearing and at the August 19, 2008, Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Advisory Council at 9:00 a.m. on Wednesday, July 16, 2008, at the 4th Street Clubhouse, 1500 4th St., Ponca City, Oklahoma.

Before the Environmental Quality Board at 9:30 a.m. on Tuesday, August 19, 2008, at the Red River Technology Center, Business and Industry Building, Room 108, 3300 W. Bois D'Arc, Duncan, Oklahoma.

These hearings shall also serve as public hearings to receive comments on the proposed revisions to the State Implementation Plan (SIP) under the requirements of 40 CFR § 51.102 of the EPA regulations and 27A O.S., § 2-5-107(6)(c).

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities or any other members of the public affected by these rules provide the Department, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, 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, or copies may be obtained from the Department by calling Cheryl E. Bradley, Environmental Programs Manager, at (405) 702-4100.

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

Please send written comments on the proposed rule changes to Cheryl E. 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.

PERSONS WITH DISABILITIES:

Should you desire to attend but have a disability and need an accommodation, please notify the Air Quality Division three (3) days in advance at (405)702-4216. For the hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #08-1002; filed 5-21-08]

Submissions for Review

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

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

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 15. PHYSICIAN ASSISTANTS

[OAR Docket #08-989]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review.

RULES:

Subchapter 11. Prescriptive Guidelines and Drug Formulary

435:15-11-1. Prescriptive and dispensing authority [AMENDED]

SUBMITTED TO GOVERNOR:

May 19, 2008

SUBMITTED TO HOUSE:

May 19, 2008

SUBMITTED TO SENATE:

May 19, 2008

[OAR Docket #08-989; filed 5-21-08]

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 75. ATTORNEY GENERAL CHAPTER 1. ADMINISTRATION

[OAR Docket #08-1045]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Information
75:1-1-1.1 [AMENDED]
75:1-1-5 [AMENDED]
Subchapter 3. Contracts for Domestic Violence and Sexual Assault Services
Part 1. Eligibility to Contract
75:1-3-3 [AMENDED]
Part 3. Contracts and Contracting Processes
75:1-3-19 [AMENDED]
Subchapter 7. Certification and Designation of Domestic Violence, Sexual Assault, and Batterers Intervention ~~Services~~ Programs
75:1-7-4 [AMENDED]
75:1-7-5 [AMENDED]
75:1-7-6 [AMENDED]
75:1-7-7 [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-1045; filed 05-23-08]

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

[OAR Docket #08-1046]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
75:15-1-1.1 [NEW]
75:15-1-2 [AMENDED]
Subchapter 2. Domestic Violence and Sexual Assault Programs
75:15-2-1 [AMENDED]
75:15-2-3 [AMENDED]
Subchapter 4. Batterers Intervention Programs
75:15-4-2 [AMENDED]
75:15-4-4 [AMENDED]
75:15-4-5 [AMENDED]
75:15-4-17 [AMENDED]
75:15-4-19 [AMENDED]
Subchapter 5. Client Records and Confidentiality
75:15-5-2 [AMENDED]
75:15-5-3 [AMENDED]
Subchapter 13. Personnel and Volunteers
Part 3. Training
75:15-13-20.1 [AMENDED]
75:15-13-20.2 [AMENDED]
75:15-13-26 [AMENDED]
75:15-13-30 [AMENDED]
Subchapter 15. Governing Authority
75:15-15-1 [AMENDED]
75:15-15-3 [AMENDED]
75:15-15-5 [NEW]
GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-1046; filed 05-23-08]

TITLE 135. COMMISSION ON CHILDREN AND YOUTH CHAPTER 10. PROGRAMS, BOARDS, AND COUNCILS: OPERATION AND ADMINISTRATION

[OAR Docket #08-885]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 23. Interagency Child Abuse Prevention Task Force [NEW]
135:10-23-1 [NEW]
135:10-23-2 [NEW]
135:10-23-3 [NEW]
GUBERNATORIAL APPROVAL:
May 6, 2008

[OAR Docket #08-885; filed 5-13-08]

TITLE 165. CORPORATION COMMISSION CHAPTER 5. RULES OF PRACTICE

[OAR Docket #08-893]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Fees

Part 1. General Provisions
165:5-3-1. Fees [AMENDED]
Subchapter 7. Commencement of A Cause
Part 1. General
165:5-7-1. General application and notice requirements [AMENDED]
Part 3. Oil and Gas
165:5-7-14. Tax exemptions pursuant to OAC 165:10, Subchapter 21 [REVOKED]
165:5-7-22. Multiple zone completions [REVOKED]
165:5-7-23. Production through multiple choke assembly [REVOKED]
165:5-7-24. Commingling of well [REVOKED]
165:5-7-35. Operation of commercial pit and/or commercial soil farming site [AMENDED]
165:5-7-36. Road Oiling [REVOKED]
Part 5. Public Utilities
165:5-7-57. Acquisition, control, or merger of domestic public utilities [AMENDED]
Subchapter 9. Subsequent Pleadings
165:5-9-3. Emergency applications [AMENDED]

GUBERNATORIAL APPROVAL:
May 6, 2008

[OAR Docket #08-893; filed 5-15-08]

TITLE 165. CORPORATION COMMISSION CHAPTER 26. ABOVEGROUND STORAGE TANKS

[OAR Docket #08-892]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Chapter 26. Aboveground Storage Tanks [AMENDED]

GUBERNATORIAL APPROVAL:
April 28, 2008

[OAR Docket #08-892; filed 5-15-08]

TITLE 208. EDGE FUND POLICY BOARD CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #08-950]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. General Provisions
208:1-1-1. Purpose [NEW]
208:1-1-2. Vision and Mission Statement [NEW]
208:1-1-3. Definitions [NEW]
208:1-1-4. Eligibility [NEW]
208:1-1-5 Programs and Projects Criteria [NEW]
Subchapter 3. Policy Board Operations
208:1-3-1. Authority and Operation [NEW]
208:1-3-2. Procedures for Adoption, Amendment and Repeal of Rules [NEW]
208:1-3-3. Requests for Declaratory Rulings [NEW]
208:1-3-4. Appeals [NEW]
Subchapter 5. Fund Operations
208:1-5-1. EDGE Fund Trust [NEW]
208:1-5-2. Technical Advisory Panel(s) [NEW]
208:1-5-3. Areas of Interest [NEW]
208:1-5-4. Funding Leverage [NEW]
208:1-5-5. Funding Limitations [NEW]
208:1-5-6. Notification Process [NEW]
208:1-5-7. Application Process [NEW]
208:1-5-8. Review Process [NEW]
208:1-5-9. Audit and Records Provisions [NEW]

GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-950; filed 5-16-08]

TITLE 245. STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS CHAPTER 2. ADMINISTRATIVE OPERATIONS

[OAR Docket #08-884]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
245:2-1-18 [AMENDED]

GUBERNATORIAL APPROVAL:
April 22, 2008

[OAR Docket #08-884; filed 5-12-08]

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

[OAR Docket #08-916]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 5. Registration, Emission Inventory and Annual Operating Fees
252:100-5-2.2. Annual operating fees [AMENDED]

GUBERNATORIAL APPROVAL:
April 23, 2008

[OAR Docket #08-916; filed 5-15-08]

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

[OAR Docket #08-917]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 24. Particulate Matter Emissions from Grain, Feed or Seed Operations
252:100-24-3 [AMENDED]
252:100-24-4 [AMENDED]
GUBERNATORIAL APPROVAL:
April 23, 2008

[OAR Docket #08-917; filed 5-15-08]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 300. LABORATORY ACCREDITATION [REVOKED]

[OAR Docket #08-918]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
252:300. Laboratory Accreditation [REVOKED]
GUBERNATORIAL APPROVAL:
April 23, 2008

[OAR Docket #08-918; filed 5-15-08]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 301. LABORATORY ACCREDITATION

[OAR Docket #08-919]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
252:301. Laboratory Accreditation [NEW]
GUBERNATORIAL APPROVAL:
April 23, 2008

[OAR Docket #08-919; filed 5-15-08]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 305. LABORATORY SERVICES

[OAR Docket #08-920]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
252:305-1-11. Required fees and other pricing [AMENDED]
Appendix A. Samples Submitted by Governmental Entities [REVOKED]
Appendix A. Samples Submitted by Government Entities [NEW]
Appendix B. Samples Submitted by Private Citizens [REVOKED]
Appendix B. Samples Submitted by Private Citizens [NEW]
GUBERNATORIAL APPROVAL:
April 23, 2008

[OAR Docket #08-920; filed 5-15-08]

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

[OAR Docket #08-921]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Appendix A. Application and Annual Fee Schedule for Radiation Machines [REVOKED]
Appendix A. Application and Annual Fee Schedule for Radiation Machines [NEW]
GUBERNATORIAL APPROVAL:
April 23, 2008

[OAR Docket #08-921; filed 5-15-08]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 515. MANAGEMENT OF SOLID WASTE

[OAR Docket #08-922]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 21. Waste Tire Processing, Certification, Permits and Compensation
Part 1. General Provisions

252:515-21-1 [AMENDED]
252:515-21-3 [AMENDED]
252:515-21-5 [AMENDED]
Part 3. Waste Tire Facilities
252:515-21-32 [AMENDED]
Part 5. Waste Tire Transportation
252:515-21-51 [AMENDED]
Part 7. Compensation from the Waste Tire Indemnity Fund
252:515-21-71 [AMENDED]
252:515-21-73 [AMENDED]
Part 9. Erosion Control, River Bank Stabilization and other Conservation Projects
252:515-21-92 [AMENDED]
Part 13. Tire Dealer and Motor License Agent Audits [NEW]
252:515-21-131 [NEW]

GUBERNATORIAL APPROVAL:
April 23, 2008

[OAR Docket #08-922; filed 5-15-08]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 606. OKLAHOMA POLLUTANT DISCHARGE ELIMINATION SYSTEM (OPDES) STANDARDS

[OAR Docket #08-923]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. Introduction
252:606-1-4 [AMENDED]
Appendix B. Fees for Non-Industrial Discharge Permits [REVOKED]
Appendix B. Fees for Non-Industrial Discharge Permits [NEW]
Appendix C. Animal Industrial Discharge Permit Fees [REVOKED]
Appendix C. Annual Industrial Discharge Permit Fees [NEW]
Appendix D. Fees for Stormwater Permits and Other General Permits [REVOKED]
Appendix D. Fees for Stormwater Permits and Other General Permits [NEW]
Appendix E. Fees for Individual Discharge Permits for Categorical Industries [REVOKED]
Appendix E. Fees for Individual Discharge Permits for Categorical Industries [NEW]
Appendix F. Fees for Land Application of Biosolids [REVOKED]
Appendix F. Fees for Land Application of Biosolids [NEW]

GUBERNATORIAL APPROVAL:
April 23, 2008

[OAR Docket #08-923; filed 5-15-08]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 611. GENERAL WATER QUALITY

[OAR Docket #08-924]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. General Provisions
252:611-1-3. Adoption and incorporation by reference [AMENDED]

GUBERNATORIAL APPROVAL:
April 23, 2008

[OAR Docket #08-924; filed 5-15-08]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 616. INDUSTRIAL WASTEWATER SYSTEMS

[OAR Docket #08-925]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 3. Permit Procedures
252:616-3-3. Annual fees [AMENDED]

GUBERNATORIAL APPROVAL:
April 23, 2008

[OAR Docket #08-925; filed 5-15-08]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 621. NON-INDUSTRIAL FLOW-THROUGH AND PUBLIC WATER SUPPLY IMPOUNDMENTS INCLUDING LAND APPLICATION

[OAR Docket #08-926]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 3. Permit Procedures
252:621-3-3. Annual permit fees for non-industrial surface impoundments [AMENDED]

GUBERNATORIAL APPROVAL:
April 23, 2008

[OAR Docket #08-926; filed 5-15-08]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 623. PRETREATMENT FOR CENTRAL TREATMENT TRUSTS

[OAR Docket #08-927]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
252:623-1-7. Incorporation by reference [AMENDED]
GUBERNATORIAL APPROVAL:
April 23, 2008

[OAR Docket #08-927; filed 5-15-08]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 624. MINOR PUBLIC WATER SUPPLY SYSTEMS

[OAR Docket #08-928]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
252:624. Minor Public Water Supply Systems [NEW]
GUBERNATORIAL APPROVAL:
April 23, 2008

[OAR Docket #08-928; filed 5-15-08]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 626. PUBLIC WATER SUPPLY CONSTRUCTION STANDARDS

[OAR Docket #08-929]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Introduction
252:626-1-1. Purpose [AMENDED]
252:626-1-2. Definitions [AMENDED]
Subchapter 3. Permit Procedures
252:626-3-1. General [AMENDED]
252:626-3-2. Applications [AMENDED]
252:626-3-4. Municipal permitting alternative [AMENDED]
252:626-3-5. Individual waterline construction permit exceptions [AMENDED]
252:626-3-6. Engineering report [AMENDED]
252:626-3-7. Plans and specifications [AMENDED]
252:626-3-8. Variances from construction standards [AMENDED]
Subchapter 5. General Design
252:626-5-1. Plant layout [AMENDED]
252:626-5-2. Building layout [AMENDED]
252:626-5-3. ~~Location of structures~~ Flood protection [AMENDED]
252:626-5-4. ~~Electrical controls~~ Security protection [AMENDED]
252:626-5-5. Standby power and elevated storage [AMENDED]
252:626-5-7. Monitoring equipment [AMENDED]
252:626-5-8. Sample taps [AMENDED]
252:626-5-9. Facility water supply [AMENDED]
252:626-5-10. Sanitary facilities [AMENDED]
252:626-5-14. ~~Bypasses~~ Treatment unit and piping configuration [AMENDED]
252:626-5-15. Cross connections and interconnections [AMENDED]
Subchapter 7. Source Development
252:626-7-2. Surface water [AMENDED]
252:626-7-3. Springs and dug wells [AMENDED]
252:626-7-4. Ground water [AMENDED]
252:626-7-6. Raw water supply conduit [AMENDED]
Subchapter 9. Treatment
252:626-9-1. General treatment requirements [AMENDED]
252:626-9-2. ~~Pre-sedimentation~~ Pretreatment [AMENDED]
252:626-9-4. Ozonation [AMENDED]
252:626-9-6. Taste and odor control [AMENDED]
252:626-9-8. Clarification [AMENDED]
252:626-9-9. Filtration [AMENDED]
252:626-9-10. Softening [AMENDED]
252:626-9-11. Disinfection [AMENDED]
252:626-9-13. Stabilization and corrosion control [AMENDED]
Subchapter 11. Chemical Application
252:626-11-1. Chemical application [AMENDED]
252:626-11-3. Facility design [AMENDED]
252:626-11-4. Additional requirements for specific chemicals [AMENDED]
Subchapter 13. Residuals Management
252:626-13-1. General [AMENDED]
252:626-13-2. Residuals Management Plan [AMENDED]
252:626-13-3. Drying beds [AMENDED]
252:626-13-4. Lagoons [AMENDED]
252:626-13-5. Land application of wastewater. [NEW]
Subchapter 15. Pumping Facilities
252:626-15-1. General [AMENDED]

252:626-15-2. Pumping station building [AMENDED]
252:626-15-3. Pumps [AMENDED]
252:626-15-4. Automatic and remote controlled stations [AMENDED]
Subchapter 17. Finished Water Storage
252:626-17-1. General [AMENDED]
252:626-17-2. Plant storage [AMENDED]
252:626-17-3. Pressure tanks [AMENDED]
252:626-17-4. Distribution storage [AMENDED]
Subchapter 19. Distribution System [AMENDED]
252:626-19-1. General
252:626-19-2. Installation of mains [AMENDED]
252:626-19-3. Water main design for all systems providing fire protection [AMENDED]
252:626-19-4. Water main design for systems providing domestic water only [AMENDED]
Subchapter 21. Design Standards for Minor Systems [REVOKED]
252:626-21-1. General requirements for permittees [REVOKED]
252:626-21-2. Water wells [REVOKED]
252:626-21-3. Slow sand filter systems [REVOKED]
Appendix A. Piping Color Code [REVOKED]
Appendix A. Piping Color Code [NEW]
Appendix C. Steel Pipe [REVOKED]
Appendix C. Steel Pipe [NEW]
Appendix E. Gravel Support for Rapid Rate Sand Filters [REVOKED]
Appendix E. Gravel Support for Rapid Rate Slow Sand Filters [NEW]
Appendix G. Minor Waste Systems [REVOKED]

GUBERNATORIAL APPROVAL:
April 23, 2008

[OAR Docket #08-929; filed 5-15-08]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 631. PUBLIC WATER SUPPLY OPERATION

[OAR Docket #08-930]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. Introduction
252:631-1-1. Purpose [AMENDED]
252:631-1-2. Definitions [AMENDED]
252:631-1-3. Adoption of U.S. EPA regulations by reference [AMENDED]
Subchapter 3. Operations
252:631-3-1. PWS Criteria [AMENDED]
252:631-3-2. Laboratory approval [AMENDED]
252:631-3-3. Disinfection requirements [AMENDED]
252:631-3-6. Disinfection profiling and benchmarking [AMENDED]
252:631-3-10. Process control tests [AMENDED]
252:631-3-11. Operating records & reports [AMENDED]
252:631-3-12. Control of lead and copper [REVOKED]
252:631-3-13. Disinfectant residuals, disinfection byproducts, and disinfection byproduct precursors [REVOKED]
252:631-3-17. Water system connections [AMENDED]
252:631-3-19. Wastewater [AMENDED]
252:631-3-20. Water pressure [AMENDED]
252:631-3-23. Source water development [NEW]
Subchapter 5. Minor Water Systems [REVOKED]
252:631-5-1. General [REVOKED]
252:631-5-2. Surface water, ground water under the direct influence of surface water, and springs [REVOKED]
252:631-5-3. Groundwater supplies [REVOKED]
252:631-5-4. Special tests [REVOKED]
252:631-5-5. Security [REVOKED]

GUBERNATORIAL APPROVAL:
April 23, 2008

[OAR Docket #08-930; filed 5-15-08]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 633. DRINKING WATER STATE REVOLVING FUND

[OAR Docket #08-931]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Appendix A. Funding Priority Formula [REVOKED]
Appendix A. Funding Priority Formula [NEW]

GUBERNATORIAL APPROVAL:
April 23, 2008

[OAR Docket #08-931; filed 5-15-08]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 641. INDIVIDUAL AND SMALL PUBLIC ON-SITE SEWAGE TREATMENT SYSTEMS

[OAR Docket #08-932]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
252:641 Individual and Small Public On-Site Sewage Treatment Systems [AMENDED]

GUBERNATORIAL APPROVAL:
April 23, 2008

[OAR Docket #08-932; filed 5-15-08]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 656. WATER POLLUTION CONTROL FACILITY CONSTRUCTION STANDARDS

[OAR Docket #08-933]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Permit Procedures
252:656-3-9. Fees [AMENDED]
GUBERNATORIAL APPROVAL:
April 23, 2008

[OAR Docket #08-933; filed 5-15-08]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 690. WATER QUALITY STANDARDS IMPLEMENTATION

[OAR Docket #08-934]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Introduction
252:690-1-4. Incorporation of USEPA regulations by reference [AMENDED]
GUBERNATORIAL APPROVAL:
April 23, 2008

[OAR Docket #08-934; filed 5-15-08]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 710. WATERWORKS AND WASTEWATER WORKS OPERATOR CERTIFICATION

[OAR Docket #08-935]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
252:710-1-12. Certification fee schedule [AMENDED]
GUBERNATORIAL APPROVAL:
April 23, 2008

[OAR Docket #08-935; filed 5-15-08]

TITLE 305. OFFICE OF DISABILITY CONCERNS CHAPTER 1. ORGANIZATION, OPERATIONS, PROCEDURES AND POLICIES

[OAR Docket #08-887]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
305:1-1-2 [AMENDED]
305:1-1-3 [AMENDED]
305:1-1-4 [AMENDED]
GUBERNATORIAL APPROVAL:
May 6, 2008

[OAR Docket #08-887; filed 5-13-08]

TITLE 305. OFFICE OF DISABILITY CONCERNS CHAPTER 10. CLIENT ASSISTANCE PROGRAM

[OAR Docket #08-886]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
305:10-1-1 [AMENDED]
GUBERNATORIAL APPROVAL:
May 6, 2008

[OAR Docket #08-886; filed 5-13-08]

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

[OAR Docket #08-967]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 27. Contracts with Charitable Health Care Providers [NEW]
310:2-27-1 through 310:2-27-6 [NEW]

GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-967; filed 5-20-08]

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

[OAR Docket #08-968]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Purpose, Forms and Fees
310:105-1-3 [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-968; filed 5-20-08]

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

[OAR Docket #08-969]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Administrative Fine Schedule
310:110-5-8. Schedule of Fines for the Fire Extinguisher Industry [NEW]
GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-969; filed 5-20-08]

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

[OAR Docket #08-970]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
310:205-1-2 [AMENDED]
Subchapter 3. License Requirements
310:205-3-2 [AMENDED]
310:205-3-3 [AMENDED]
310:205-3-4 [AMENDED]
310:205-3-7 [AMENDED]
310:205-3-8 [AMENDED]
310:205-3-9 [AMENDED]
310:205-3-10 [AMENDED]
310:205-3-11 [AMENDED]
GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-970; filed 5-20-08]

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

[OAR Docket #08-971]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Examinations
310:210-3-3 [AMENDED]
310:210-3-5 [AMENDED]
Subchapter 5. Licensing
310:210-5-1 [AMENDED]
310:210-5-2 [AMENDED]
310:210-5-6 [AMENDED]
310:210-5-8 [AMENDED]
310:210-5-9 [NEW]
GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-971; filed 5-20-08]

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

[OAR Docket #08-972]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. License Classifications and Associated Fees For Consumer Health Services
310:250-3-1. Food service establishments' permits [AMENDED]
310:250-3-7. Application fee [NEW]
GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-972; filed 5-20-08]

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

[OAR Docket #08-973]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Applications
310:345-3-3 [AMENDED]
310:345-3-6 [AMENDED]
Subchapter 5. Registration
310:345-5-3 [AMENDED]
Subchapter 7. Revocation and Reinstatement
310:345-7-2 [AMENDED]
GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-973; filed 5-20-08]

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

[OAR Docket #08-974]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Rules of Professional Conduct
310:400-5-3 [AMENDED]
Subchapter 7. Application for Licensure
310:400-7-2.1 [AMENDED]
310:400-7-4 [AMENDED]
310:400-7-5 [NEW]
Subchapter 11. Supervised Experience Requirements
310:400-11-2 [AMENDED]
310:400-11-3 [AMENDED]
310:400-11-5 [AMENDED]
Subchapter 15. Issuance and Maintenance of License
310:400-15-4 [AMENDED]
310:400-15-8 [AMENDED]
GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-974; filed 5-20-08]

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

[OAR Docket #08-975]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Forms
310:403-5-2 [AMENDED]
Subchapter 11. Application Procedures
310:403-11-8 [AMENDED]
310:403-11-11 [AMENDED]
Subchapter 15. Supervised Experience Requirement
310:403-15-4 [AMENDED]
310:403-15-5 [AMENDED]
Subchapter 21. Continuing Education Requirements
310:403-21-2 [AMENDED]
GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-975; filed 5-20-08]

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

[OAR Docket #08-976]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Rules of Professional Conduct
310:405-3-3 [AMENDED]
Subchapter 7. Application Procedures
310:405-7-2 [AMENDED]
310:405-7-5 [AMENDED]
310:405-7-8 [AMENDED]
310:405-7-9 [AMENDED]
Subchapter 11. Supervised Experience Requirement
310:405-11-2 [AMENDED]
310:405-11-3 [AMENDED]
310:405-11-4 [AMENDED]
Subchapter 17. Continuing Education Requirements
310:405-17-2 [AMENDED]
310:405-17-3 [AMENDED]
310:405-17-4.1 [AMENDED]
310:405-17-6.1 [AMENDED]
Subchapter 29. Consumer Information
310:405-29-4 [NEW]

GUBERNATORIAL APPROVAL:
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[OAR Docket #08-976; filed 5-20-08]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 451. FIRE EXTINGUISHER INDUSTRY

[OAR Docket #08-977]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions [NEW]
310:451-1-1 through 310:451-1-3.1 [NEW]
Subchapter 3. License Requirements [NEW]
310:451-3-1 through 310:451-3-5 [NEW]
Subchapter 5. Special Provisions [NEW]
310:451-5-1 through 310:451-5-3 [NEW]
Subchapter 7. Enforcement [NEW]
310:451-7-1 through 310:451-7-2 [NEW]
GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-977; filed 5-20-08]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 638. DRUG AND ALCOHOL TESTING ~~RULES~~

[OAR Docket #08-978]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
310:638-1-2 [AMENDED]
310:638-1-3 [AMENDED]
310:638-1-4 [AMENDED]
310:638-1-5 [AMENDED]
310:638-1-6.2 [NEW]
310:638-1-7.2 [NEW]
310:638-1-8.2 [NEW]
310:638-1-10 [AMENDED]
Subchapter 3. Administration
310:638-3-4 [REVOKED]
310:638-3-7 [AMENDED]
Subchapter 5. Drug Screen Testing Facilities
310:638-5-2 [AMENDED]
310:638-5-3 [AMENDED]
310:638-5-4 [AMENDED]
310:638-5-9 [AMENDED]
310:638-5-10 [AMENDED]
GUBERNATORIAL APPROVAL:
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[OAR Docket #08-978; filed 5-20-08]

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

[OAR Docket #08-979]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Ambulance Services
Part 1. General Provisions
310:641-3-2 [AMENDED]
Part 3. Ambulance Services
310:641-3-10 [AMENDED]
Part 5. Ground Transport Vehicles
310:641-3-20 [AMENDED]
310:641-3-23 [AMENDED]
Part 7. Air Ambulances
310:641-3-30 [AMENDED]
310:641-3-32 [AMENDED]
Part 27. Transfer Protocols
310:641-3-130 [AMENDED]
Subchapter 5. Personnel Licenses and Certification
Part 3. Emergency Medical Personnel Licenses
310:641-5-11 [AMENDED]
310:641-5-14 [AMENDED]
Subchapter 7. Training Programs
Part 5. Instructor Qualifications
310:641-7-20 [AMENDED]
Part 7. In-Service Instruction Program
310:641-7-30 [AMENDED]
GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-979; filed 5-20-08]

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

[OAR Docket #08-980]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
310:662-1-2 [AMENDED]
Subchapter 2. Licenses

310:662-2-1 [AMENDED]
Subchapter 3. Administration
310:662-3-3 [AMENDED]
Subchapter 8. Sitter or companion services [NEW]
310:662-8-1 through 310:662-8-9 [NEW]

GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-980; filed 5-20-08]

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

[OAR Docket #08-981]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

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

GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-981; filed 5-20-08]

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

[OAR Docket #08-982]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 15. Nursing Service
310:667-15-6 [AMENDED]
Subchapter 19. Medical Records Department
310:667-19-2 [AMENDED]
310:667-19-13 [AMENDED]
Subchapter 21. Drug Distribution
310:667-21-7 [AMENDED]
310:667-21-8 [AMENDED]
Subchapter 25. Surgical Services
310:667-25-2 [AMENDED]
Subchapter 39. Critical Access Hospital
310:667-39-6 [AMENDED]
310:667-39-9 [AMENDED]
310:667-39-11 [AMENDED]
Subchapter 40. Emergency Hospital
310:667-40-6 [AMENDED]
310:667-40-9 [AMENDED]
310:667-40-11 [AMENDED]

GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-982; filed 5-20-08]

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

[OAR Docket #08-983]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

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]

GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-983; filed 5-20-08]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 20. RACING OFFICIALS AND RACING PERSONNEL

[OAR Docket #08-955]

RULEMAKING ACTION:
Gubernatorial approval of permanent rule

RULES:
325:20-1-3 [AMENDED]

GUBERNATORIAL APPROVAL:
May 6, 2008

[OAR Docket #08-955; filed 5-19-08]

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

[OAR Docket #08-961]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 3. Office of Client Advocacy
Part 1. Administration
340:2-3-2 [AMENDED]
Part 3. Investigations
340:2-3-36 [AMENDED]
Part 5. Grievances
340:2-3-45 through 340:2-3-46 [AMENDED]
340:2-3-50 [AMENDED]
(Reference APA WF 08-03)

GUBERNATORIAL APPROVAL:
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[OAR Docket #08-961; filed 5-20-08]

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

[OAR Docket #08-963]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. Human Resources Management Division (HRMD)
Part 3. Internal Human Resources
340:2-1-34 [AMENDED]
Part 7. Recruitment, Selection, and Placement
340:2-1-89 [AMENDED]
(Reference APA WF 08-02)

GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-963; filed 5-20-08]

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

[OAR Docket #08-965]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 11. Special Procedures
Part 9. Disaster Procedures and Reporting Requirements
340:50-11-87 [REVOKED]
(Reference APA WF 08-01)

GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-965; filed 5-20-08]

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

[OAR Docket #08-1018]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 6. Permanency Planning
Part 1. General Provisions
340:75-6-4 [AMENDED]
Part 5. Permanency Planning Services
340:75-6-31 [AMENDED]
340:75-6-31.5 [AMENDED]

Subchapter 8. Therapeutic Foster Care and Developmental Disabilities Services
Part 1. Therapeutic Foster Care
340:75-8-8 [AMENDED]
Subchapter 15. Adoptions
Part 2. Legal Base and Scope of the Adoption Program
340:75-15-5 [AMENDED]
340:75-15-7 [AMENDED]
Part 10. Adoptive Family Assessment and Preparation Process
340:75-15-93 [AMENDED]
(Reference APA WF 08-04)
GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-1018; filed 5-22-08]

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

[OAR Docket #08-1020]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
Part 1. Licensing Services - Child Care
340:110-1-4 through 340:110-1-6 [AMENDED]
340:110-1-8 through 340:110-1-8.1 [AMENDED]
340:110-1-8.3 [AMENDED]
340:110-1-9 through 340:110-1-11 [AMENDED]
340:110-1-14 [AMENDED]
340:110-1-17 [AMENDED]
340:110-1-20 through 340:110-1-21 [AMENDED]
Part 3. Licensing Services - Residential Care and Agencies
340:110-1-40 [AMENDED]
340:110-1-42 through 340:110-1-43.1 [AMENDED]
340:110-1-45 through 340:110-1-47.2 [AMENDED]
340:110-1-51 through 340:110-1-53 [AMENDED]
340:110-1-55 [AMENDED]
Subchapter 3. Licensing Standards for Child Care Facilities
Part 1. Requirements for Child Care Centers
340:110-3-5 through 340:110-3-5.1 [AMENDED]
340:110-3-27 [AMENDED]
Part 2. Requirements for Part-Day Children's Programs
340:110-3-39 through OAC 340:110-3-40 [AMENDED]
340:110-3-49.3 [AMENDED]
Part 5. Requirements for Family Child Care Homes and Large Family Child Care Homes
340:110-3-81 through 340:110-3-82 [AMENDED]
340:110-3-84 through 340:110-3-88 [AMENDED]
340:110-3-89.1 through 340:110-3-91 [AMENDED]
340:110-3-91.1 [NEW]
340:110-3-92 through 340:110-3-94 [AMENDED]
340:110-3-97 through 340:110-3-97.1 [AMENDED]
Part 14. Requirements for School-Age Programs
340:110-3-223 through OAC 340:110-3-224 [AMENDED]
340:110-3-237 [AMENDED]
(Reference APA WF 07-16 and 08-05)
GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-1020; filed 5-22-08]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 1. AGENCY AUTHORITY AND OBJECTIVES

[OAR Docket #08-869]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
390:1-1-4 [AMENDED]
390:1-1-8 [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-869; filed 5-12-08]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 2. ADMINISTRATIVE PROCEDURES

[OAR Docket #08-870]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
390:2-1-2 [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-870; filed 5-12-08]

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

[OAR Docket #08-871]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
390:10-1-2 [AMENDED]
390:10-1-4 [AMENDED]
390:10-1-5 [AMENDED]
390:10-1-6 [AMENDED]
390:10-1-7 [AMENDED]
GUBERNATORIAL APPROVAL:
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[OAR Docket #08-871; filed 5-12-08]

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

[OAR Docket #08-872]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Basic Academy Programs
390:15-1-1 [AMENDED]
390:15-1-2 [AMENDED]
390:15-1-3 [AMENDED]
390:15-1-11 [AMENDED]
390:15-1-13 [AMENDED]
390:15-1-18 [AMENDED]
390:15-1-19 [AMENDED]
Subchapter 3. Collegiate Officer Program
390:15-3-1 [AMENDED]
390:15-3-6 [AMENDED]
390:15-3-7 [AMENDED]
GUBERNATORIAL APPROVAL:
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[OAR Docket #08-872; filed 5-12-08]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 20. RESERVE PEACE OFFICER CERTIFICATION AND TRAINING

[OAR Docket #08-873]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
390:20-1-2 [AMENDED]
390:20-1-3 [AMENDED]
390:20-1-7 [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-873; filed 5-12-08]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 25. CONTINUING LAW ENFORCEMENT EDUCATION

[OAR Docket #08-874]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
390:25-1-6 [AMENDED]
390:25-1-7 [AMENDED]
390:25-1-8 [AMENDED]
390:25-1-14 [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-874; filed 5-12-08]

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

[OAR Docket #08-875]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
390:35-5-4 [AMENDED]
390:35-5-5 [AMENDED]
390:35-5-12 [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-875; filed 5-12-08]

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

[OAR Docket #08-876]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
390:55-1-10 [AMENDED]

GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-876; filed 5-12-08]

TITLE 422. OKLAHOMA LIQUEFIED PETROLEUM GAS RESEARCH, MARKETING AND SAFETY COMMISSION CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #08-984]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
422:1-1-2. Definitions [AMENDED]
422:1-1-4. Funding [AMENDED]
422:1-1-6. Location, office hours [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-984; filed 5-20-08]

TITLE 422. OKLAHOMA LIQUEFIED PETROLEUM GAS RESEARCH, MARKETING AND SAFETY COMMISSION CHAPTER 10. MARKETING AND SAFETY PROGRAMS

[OAR Docket #08-985]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Water Heater Rebate Program
422:10-1-2. Definitions [AMENDED]
422:10-1-5. Eligibility [AMENDED]
422:10-1-6. Applications [AMENDED]
422:10-1-9. Rebate amount; minimum efficiency factor [AMENDED]
Subchapter 5. Regulator Rebate Program
422:10-5-2. Definitions [AMENDED]
422:10-5-5. Eligibility [AMENDED]
422:10-5-6. Applications [AMENDED]
422:10-5-9. Rebate amount~~; minimum efficiency factor~~ [AMENDED]
Subchapter 15. Manufactured Housing Incentive Program [REVOKED]
422:10-15-1. Definitions [REVOKED]
422:10-15-2. Establishment; limitation [REVOKED]
422:10-15-3. Incentive amount; limitation [REVOKED]
422:10-15-4. Eligibility [REVOKED]
422:10-15-5. Application procedure [REVOKED]
422:10-15-6. Payment of rebate [REVOKED]
422:10-15-7. Conditions of receipt of rebate [REVOKED]
422:10-15-8. Assignment of incentive [REVOKED]
422:10-15-9. Compliance [REVOKED]
422:10-15-10. Complaints [REVOKED]
422:10-15-11. Penalties [REVOKED]
Subchapter 20. Central Furnace Rebate Program
422:10-20-2. Definitions [AMENDED]
422;10-20-5. Eligibility [AMENDED]
422:10-20-6. Applications [AMENDED]
422:10-20-9. Rebate amount; minimum efficiency factor [AMENDED]
Subchapter 22. Media Rebate Program
422:10-22-5. Application [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-985; filed 5-20-08]

TITLE 422. OKLAHOMA LIQUEFIED PETROLEUM GAS RESEARCH, MARKETING AND SAFETY COMMISSION CHAPTER 15. ASSESSMENT ENFORCEMENT AND COLLECTION

[OAR Docket #08-986]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Audits and Investigations
422:15-3-1. Inspection of Records [AMENDED]
Subchapter 5. Assessment Hearings
422:15-5-1. Petition and notice [AMENDED]
422:15-5-3. Subpoenas [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-986; filed 5-20-08]

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

[OAR Docket #08-1017]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Affirmative Action and Equal Employment Opportunity
Part 2. Discrimination Complaints Investigations
530:10-3-22 [AMENDED]
Subchapter 7. Salary and Payroll
Part 1. Salary and Rates of Pay

530:10-7-1.2
Subchapter 15. Time and Leave
Part 5. Miscellaneous Types of Leave
530:10-15-45 [AMENDED]
Subchapter 17. Performance Evaluation and Career Enhancement Programs
Part 17. State Work Incentive Program
530:10-17-177 [AMENDED]
Subchapter 21. Employee Assistance Programs
Part 1. General Provisions
530:10-21-5 [AMENDED]
Subchapter 23. Employee Recognition
Part 1. General Provisions
530:10-23-3 [AMENDED]
Appendix A. Pay Band Schedule [REVOKED]
Appendix A. Pay Band Schedule [NEW]

GUBERNATORIAL APPROVAL:
April 22, 2008

[OAR Docket #08-1017; filed 5-22-08]

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

[OAR Docket #08-1023]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 5. General Course in Method of ~~Operation~~ Operations
535:1-5-5.1. Complaint confidentiality [AMENDED]

GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-1023; filed 5-22-08]

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

[OAR Docket #08-1024]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 3. Pharmacists
535:10-3.1.2. Violations of professional conduct [AMENDED]
Subchapter 7. Pharmacist Licensure
535:10-7-8. Foreign pharmacy graduates licensure applicants [AMENDED]

GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-1024; filed 5-22-08]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 20. MANUFACTURERS, PACKAGERS, AND WHOLESALERS

[OAR Docket #08-1025]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 7. Wholesalers and Pedigree Rules
535:20-7-1. Purpose [AMENDED]
535:20-7-2. Definitions [AMENDED]
535:20-7-3. Wholesale drug distributor licensing requirement [AMENDED]
535:20-7-4. Minimum required information for licensure [AMENDED]
535:20-7-5. Minimum qualifications [AMENDED]
535:20-7-6. Personnel [AMENDED]
535:20-7-7. Minimum requirements for the storage, ~~and~~ handling, transport, and shipment of ~~prescription~~ drugs and/or devices and ~~for the~~ establishment and maintenance of ~~prescription~~ drug ~~distribution~~ records [AMENDED]
535:20-7-7.1. Facility requirements [AMENDED]
535:20-7-7.2. Multiple licensing [AMENDED]
535:20-7-7.3. Security and anti-counterfeiting [AMENDED]
535:20-7-7.4. Storage [AMENDED]
535:20-7-7.5. Examination of materials [AMENDED]
535:20-7-7.6. Drug returns, and returned, ~~Returned,~~ damaged, and outdated ~~prescription~~ drugs [AMENDED]
535:20-7-7.7. Recordkeeping [AMENDED]
535:20-7-7.8. Written policies and procedures [AMENDED]
535:20-7-7.9. Responsible persons [REVOKED]
535:20-7-7.10. Compliance with federal, state and local laws [AMENDED]
535:20-7-7.11. Salvaging and reprocessing [REVOKED]
535:20-7-9.1. Prohibited Conduct [NEW]

GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-1025; filed 5-22-08]

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

[OAR Docket #08-1026]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 9. Violations of the Rules of Registrant Conduct
535:25-9-7. Theft [AMENDED]
GUBERNATORIAL APPROVAL:
May 8, 2008

[OAR Docket #08-1026; filed 5-22-08]

TITLE 630. SCENIC RIVERS COMMISSION
CHAPTER 1. ~~RULES~~ OSRC OPERATIONS

[OAR Docket #08-990]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 1. ~~Rules~~ OSRC Operations [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-990; filed 5-21-08]

TITLE 630. SCENIC RIVERS COMMISSION
CHAPTER 2. OKLAHOMA SCENIC RIVERS COMMISSION [REVOKED]

[OAR Docket #08-991]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 2. Oklahoma Scenic Rivers Commission [REVOKED]
GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-991; filed 5-21-08]

TITLE 630. SCENIC RIVERS COMMISSION
CHAPTER 4. HEARING PROCEDURES, PRACTICES, AND APPEALS

[OAR Docket #08-992]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 4. Hearing Procedures, Practices, and Appeals [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-992; filed 5-21-08]

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

[OAR Docket #08-993]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 10. Licensing and Use Permits [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-993; filed 5-21-08]

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

[OAR Docket #08-994]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 15. Protection of Natural Resources [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-994; filed 5-21-08]

TITLE 630. SCENIC RIVERS COMMISSION
CHAPTER 20. VIOLATIONS [REVOKED]

[OAR Docket #08-995]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 20. Violations [REVOKED]
GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-995; filed 5-21-08]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #08-894]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Public Policy
Part 11. Public Records
710:1-3-70 [AMENDED]
Subchapter 5. Practice and Procedure
Part 5. Administrative Proceedings Related to Tax Protests
710:1-5-27 [AMENDED]
710:1-5-40 [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-894; filed 5-15-08]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 10. AD VALOREM

[OAR Docket #08-895]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 2. Business Personal Property Valuation Schedules
710:10-2-5 [AMENDED]
Subchapter 7. Manufacturing Facilities
710:10-7-2.2 [AMENDED]
710:10-7-5 [AMENDED]
Subchapter 14. Full Fair Cash Value Exemption for Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate
710:10-14-5 [AMENDED]
Subchapter 15. Freeport Exemption [NEW]
710:10-15-1 [NEW]
710:10-15-2 [NEW]
710:10-15-3 [NEW]
710:10-15-4 [NEW]
GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-895; filed 5-15-08]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 20. ALCOHOL, MIXED BEVERAGES, AND LOW-POINT BEER

[OAR Docket #08-896]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
710:20-1-3 [AMENDED]
Subchapter 2. Low-Point Beer
Part 1. General Provisions
710:20-2-20 [AMENDED]
Part 3. Low-Point Beer Distribution
710:20-2-52 [AMENDED]
710:20-2-53 [AMENDED]
710:20-2-55 [AMENDED]
710:20-2-56 [AMENDED]
Subchapter 5. Mixed Beverages
710:20-5-4 [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-896; filed 5-15-08]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 22. BOATS AND MOTORS

[OAR Docket #08-897]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 7. Titles
710:22-7-5 [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-897; filed 5-15-08]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 23. CHARITY GAMES TAX

[OAR Docket #08-898]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
710:23-1-4 [AMENDED]
710:23-1-8 [AMENDED]

GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-898; filed 5-15-08]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 35. ESTATES

[OAR Docket #08-899]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Returns; Remittance; Releases
Part 1. Filing and Payment
710:35-3-9 [NEW]
Part 3. Releases
710:35-3-20 [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-899; filed 5-15-08]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 40. FRANCHISE TAX

[OAR Docket #08-900]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
710:40-1-17 [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-900; filed 5-15-08]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 45. GROSS PRODUCTION

[OAR Docket #08-901]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Payment; Remittance; Refunds
710:45-3-5 [AMENDED]
Subchapter 5. Required Returns and Reports
710:45-5-2 [AMENDED]
Subchapter 9. Exemptions and Exclusions
Part 5. Horizontally Drilled Production Wells
710:45-9-28 [AMENDED]
Part 7. Incremental Production from Enhanced Recovery Projects or Properties
710:45-9-32 [AMENDED]
Part 9. Production Enhancement Projects
710:45-9-43 [AMENDED]
Part 11. Reestablishment Of Production From an Inactive Well
710:45-9-53 [AMENDED]
Part 13. Deep Wells
710:45-9-62.1 [AMENDED]
Part 15. New Discovery Wells
710:45-9-73 [AMENDED]
Part 17. Economically At-Risk Leases
710:45-9-81 [AMENDED]
710:45-9-82 [AMENDED]
Part 19. Production Using Three Dimensional Seismic Shoots
710:45-9-93 [AMENDED]
Part 21. Marketing Costs Deduction [NEW]
710:45-9-100 [NEW]
710:45-9-101 [NEW]
710:45-9-102 [NEW]
710:45-9-103 [NEW]
710:45-9-104 [NEW]
710:45-9-105 [NEW]
Appendix A. Marketing Costs [NEW]
GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-901; filed 5-15-08]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 50. INCOME

[OAR Docket #08-902]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Returns and Reports
Part 1. General Information
710:50-3-3 [AMENDED]
Subchapter 7. Remittances
710:50-7-2 [AMENDED]
Subchapter 15. Oklahoma Taxable Income
Part 5. Other Adjustments to Income
710:50-15-66 [AMENDED]
710:50-15-67 [NEW]
Part 7. Credits against Tax
710:50-15-71 [AMENDED]
710:50-15-86.1 [AMENDED]
710:50-15-87.1 [AMENDED]
710:50-15-96 [AMENDED]
710:50-15-98 [AMENDED]

710:50-15-106 [AMENDED]
710:50-15-107 [AMENDED]

GUBERNATORIAL APPROVAL:

May 5, 2008

[OAR Docket #08-902; filed 5-15-08]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 60. MOTOR VEHICLES

[OAR Docket #08-903]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 3. Registration and Licensing
Part 1. General Provisions
710:60-3-10 [AMENDED]
710:60-3-24 [NEW]
Part 5. Dealers
710:60-3-55 [AMENDED]
710:60-3-56 [AMENDED]
Part 11. Other Vehicles
710:60-3-111 [AMENDED]
Part 13. Manufactured Homes
710:60-3-134 [NEW]
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 15. Special License Plates
710:60-3-150 [AMENDED]
710:60-3-160 [AMENDED]
710:60-3-168 [AMENDED]
710:60-3-171 [AMENDED]
Subchapter 5. Motor Vehicle Titles
Part 13. Foreign Vehicles
710:60-5-130 [AMENDED]
Subchapter 7. Motor Vehicle Excise Tax
710:60-7-1 [AMENDED]
Subchapter 9. Motor Vehicle License Agents/Agencies
Part 1. General Requirements, Duties and Responsibilities of Motor License Agents
710:60-9-11 [AMENDED]
Part 9. Specific Fiscal Duties
710:60-9-90 [AMENDED]
710:60-9-92 [AMENDED]
710:60-9-95 [AMENDED]
710:60-9-97 [AMENDED]

GUBERNATORIAL APPROVAL:

May 5, 2008

[OAR Docket #08-903; filed 5-15-08]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 65. SALES AND USE TAX

[OAR Docket #08-904]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 1. General Provisions
710:65-1-2 [AMENDED]
710:65-1-5 [AMENDED]
710:65-1-7 [AMENDED]
710:65-1-9 [AMENDED]
Subchapter 3. Reports and Returns; Payments and Penalties; Records
Part 3. Records and Recordkeeping
710:65-3-30 [AMENDED]
Subchapter 7. Duties and Liabilities
710:65-7-6 [AMENDED]
710:65-7-8.1 [NEW]
710:65-7-9 [AMENDED]
710:65-7-11 [AMENDED]
710:65-7-13 [AMENDED]
710:65-7-15 [AMENDED]
710:65-7-17 [AMENDED]
710:65-7-19 [NEW]
Subchapter 9. Permits
710:65-9-1 [AMENDED]
710:65-9-6 [AMENDED]
710:65-9-8 [AMENDED]
710:65-9-10 [AMENDED]
Subchapter 13. Sales and Use Tax Exemptions
Part 1. Advertising in Media
710:65-13-1 [AMENDED]
Part 3. Agricultural Transactions
710:65-13-17 [AMENDED]
Part 5. Items Subject to Other Taxes
710:65-13-30 [AMENDED]
710:65-13-31 [REVOKED]
Part 7. Churches, and Charitable, Civic, and Social Organizations and Activities
710:65-13-33 [AMENDED]
Part 9. Computers; Data Processing; Telecommunications
710:65-13-51 [AMENDED]
710:65-13-52 [AMENDED]
710:65-13-54 [AMENDED]
Part 10. Coal
710:65-13-55 [AMENDED]
Part 11. Containers
710:65-13-60 [AMENDED]
Part 12. Aircraft
710:65-13-63 [AMENDED]
Part 16. Electronic Goods - Refitting, Refurbishing or Repairing [NEW]
710:65-13-85 [NEW]

Part 17. Export
710:65-13-90 [AMENDED]
Part 19. County, District and State Fairs
710:65-13-100 [AMENDED]
Part 21. Food Stamps
710:65-13-110 [AMENDED]
Part 23. Gas and Electricity
710:65-13-123 [AMENDED]
Part 25. Governmental Entities
710:65-13-132 [AMENDED]
Part 29. Manufacturing
710:65-13-150.1 [AMENDED]
710:65-13-153 [AMENDED]
710:65-13-155 [AMENDED]
710:65-13-156 [AMENDED]
Part 31. Medicine, Medical Appliances, and Health Care Entities and Activities
710:65-13-169 [AMENDED]
710:65-13-170 [AMENDED]
710:65-13-171 [AMENDED]
710:65-13-172 [AMENDED]
710:65-13-173 [AMENDED]
710:65-13-175 [AMENDED]
Part 33. Motor Fuels
710:65-13-180 [AMENDED]
Part 35. Newspapers; Periodicals; Programs; Media
710:65-13-192 [AMENDED]
710:65-13-194 [AMENDED]
Part 39. Schools and Higher Education
710:65-13-210 [AMENDED]
710:65-13-211 [RESERVED]
710:65-13-212 [RESERVED]
710:65-13-213 [RESERVED]
710:65-13-214 [RESERVED]
710:65-13-215 [RESERVED]
710:65-13-216 [RESERVED]
710:65-13-217 [RESERVED]
710:65-13-218 [RESERVED]
710:65-13-219 [RESERVED]
710:65-13-220 [NEW]
Part 43. Social, Charitable, and Civic Organizations and Activities
710:65-13-330 [AMENDED]
710:65-13-331 [AMENDED]
710:65-13-332 [AMENDED]
710:65-13-333 [AMENDED]
710:65-13-335 [AMENDED]
710:65-13-337 [AMENDED]
710:65-13-338 [AMENDED]
710:65-13-339 [AMENDED]
710:65-13-340 [AMENDED]
710:65-13-354 [NEW]
710:65-13-355 [NEW]
710:65-13-356 [NEW]
Part 51. Sales Tax Holiday [NEW]
710:65-13-510 [RESERVED]
710:65-13-511 [NEW]
710:65-13-512 [NEW]
Subchapter 18. Sourcing Pursuant to the Streamlined Sales and Use Tax Administration Act
710:65-18-3 [AMENDED]
710:65-18-5 [AMENDED]
Subchapter 19. Specific Applications and Examples
PART 1. "A"
710:65-19-6 [AMENDED]
PART 5. "C"
710:65-19-45 [AMENDED]
710:65-19-51 [AMENDED]
710:65-19-55 [AMENDED]
710:65-19-56 [AMENDED]
PART 9. "E"
710:65-19-89 [AMENDED]
PART 31. "P"
710:65-19-260 [AMENDED]
710:65-19-268 [AMENDED]
PART 39. "T"
710:65-19-330 [AMENDED]
PART 41. "U"
710:65-19-341 [AMENDED]

GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-904; filed 5-15-08]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 90. WITHHOLDING

[OAR Docket #08-905]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 3. Returns and Payments
710:90-3-11 [AMENDED]

GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-905; filed 5-15-08]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 95. MISCELLANEOUS AREAS OF REGULATORY AND ADMINISTRATIVE AUTHORITY

[OAR Docket #08-906]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 5. Waste Tire Recycling
710:95-5-3 [AMENDED]
710:95-5-11 [AMENDED]
710:95-5-13 [REVOKED]
710:95-5-14 [REVOKED]
710:95-5-15 [REVOKED]
710:95-5-16 [REVOKED]
710:95-5-17 [REVOKED]
710:95-5-18 [REVOKED]
710:95-5-19 [NEW]
710:95-5-20 [REVOKED]
710:95-5-21 [REVOKED]
710:95-5-22 [REVOKED]
GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-906; filed 5-15-08]

TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #08-889]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
725:1-1-4. General provisions for meetings of the Oklahoma Tourism and Recreation Commission [AMENDED]
GUBERNATORIAL APPROVAL:
May 5, 2008

[OAR Docket #08-889; filed 5-13-08]

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

[OAR Docket #08-1055]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 13. Printing and Publications
780:1-13-1 [AMENDED]
GUBERNATORIAL APPROVAL:
May 9, 2008

[OAR Docket #08-1055; filed 5-23-08]

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

[OAR Docket #08-1056]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. State Technical Assistance, Supervision, and Services
780:10-3-2 [AMENDED]
780:10-3-3 [AMENDED]
780:10-3-11 [REVOKED]
780:10-3-12 [AMENDED]
Subchapter 9. Service Contracts and Equipment Guidelines
780:10-9-1 [AMENDED]
GUBERNATORIAL APPROVAL:
May 9, 2008

[OAR Docket #08-1056; filed 5-23-08]

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

[OAR Docket #08-1057]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Technology Centers Education
780:15-3-1 [AMENDED]
780:15-3-2 [AMENDED]
780:15-3-4 [AMENDED]
780:15-3-6 [AMENDED]
780:15-3-7 [AMENDED]
780:15-3-8 [AMENDED]
GUBERNATORIAL APPROVAL:
May 9, 2008

[OAR Docket #08-1057; filed 5-23-08]

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

[OAR Docket #08-1058]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
780:20-1-2 [NEW]

Subchapter 3. Secondary, Full-Time and Short-Term Adult *Career*Tech Programs
780:20-3-1 [AMENDED]
780:20-3-2 [AMENDED]
GUBERNATORIAL APPROVAL:
May 9, 2008

[OAR Docket #08-1058; filed 5-23-08]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 10. SPORT FISHING RULES

[OAR Docket #08-913]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
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 3. Methods of Taking
800:10-3-3. Additional definitions [AMENDED]
GUBERNATORIAL APPROVAL:
April 17, 2008

[OAR Docket #08-913; filed 5-15-08]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 15. COMMERCIAL HARVEST RULES; AQUATIC SPECIES

[OAR Docket #08-912]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 11. Commercial Aquatic Production
800:15-11-2. List of restricted aquatic species [AMENDED]
GUBERNATORIAL APPROVAL:
April 17, 2008

[OAR Docket #08-912; filed 5-15-08]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 20. RESTRICTION ON AQUATIC SPECIES INTRODUCTION

[OAR Docket #08-911]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Restricted Exotic Fish
800:20-1-2. List of restricted exotic species [AMENDED]
Subchapter 3. Noxious Aquatic Plants
800:20-3-2. List of declared noxious aquatic plant species [AMENDED]
GUBERNATORIAL APPROVAL:
April 17, 2008

[OAR Docket #08-911; filed 5-15-08]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 25. WILDLIFE RULES

[OAR Docket #08-914]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 7. General Hunting Seasons
Part 13. Deer
800:25-7-51. Deer - archery [AMENDED]
800:25-7-52. Deer-primitive firearms (muzzleloading) [AMENDED]
Part 19. Seasons on Areas Owned or Managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service
800:25-7-86. Broken Bow WMA [AMENDED]
800:25-7-108.1. Honobia Creek WMA [AMENDED]
800:25-7-116. Keystone WMA [AMENDED]
800:25-7-117. Lexington WMA [AMENDED]
800:25-7-132. Ouachita WMA - LeFlore Unit [AMENDED]
800:25-7-133.1. Ouachita WMA - McCurtain Unit [AMENDED]
800:25-7-143. Skiatook WMA [AMENDED]
800:25-7-149.1. Three Rivers WMA [AMENDED]
Subchapter 9. Controlled Hunts
Part 1. Guidelines
800:25-9-3. Applications and instructions [AMENDED]
800:25-9-4. Categories [AMENDED]
Subchapter 17. Black-Footed Ferrets and Prairie Dogs
800:25-17-4. Poisons [AMENDED]
800:25-17-5. State school lands [REVOKED]
Subchapter 37. Nuisance Wildlife Control Programs
Part 1. Nuisance Wildlife Control Operators Program
800:25-37-1. Purpose [AMENDED]
800:25-37-2. Permit requirements [AMENDED]
800:25-37-4. Reporting procedures [AMENDED]
800:25-37-5. Procedures and guidelines [AMENDED]
Part 3. Wildlife and Feral Hog Nuisance and Depredation Rules [NEW]
800:25-37-11. Purpose [NEW]
800:25-37-12. General Provisions [NEW]

800:25-37-13. Exemptions [NEW]
800:25-37-14. Specific Provisions [NEW]
800:25-37-15. Penalties [NEW]

GUBERNATORIAL APPROVAL:
April 17, 2008

[OAR Docket #08-914; filed 5-15-08]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 30. DEPARTMENT OF WILDLIFE LANDS MANAGEMENT

[OAR Docket #08-915]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 3, Mineral Exploration and Production
800:30-3-2. General provisions [AMENDED]
800:30-3-3. Site development [AMENDED]
800:30-3-4. Site preparation [AMENDED]
800:30-3-5. Regulations for producing wells [AMENDED]
800:30-3-6. Regulations for non-producing wells [AMENDED]
800:30-3-7. Damage and use charges [AMENDED]

GUBERNATORIAL APPROVAL:
April 17, 2008

[OAR Docket #08-915; filed 5-15-08]

Legislative Disapprovals

Upon disapproval by the Legislature of an agency's rules, the agency must publish a notice of such legislative disapproval in the *Register.*

For additional information on legislative disapprovals, see 75 O.S., Section 308.

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 13. TEMPORARY LICENSE PLATES

[OAR Docket #08-952]

RULEMAKING ACTION:

Legislative disapproval of PERMANENT rules

RULES:

Subchapter 3. DESIGN [NEW]

Portions of 765:13-3-3(c)[1] [NEW]

Portions of 765:13-3-3(d)[2] [NEW]

LEGISLATIVE DISAPPROVAL:

Certain language in this rule [1] [2] was disapproved by the Legislature in House Joint Resolution 1107 effective May 15, 2008.

[1] The following language in subsection (c) was disapproved by the Legislature: "centered in an area below the date rectangles", "centered in an area above the date rectangles", and "and 'Purchaser's Name',".

[2] The following language in subsection (d) was disapproved by the Legislature: "the selling dealer's license number and", "both of which shall be preprinted on the same line in black ink,", and "with the license number and sequential number separated by a hyphen, creating a unique sequential number for each temporary license plate. This unique sequential number to be located in an area between 3.5 inches and 4.75 inches below the top of the 6 inch wide temporary license plate and proportionally located on the motorcycle temporary license plate."

[OAR Docket #08-952; filed 5-16-08]

Emergency Adoptions

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

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

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

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

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF

[OAR Docket #08-1054]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 9. Professional Standards: Teacher Education and Certification
Part 9. Teacher Certification
210:20-9-102. Career development program for paraprofessionals [AMENDED]
AUTHORITY:
70 O. S. § 3-104, State Board of Education
DATES:
Adoption:
March 27, 2008
Approved by Governor:
May 5, 2008
Effective:
Immediately upon Governor's approval
Expiration:
Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
FINDING OF EMERGENCY:
The proposed rule amendments will allow public schools time to implement the career development program for the 2008-2009 school year.
ANALYSIS:
In accordance with statutory requirements of 70 O. S. § 159.1, the proposed rules would outline a career development program for paraprofessionals employed in public schools and to achieve teacher certification.
CONTACT PERSON:
Connie Holland, 405-521-3308

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

SUBCHAPTER 9. PROFESSIONAL STANDARDS: TEACHER EDUCATION AND CERTIFICATION

PART 9. TEACHER CERTIFICATION

210:20-9-102. Career development program for paraprofessionals

(a) The State Department of Education shall issue a paraprofessional credential to an applicant who meets the following requirements:

(1) has a high school diploma or a General Educational Development (GED) Diploma,

(2) has met a career development paraprofessional program approved by the State Board of Education, and

(3) has on file with the Board a current Oklahoma criminal history record from the Oklahoma State Bureau of Investigation as well as a national fingerprint-based criminal history record provided by the Federal Bureau of Investigation. Upon receipt of the Oklahoma criminal history record, the Board may issue a temporary credential which shall be effective until receipt of the national fingerprint-based criminal history record. The person applying for a credential shall be responsible for the cost of the criminal history records.

(b) The State Department of Education shall issue a one-year teaching certificate to a paraprofessional who meets the following requirements:

(1) Has been employed for one (1) year with a public school as a paraprofessional.

(2) Has a bachelor's degree from an accredited college.

(3) Has passed the Oklahoma General Education Test and an Oklahoma Subject Area Test.

(4) Has on file with the Board a current Oklahoma criminal history record from the Oklahoma State Bureau of Investigation as well as a national fingerprint-based criminal history record provided by the Federal Bureau of Investigation. Upon receipt of the Oklahoma criminal history record, the Board may issue a temporary credential which shall be effective until receipt of the national fingerprint-based criminal history record. The person applying for a credential shall be responsible for the cost of the criminal history records.

(5) Has made application to the Oklahoma State Department of Education.

(6) The individual shall be reported on the certified personnel report and be considered as any other certified employee.

(7) A mentor teacher shall be required for the first year of teaching.

(8) The State Department of Education shall issue a standard teaching certificate upon completion of three (3) semester hours of college credit in reading, approved by the State Department of Education. Coursework must be recorded on a transcript by an accredited institution of higher education.

[OAR Docket #08-1054; filed 5-23-08]

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

[OAR Docket #08-960]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 10. Policies and Procedures Manual for Title III of the Older Americans Act of 1965, as Amended
Part 1. Introduction
340:105-10-3 [AMENDED]
Part 3. State Agency
340:105-10-12 through 105-10-13 [AMENDED]
Part 5. Area Agencies on Aging
340:105-10-32 [AMENDED]
340:105-10-36 through 105-10-38 [AMENDED]
340:105-10-40 [AMENDED]
Part 7. Program Standards for Services Funded Under Title III
340:105-10-50.1 [AMENDED]
340:105-10-54 [AMENDED]
340:105-10-71 [AMENDED]
340:105-10-75 [AMENDED]
340:105-10-90.1 [AMENDED]
Part 9. Fiscal and Administrative Policies for Area Agencies on Aging and Title III Projects
340:105-10-96 [AMENDED]
340:105-10-101 [AMENDED]
(Reference APA WF 08-06)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; Older Americans Act, as amended in 2006, Oklahoma State Council on Aging By-laws, and 21 O.S. § 1247.
DATES:
Adoption:
March 25, 2008
Effective:
June 1, 2008
Approved by Governor:
May 8, 2008
Expiration:
Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
FINDING OF EMERGENCY:
Emergency rulemaking approval is requested as the proposed rules will allow for older persons to receive needed services, allow for improved representation of older persons on the State Council on Aging, and allow for smoke free Title III senior centers. Implementation of the proposed rules will bring the rules into compliance with federal law, which will have a positive impact on the health, safety, and well-being of the affected persons by expanding program eligibility.
ANALYSIS:
The proposed revisions to Subchapter 10 of Chapter 105 amend the rules to: (1) comply with the Older Americans Act, as amended in 2006 (Public Law 109-365), including definitions of terms, eligibility for the National Family Caregiver Support Program (NFCSP), clarification of services available, and clarification of the target population to be served; (2) include recent amendments to the State Council on Aging By-laws increasing the number of members from 29 to 31 and add to the list of entities eligible for membership; and (3) comply with Section 1247 of Title 21 of the Oklahoma Statutes (21 O.S. § 1247) requiring public facilities be smoke free.

340:105-10-3 is amended to comply with 2006 Reauthorized Older Americans Act (OAA) revisions that update and clarify definitions used by OAA Title III programs.

340:105-10-12 is amended to reflect recent amendments to the State Council on Aging By-laws that increase the number of Council members from 29 to 31, clarify titles of entities that submit nominees for membership to the Council, add the Oklahoma Health Care Authority to that list, and increase the number of at-large members nominated and appointed to the Council from eight to nine.

340:105-10-13 is amended to reflect updated language of OAA 2006 revisions adding to list receiving preference those individuals at risk for institutional placement and older individuals with limited English proficiency.

340:105-10-32 is amended to add family caregivers of participants or eligible participants to the required composition of area agency on aging advisory councils.

340:105-10-36 is amended to reflect for-profit applications to provide an OAA Title III service must be approved by the State Agency.

340:105-10-37 is amended to include the requirement to coordinate with the State Agency and the Oklahoma Department of Mental Health and Substance Abuse Services to increase public awareness of mental health disorders, remove barriers to diagnosis and treatment and to coordinate mental health services and to coordinate with trained volunteers as stipulated in the OAA, revised in 2006.

340:105-10-38 is amended to update targeting language to comply with 2006 Reauthorized OAA revisions.

340:105-10-40 is amended to clarify the request for proposal (RFP) process by deleting the requirement for State Agency approval for RFP packages with the exception that for-profit applications must be reviewed and approved by the State Agency.

340:105-10-50.1 is amended to update the taxonomy to comply with 2006 Reauthorized OAA revisions deleting daily recommended dietary allowances (RDA) and expanding the definition of caregiver counseling services to include the areas of health, nutrition, and financial literacy.

340:105-10-54 is amended to update language to comply with 2006 Reauthorized OAA revisions to supportive services including mental health screening and provision of assistive devices.

340:105-10-71 is amended to comply with 21 O.S. § 1247, as amended that mandates all public facilities be smoke free and that such designation be posted.

340:105-10-75 is amended to update language to comply with 2006 Reauthorized OAA revisions and to allow Form 02AG018E, Project Menu Plan - Nutrition Program for the Elderly, to be submitted quarterly to the area agency on aging instead of the State Agency Registered Dietitian (RD).

340:105-10-90.1 is amended to comply with 2006 Reauthorized OAA revisions that update and clarify eligibility requirements for the National Family Caregiver Support Program (NFCSP) by revising the definition of a grandparent or older person who is a relative caregiver to include adoption and decreasing the eligible age of a grandparent or relative caregiver from 60 to 55 years. The amendment also clarifies NFCSP services available and adds caregivers who are older persons providing care to a person with severe disabilities including children with severe disabilities to the target population to be served.

340:105-10-96 is amended to include health services (including mental health services) to the list of priority supportive access services to comply with 2006 Reauthorized OAA revisions.

340:105-10-101 is amended to clarify the request for proposal (RFP) process by deleting the requirement for State Agency approval for RFP guide and grant application package with the exception that for-profit applications must be reviewed and approved by the State Agency.
CONTACT PERSON:
Dena Thayer at (405)521-4326

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

253(D), WITH A LATER EFFECTIVE DATE OF JUNE 1, 2008:

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

PART 1. INTRODUCTION

340:105-10-3. Definitions

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

"Abuse" means the willful:

(A) infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm or pain or mental anguish; or

(B) deprivation by a person, including a caregiver, of goods or services necessary to avoid physical harm, mental anguish, or mental illness.

"Act" means the Older Americans Act (OAA) of 1965 as amended.

"Activities of daily living (ADL)" means:

(A) eating;

(B) dressing;

(C) bathing;

(D) toileting;

(E) transferring in and out of bed or chair; and

(F) walking.

"Aging and Disability Resource Center" means an entity established by the State as part of the state system of coordinated long-term care to provide:

(A) comprehensive information on the full range of available public and private long-term care programs, options, service providers, and resources within a community, including information on the availability of integrated long-term care;

(B) personal counseling to assist a person assess existing or anticipated long-term care needs; and

(C) access to publicly-supported long-term care programs for which a person may be eligible, by serving as a convenient point of entry for such programs.

"Area Agency on Aging (AAA)" means an agency designated under the OAA, Section 305(a)(2)(A) or the State Agency performing the functions of an AAA under the OAA, Section 305(b)(5).

"Assistive device" means an assistive technology device that has the same meaning given in Section 3 of the Assistive Technology Act of 1998 [29 U.S.C. 3002].

"At risk for institutional placement" means that an older person is unable to perform at least two activities of daily living without substantial assistance such as verbal reminding, physical cuing, or supervision and is determined by the State to be in need of placement in a long-term care facility.

"CFR" means Code of Federal Regulations in the Federal Register published by the United States (U.S.) Department of Health and Human Services, Office of Human Development, and Administration on Aging (AoA).

"Caregiver" means an adult family member, or another person, who is an informal provider of in-home and community care to a person 60 years of age or older.

"Case management service" means a service provided to an older person, at the direction of the older person or a family member of the older person:

(A) by a person who is trained or experienced in the case management skills required to deliver the services and coordination described in (B) of this paragraph;

(B) to assess the needs, and arrange, coordinate, and monitor an optimum package of services to meet the needs of the older person; and

(C) including services and coordination, such as:

(i) comprehensive assessment of the older person's physical, psychological, and social needs;

(ii) development and implementation of a service plan with the older person to mobilize the formal and informal resources and services identified in the assessment to meet the needs of the older person, including coordination of the resources and services with:

(I) ~~any~~ other plans existing for various formal services, such as hospital discharge plans; and

(II) the information and assistance services funded by Title III of OAA;

(iii) monitoring formal and informal service delivery to ensure services specified in the plan are provided;

(iv) periodic reassessment and revision of the status of the older person with:

(I) the older person; or

(II) if necessary, a primary caregiver or family member of the older person; and

(v) advocacy on behalf of the older person for needed services or resources in accordance with the wishes of the older person.

"Child" means a person who is not older than 18 years of age.

"Civic engagement" means a person or a collective action designed to address a public concern or an unmet human, educational, health care, environmental, or public safety need.

"Comprehensive and coordinated system" means a system for providing all necessary supportive services, including nutrition services, in a manner designed to:

(A) facilitate accessibility to and utilization of all supportive services and nutrition services provided within the geographic area served by such system by any public or private agency or organization;

(B) develop and make the most efficient use of supportive services and nutrition services in meeting the needs of older persons;

(C) use available resources efficiently and with a minimum of duplication; and

(D) encourage and assist public and private entities having unrealized potential for meeting the service needs of older persons to assist the older persons on a voluntary basis.

"Construction," with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees or making modifications to or in connection with an existing facility in excess of double the square footage of the original facility and all physical improvements.

"Department" means U.S. Department of Health and Human Services (DHHS).

"Direct services" means any activity performed to provide services directly to an older person by the staff of a service provider, AAA, or State Agency in a single planning and service area.

"Disability" means a mental or physical impairment, or a combination of mental and physical impairments, resulting in substantial functional limitations in one or more areas of the major life activities of:

(A) self-care;

(B) receptive and expressive language;

(C) learning;

(D) mobility;

(E) self-direction;

(F) capacity for independent living;

(G) economic self-sufficiency;

(H) cognitive functioning; and

(I) emotional adjustment.

"Disease prevention and health promotion services" means providing:

(A) health risk assessments;

(B) routine health screening, such as hypertension, glaucoma, cholesterol, cancer, vision, hearing, diabetes, bone density, oral health, and nutrition screening;

(C) nutritional counseling and educational services for older persons and their primary caregivers;

(D) evidence-based health promotion programs, including programs ~~relating~~ related to prevention and ~~reduction~~ mitigation of effects of chronic ~~disabling conditions~~ disease, such as:

(i) osteoporosis~~,~~;

(ii) hypertension;

(iii) obesity;

(iv) diabetes;

(v) cardiovascular disease~~,~~;

(vi) oral or dental ~~care,~~ disease;

(vii) alcohol and substance abuse reduction~~,~~;

(viii) smoking cessation~~,~~;

(ix) weight loss and control~~, and~~;

(x) stress management;

(xi) falls prevention;

(xii) physical activity; and

(xiii) improved nutrition;

(E) programs regarding physical fitness, group exercise, and music, art, and dance movement therapy, including programs for multigenerational participation provided by:

(i) an institution of higher education;

(ii) a local educational agency, as defined in Section 1471 of the Elementary and Secondary Education Act of 1965; or

(iii) a community-based organization;

(F) home injury control services, including screening of high risk home environments and provision of educational programs on injury prevention, such as fall and fracture prevention;

(G) screening for the prevention of depression, coordination of community mental health services, provision of educational activities, and referral to psychiatric and psychological services;

(H) educational programs on the availability, benefits, and appropriate use of preventive health services covered under Title XVIII of the Social Security Act;

(I) medication management screening and education to prevent incorrect medication and adverse drug reactions;

(J) information concerning diagnosis, prevention, treatment, and rehabilitation concerning age related diseases and chronic disabling conditions, including:

(i) osteoporosis~~,~~;

(ii) cardiovascular diseases~~,~~;

(iii) diabetes~~,~~; and

(iv) Alzheimer's disease and related disorders with neurological and organic brain dysfunction;

(K) gerontological counseling; and

(L) counseling regarding social services and follow-up health services based on any of the services described in (A) through (K) of this subsection.

"Elder abuse" means abuse of an older person.

"Eldercare (National Campaign)" means the AoA sponsored program to establish and promote public and private partnerships addressing the needs of the growing population of older persons and their caregivers.

"Elder justice" means efforts to:

(A) prevent, detect, treat, intervene in, and respond to elder abuse, neglect, and exploitation;

(B) protect older persons with diminished capacity while maximizing their autonomy; and

(C) recognize a person's rights, including the right to be free of abuse, neglect, and exploitation.

"Ethnicity status." See "Race or ethnicity status."

"Exploitation" means the fraudulent or otherwise illegal, unauthorized, or improper act or process of a person, including a caregiver or fiduciary, that uses the resources of an older person for monetary or personal benefit, profit, or gain, or that results in depriving an older person of rightful access to, or use of, benefits, resources, belongings, or assets. Within this definition, a caregiver is a person who has the responsibility for the care of an older person, either voluntarily, by contract, by receipt of payment for care, or as a result of the operation of

law and is a family member or other person providing, on behalf of the person or of a public or private agency, organization, or institution, compensated or uncompensated care to an older person.

"Fiduciary" means a person or entity with the legal responsibility to make decisions on behalf of and for the benefit of another person and to act in good faith and with fairness and includes a trustee, a guardian, a conservator, an executor, an agent under a financial power of attorney or health care power of attorney, or a representative payee.

"Focal point" means a facility established to encourage the maximum collocation and coordination of services for older persons.

"Frail" means a condition of functionally impaired determined because the older person:

(A) is unable to perform at least two activities of daily living without substantial human assistance, including verbal reminding, physical cueing, or supervision; or

(B) due to a cognitive or other mental impairment, requires substantial supervision because the person behaves in a manner posing a serious health or safety hazard to self or another person.

"Grandparent or older person who is a relative caregiver" means a grandparent~~,~~ or a stepgrandparent~~, or relative~~ of a child or a relative of a child by blood, ~~or~~ marriage, or adoption who is ~~60~~ 55 years of age or older and:

(A) lives with the child;

(B) is the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregiver of the child; and

(C) has a legal relationship to the child, such as legal custody or guardianship, or is raising the child informally.

"Grantee agency" means an agency that receives funds granted or awarded by the sponsoring agency. The AAAs are grantees of the State Agency and the service providers are grantees of the AAAs.

"Grantor agency" means an agency that grants or awards funds to another entity. The State Agency is the grantor agency for the AAAs and the AAAs are the grantor agencies for the service providers.

"Greatest economic need" means the need resulting from an income level at or below the poverty line.

"Greatest social need" means the need caused by non-economic factors, including physical and mental disabilities; language barriers; and cultural, geographical, or social isolation, including that caused by racial or ethnic status that restricts the person's ability to perform normal daily tasks or threatens the person's capacity to live independently.

"Hispanic-serving institution" means the same as in Section 502 of the Higher Education Act of 1965 [20 U.S.C. 1101a].

"Impairment in activities of daily living" means the inability to perform one or more of the six ADL without personal assistance, stand-by assistance, supervision, or cues.

"Impairment in instrumental activities of daily living" means the inability to perform one or more of the eight instrumental activities of daily living (IADL) without personal assistance, stand-by assistance, supervision, or cues.

"Informal care" means care not provided as part of a public or private formal service program.

"Information and assistance (I & A)" means a service for older persons that:

(A) provides older persons current information on services available within their communities including information relating to assistive technology;

(B) links older persons with the opportunities and services available within their communities; ~~and~~

(C) establishes adequate follow-up procedures to the maximum extent practicable; and

(D) serves the entire community of older persons, particularly those with greatest social and economic need and those at risk for institutional placement.

"In-home service" means:

(A) services of homemakers and home health aides;

(B) visiting and telephone reassurance;

(C) chore maintenance;

(D) in-home respite care for families, including adult day care as a respite service for families;

(E) minor modification of homes necessary to facilitate the ability of older persons to remain at home, and not available under other programs. Not more than $250 per client may be expended annually for such modification; and

(F) personal care services.

"Instrumental activities of daily living (IADL)" means:

(A) preparing meals;

(B) shopping for personal items;

(C) managing medication;

(D) managing money;

(E) using the telephone;

(F) doing heavy housework;

(G) doing light housework; and

(H) making use of available transportation without assistance.

"Integrated long-term care" means items and services that consist of:

(A) with respect to long-term care:

(i) items or services provided under a State plan for medical assistance under the SoonerCare program established under Title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], including nursing facility services, home and community-based services, personal care services, and case management services provided under the plan; and

(ii) any other supports, items, or services that are available under any federally funded long-term care program;

(B) with respect to other health care, items and services covered under:

(i) the Medicare program established under Title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.];

(ii) the State plan for medical assistance under the SoonerCare program; or

(iii) any other federally funded health care program; and

(C) includes such items or services that are provided under a public or private managed care plan or through any other service provider.

"Legal assistance" means legal advice and representation by an attorney to an older person who has economic or social needs and includes, to the extent feasible, counseling or other appropriate assistance by a paralegal or law student under the supervision of an attorney and counseling or representation by a non-lawyer where permitted by law.

"Living alone" means a one person household, using the census definition of household, where the householder lives by himself or herself in an owned or rented place of residence in a non-institutional setting, including board and care facilities, assisted living units, and group homes.

"Low income minority elderly" means a minority older person with annual income at or below the federally established poverty line.

"Low income non-minority elderly" means an older person who is not a minority with an annual income at or below the federally established poverty line.

"Means testing" means the use of an older person's income or resource to deny or limit the person's receipt of services.

"Minority elderly" means a person age 60 or older who is:

(A) American Indian or Alaskan Native;

(B) Asian;

(C) Black or African American;

(D) Hispanic or Latino; or

(E) Native Hawaiian or Other Pacific Islander.

"Multipurpose senior center" means a community facility for the organization and provision of a broad spectrum of services, to include the provision of health, such as mental health, social, nutritional, and educational services and facilities for recreational activities for older persons.

"NAPIS" means the National Aging Program Information System.

"Neglect" means the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an older person or self-neglect.

"Nonprofit" means an agency, institution, or organization owned or operated by one or more corporations or associations having no part of the net earnings or benefit of any private shareholder or individual.

"OAA" means the Older Americans Act of 1965, as amended.

"OKDHS" means Oklahoma Department of Human Services.

"Older person" or **"older individual"** means anyone 60 years of age or older.

"Periodic," as used in the OAA with respect to evaluations of and public hearings on activities carried out under State and Area Plans, means, at a minimum, once each fiscal year.

"Planning and service area (PSA)" means an area designated by the State Agency under Section 305(a)(1)(E) of the OAA, as amended, for the purposes of developing and coordinating service systems.

"Poverty" means the income level defined each year by the Office of Management and Budget (OMB), and adjusted by the DHHS Secretary in accordance with subsection 673(2) of the Community Services Block Grant Act. The annual DHHS Poverty Guidelines provide dollar thresholds representing poverty levels for households of various sizes.

"Poverty line" means the official poverty line as defined by OMB in accordance with Section 673(2) of the Community Services Block Grant Act, per Section 9902(2) of Title 42 of the U.S. Code.

"Project" as used in Section 306(a)(1) of the OAA with respect to the provision of supportive and nutrition services, means an entity awarded a subgrant or contract from an AAA to provide services under the Area Plan.

"Race or ethnicity status" reflects the requirements of OMB for obtaining information from persons regarding their self-identification of race and ethnicity.

(A) Race includes:

(i) American Indian or Alaskan Native: a person having origins in any of the original peoples of North America, including Central America, and who maintains tribal affiliation or community attachment;

(ii) Asian: a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam;

(iii) Black or African American: a person having origins in any of the black racial groups of Africa;

(iv) Native Hawaiian or Other Pacific Islander: a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands; and

(v) White: a person having origins in any of the peoples of Europe, the Middle East, or North Africa.

(B) Ethnicity includes:

(i) Hispanic or Latino: a person of Cuban, Mexican, Puerto Rican, Central or South American, or other Spanish culture or origin, regardless of race; and

(ii) Not Hispanic or Latino.

"Rural" means an area not defined as urban by AoA.

"Rural counties" means counties not considered urban as defined by AoA.

"Rural elderly" means older persons not considered living in urban counties as defined by AoA.

"SUOA" means Special Unit on Aging, a unit of OKDHS Aging Services Division.

"Self-directed care" means an approach to providing services, including programs, benefits, supports, and technology

under the OAA intended to assist a person with activities of daily living, in which:

(A) services, including the amount, duration, scope, provider, and location of such services, are planned, budgeted, and purchased under the direction and control of the person;

(B) a person is provided with information and assistance as are necessary and appropriate to make informed decisions about care options;

(C) the needs, capabilities, and preferences of a person with respect to such services are assessed by the AAA, or other agency designated by the AAA, involved;

(D) based on the assessment, the AAA, or other agency designated by the AAA, develops together with the person and the person's family, caregiver, or legal representative:

(i) a plan of services for the person that specifies the services the person will be responsible for directing;

(ii) a determination of the role of family members, and others the person wants to participate, in providing services under the plan; and

(iii) a budget for such services; and

(E) the AAA or State Agency provides for oversight of self-directed receipt of services, including steps to ensure the quality of services provided and the appropriate use of funds under the OAA.

"Self-neglect" means an adult's inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks including:

(A) obtaining essential food, clothing, shelter, and medical care;

(B) obtaining goods and services necessary to maintain physical health, mental health, or general safety; or

(C) managing one's own financial affairs.

"Service provider," as used in Section 306(a)(1) of the OAA with respect to the provision of supportive and nutrition services, means an entity awarded a subgrant or contract from an AAA to provide services under the Area Plan.

"Severe disability," as used to carry out the provisions of the OAA, means a severe chronic disability attributable to mental or physical impairment of a person that:

(A) is likely to continue indefinitely; and

(B) results in substantial functional limitation in three or more of the major life activities of:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency.

"Sponsoring agency" means a multipurpose or umbrella organization of a grantee.

"State Agency" means the agency designated by the ~~state~~ State under Section 305(a)(1) of the OAA, as amended. In Oklahoma, the State Agency is OKDHS ASD.

"State system of long-term care" means the federal, state, and local programs and activities administered by a state that provide, support, or facilitate access to long-term care for persons in the state.

"Subgrantee" means an agency that subcontracts with a grantee agency. Subgrantee usually refers to the service provider, but it is possible for a service provider to subcontract with another entity.

"Taxonomy" means the uniform set of service definitions and service unit measures adopted by AoA for national reporting on programs and activities under Title III of the OAA.

"Unit of general purpose local government" means:

(A) a political subdivision of the state having general authority and not limited to only one function or combination of related functions; or

(B) an Indian tribal organization.

"Urban" means areas defined by AoA comprised of an:

(A) urbanized area, a central place and its adjacent densely settled territories with a combined minimum population of 50,000; or

(B) incorporated place or census designated place with 20,000 or more inhabitants.

"Urban counties" means urban areas as defined by AoA. Counties in Oklahoma considered urban are:

(A) Canadian;

(B) Cleveland;

(C) Comanche;

(D) Creek;

(E) Garfield;

(F) Logan;

(G) McClain;

(H) Oklahoma;

(I) Osage;

(J) Pottawatomie;

(K) Rogers;

(L) Sequoyah;

(M) Tulsa; and

(N) Wagoner.

(b) **Authority.** The authority for this Section is OMB Notice of Action 0985-0008.

PART 3. STATE AGENCY

340:105-10-12. State Council on Aging

(a) **Policy.** The State of Oklahoma has a State Council on Aging that meets the requirements of the Older Americans Act (OAA), and the Aging Services Division's (ASD's) need for statewide representation from older Oklahomans and service providers.

(b) **Authority.** The authority for this Section is Section 305 of the OAA of 1965, as amended and Oklahoma State Council on Aging Bylaws.

(c) **Procedures.** The State Council on Aging is composed of ~~29~~ 31 members who are residents of the state and who have

demonstrated an interest in, knowledge of, and accomplishments regarding the concerns of older persons. At least 18 of the members are 60 years of age or older.

(1) Members of the State Council on Aging include:

(A) one member appointed by the Governor;

(B) one member appointed by the President Pro Tempore of the State Senate;

(C) one member appointed by the Speaker of the House of Representatives; and

(D) 26 members appointed by the Oklahoma Department of Human Services (OKDHS) Director and include:

(i) five members who are 60 years of age or older who are participating consumers or volunteers working regularly in aging programs and are chosen from Area Agency on Aging (AAA) advisory council nominees. Each of the AAA advisory councils submit one nominee for consideration from their respective planning and service areas. The consumer members chosen include residents of rural counties and represent citizens from all economic levels;

(ii) one member from nominees is submitted by entities to include:

(I) Oklahoma Association of Area Agencies on Aging ~~Association~~;

(II) Oklahoma State Department of Health;

(III) Oklahoma State Department of Mental Health, gerontological representative;

(IV) ~~Older American Volunteer Program~~ Oklahoma Senior Corps Directors Association;

(V) Oklahoma State Nutrition Directors Association;

(VI) Urban League, alternating by term between Oklahoma City and Tulsa chapters;

(VII) Oklahoma Indian Council on Aging;

(VIII) Oklahoma ~~American Association of Retired Persons (~~AARP~~)~~;

(IX) Oklahoma Federation of Chapters of the National Association of Retired Federal Employees;

(X) Adult Day Services Association of Oklahoma;

(XI) Oklahoma Alliance on Aging;

(XII) Oklahoma Retired Educators Association; ~~and~~

(XIII) Silver Haired Legislature Alumni; and

(XIV) Oklahoma Health Care Authority; and

(iii) ~~eight~~ nine at-large members nominated and appointed by the OKDHS Director to ensure ethnic, geographical, and demographical balance in the State Council on Aging.

(2) Duties of the State Council on Aging include:

(A) informing entities of the needs, conditions, and concerns of older Oklahomans to include the:

(i) Oklahoma Commission for Human Services;

(ii) OKDHS Director and the Aging Services Division (ASD) director;

(iii) State of Oklahoma Governor's Office;

(iv) Oklahoma State Legislature;

(v) United States Oklahoma Congressional Delegates;

(vi) state agencies;

(vii) federal agencies; and

(viii) general public;

(B) reviewing and commenting on all policies, budget appropriations, planning regulations, and legislation that could benefit or adversely impact older Oklahomans, and advocating for concerns and issues of older Oklahomans, maintaining high visibility and a strong voice;

(C) monitoring and evaluating the provision of services to older persons within Oklahoma;

(D) conducting public forums on the needs or conditions of older Oklahomans and seeking public input on programs or issues involving older persons; and

(E) advising the ASD director on all matters pertaining to:

(i) development and implementation of policies, budget appropriations, planning, regulations, and standards;

(ii) effective and efficient administration of division programs;

(iii) development of training and educational programs; and

(iv) administration of other functions of ASD.

340:105-10-13. State Plan on Aging

(a) **Policy.** In order to receive Older Americans Act (OAA) funding, the State Agency must have developed and approved a State Plan on Aging. This plan must be on file with the Administration on Aging and must be available for public review. At a minimum, the plan must include:

(1) identification by the ~~state~~ State of the sole state agency that has been designated to develop and administer the plan;

(2) statewide program objectives to implement the requirements under Title III of the OAA and any objectives established by the federal Assistant Secretary for Aging through the rulemaking process;

(3) a resource allocation plan, budget, indicating the proposed use of all Title III funds administered by the State Agency and the distribution of Title III funds to each planning and service area (PSA);

(4) identification of the geographic boundaries of each ~~planning and service area~~ PSA and of Area Agencies on Aging;

(5) prior federal fiscal year information related to:

(A) number of low income minority older persons;

(B) methods used to attempt to satisfy the service needs of such minority older persons; and

(C) methods used to attempt to satisfy the service needs of older persons who reside in rural areas;

(6) all assurances and provisions as outlined in the OAA and regulations ensure:

(A) preference is given to older persons in greatest ~~social and~~ economic and social need and to older persons at risk for institutional placement with particular attention given to those ~~individuals~~ older persons residing in rural areas, low-income minority older persons, and older persons with limited English proficiency in the provision of services under the plan;

(B) all services under the OAA are provided without use of any means tests;

(C) all services provided under Title III meet any existing state and local health and safety licensing requirements for the provision of those services;

(D) older persons are provided opportunities to voluntarily contribute to the cost of services; and

(E) other such assurances as are needed for compliance with the OAA, regulations, other applicable federal law, state statutes, and state policy; and

(7) listing of State Council on Aging membership and responsibilities.

(b) **Authority.** The authority for this Section is Section 307 of the OAA of 1965, as amended and Title 45 of the Code of Federal Regulations, Part 1321.17.

(c) **Cross references.** See OAC 340:105-10-14.

PART 5. AREA AGENCIES ON AGING

340:105-10-32. Area Agency on Aging advisory council

(a) **Policy.** Each Area Agency on Aging (AAA) establishes and maintains an advisory council. The council carries out advisory functions which further the AAA's mission of developing and coordinating community-based systems of services for all older persons in the planning and service area. ~~The composition of the council is described in (1) and (2).~~

(1) The advisory council is separate and distinct from the AAA governing board and composed of:

(A) more than 50 percent older persons, including minority ~~individuals~~ persons who are participants or who are eligible to participate in Title III programs, and family caregivers of such persons;

(B) representatives of older persons;

(C) representatives of health care provider organizations, including providers of veterans' health care, if appropriate;

(D) representatives of supportive services providers;

(E) persons with leadership experience in the private and voluntary sectors;

(F) local elected officials; and

(G) the general public.

(2) The advisory council may not be composed of:

(A) State Agency staff or governing board members;

(B) AAA staff or governing board members;

(C) Title III project staff or governing board members; or

(D) any other ~~individuals~~ persons that may give an appearance of a potential conflict of interest.

(b) **Authority.** The authority for this Section is Title 45 of the Code of Federal Regulations, Part 1321.57.

(c) **Procedures.**

(1) The ~~responsibilities of the~~ advisory council ~~are to advise~~ is responsible for advising the AAA ~~relative~~ in regard to:

(A) developing and administering the Area Plan;

(B) conducting public hearings;

(C) representing the interests of older persons; and

(D) reviewing and commenting on all community policies, programs, and actions which affect older persons with the intent of assuring maximum coordination and responsiveness to older persons.

(2) The ~~responsibilities of the~~ AAA ~~relative to~~ is responsible for supporting the efforts of the advisory council ~~include:~~. The AAA:

(A) ~~scheduling~~ schedules meetings of the full council at least quarterly and ~~providing~~ provides staff assistance to same;

(B) ~~keeping~~ keeps the council informed of all matters relating to Area Plan development and administration;

(C) ~~maintaining~~ maintains close contact with advisory council officers;

(D) ~~assisting~~ assists the council in developing bylaws. The bylaws, at a minimum, address the:

(i) size and composition of the council;

(ii) tenure and selection procedures for members;

(iii) frequency of meetings; and

(iv) functions of the council;

(E) ~~providing~~ provides reimbursement for travel and other allowable expenses to council members, as appropriate;

(F) ~~submitting~~ submits the Area Plan and subsequent amendments to the council for review and comment before they are submitted to the State Agency for approval; and

(G) ~~conducting~~ conducts annual training for advisory council members to provide orientation to the rights and responsibilities of advisory council members.

(d) **Cross references.** See OAC 340:105-10-31(a)(1).

340:105-10-36. Area Plan administration ~~(Title III compliance monitoring)~~

(a) **Policy.** The Area Agency on Aging ~~shall have~~ (AAA) has responsibility for carrying out all activities under the Area Plan on Aging.

(b) **Authority.** The authority for ~~OAC 340:105-10-36~~ this Section is Section 306 and Section 212(b)(1) of the Older Americans Act, as amended, and ~~45 CFR~~ Parts 1321.61 and 1321.53 of Title 45 of the Code of Federal Regulations.

(c) **Procedures.** The ~~Area Agency carries out its responsibilities under the Area Plan on Aging via the following activities~~ AAA:

(1) ~~Developing~~ develops and ~~monitoring~~ monitors a management plan for the Area Plan on Aging which includes:

(A) ~~Overall Plan~~ overall plan goals;

(B) ~~Measurable~~ measurable objectives which outline what will be done to reach the goal;

(C) ~~Action~~ action steps ~~which~~ that describe how each objective will be accomplished, ~~i.e.~~ such as specific tasks;

(D) ~~Staff~~ staff assignments of responsibility for each objective; and

(E) ~~Target~~ target dates for the completion of action steps;

(2) ~~Submitting~~ submits all required program and fiscal reports related to Area Plan activities to the State Agency ~~on Aging~~;

(3) ~~Developing~~ develops a Title III ~~grant application (Request For Proposal)~~ request for proposal (RFP) package and ~~providing~~ provide technical assistance on the applications to prospective grantees;

(4) ~~Reviewing~~ reviews and ~~approving all~~ approves Title III ~~grant applications~~ RFPs, except for-profit applications that must be reviewed and approved by the State Agency;

(5) ~~Monitoring~~ monitors the program and fiscal reports of Title III projects in the planning and service area (PSA);

(6) ~~Conducting~~ conducts on-site quarterly assessments with each Title III project and ~~forwarding~~ forwards follow-up written reports to each project;

(7) ~~Providing~~ provides technical assistance to the Title III projects as appropriate; and

(8) ~~Developing~~ develops a policy and procedures manual for Title III projects in the ~~planning and service area~~ PSA.

(d) **Cross references.** See OAC 340:105-10-31(a)(3), 340:105-10-33, and 340:105-10-34.

340:105-10-37. Coordination and resource development

(a) **Policy.** The Area Agency on Aging (AAA) performs activities which maximize the availability of all services to older persons in the planning and service area (PSA), and reduce duplication of effort. Particular effort is made to coordinate with:

(1) organizations providing ~~day~~ child care services for children, assistance to older ~~individuals~~ persons caring for relatives who are children, and respite for families to provide opportunities for older ~~individuals~~ persons to aid or assist on a voluntary basis;

(2) organizations established for the benefit of victims of Alzheimer's disease;

(3) ~~community health centers when Title III funds are being expended for mental health services~~ the State Agency and the Oklahoma Department of Mental Health and Substance Abuse Services to:

(A) increase public awareness of mental health disorders;

(B) remove barriers to diagnosis and treatment; and

(C) coordinate mental health services, including mental health screenings, provided with funds expended by the AAA with mental health services provided by community health centers and by other public agencies and nonprofit private organizations;

(4) job training and partnership programs;

(5) Title II programs of the Domestic Volunteer Service Act of 1973;

(6) Titles XVI, XVIII, XIX, and XX programs of the Social Security Act;

(7) federal housing programs, United States Housing Act of 1937 or Section 202 of the Housing Act of 1959;

(8) Title I programs of the Housing and Community Development Act of 1974;

(9) adult education programs, Title I of the Higher Education Act of 1965 or Adult Education Act;

(10) transportation programs, Section 5310 of the Transportation Equity Act;

(11) public health programs, Title XIX of the Public Health Service Act;

(12) energy assistance programs, Low-Income Home Energy Assistance Act of 1981;

(13) weatherization assistance for low income persons, Part A of the Energy Conservation in Existing Buildings Act of 1976; ~~and~~

(14) programs funded by the Community Services Block Grant Act; and

(15) trained volunteers providing direct services to older persons and persons with disabilities working when possible with organizations that have experience in providing training, placement, and stipends for volunteers or participants in community services settings such as organizations carrying out federal service programs administered by the Corporation for National and Community Service.

(b) **Authority.** The authority for this Section is Section 306(a)(6) of the Older Americans Act of 1965, as amended and ~~Title 45 of the Code of Federal Regulations,~~ Part 1321.53 of Title 45 of the Code of Federal Regulations.

(c) **Procedures.** The AAA ensures maximum availability of services to older persons in the PSA, and reduces duplication of effort for all agencies and organizations serving older persons ~~by:~~. The AAA staff:

(1) ~~identifying~~ identify federal, state, and local programs which impact or could impact the older persons in the PSA and ~~providing~~ provide information in order to justify the allocation of funds for aging programs;

(2) ~~making~~ make application for alternative sources of funding where appropriate, such as grant writing;

(3) ~~participating~~ participate in interagency organizations developed for purposes of information sharing, joint planning, and service delivery;

(4) ~~establishing~~ establish public and private coalitions to address the growing needs of older persons in the PSA;

(5) ~~entering~~ enter into cooperative written agreements with local agencies and organizations in order to clearly outline respective responsibilities and expected outcomes;

(6) ~~extending~~ extend opportunities for participation in AAA sponsored training to:

(A) local health and social services agencies who serve or advocate for ~~the elderly~~ older persons;

~~(7) extending opportunities for participation in AAA sponsored training to~~

(B) businesses; and

(C) other private entities; and

(~~8~~7) ~~participating~~ participate in training sponsored by other local agencies, organizations, and businesses which improve the skills of AAA staff or otherwise further the interests or needs of older persons in the PSA.

(d) **Cross references.** See OAC 340:105-10-31(a)(4).

340:105-10-38. Targeting resources to older persons in greatest economic or social need

(a) **Policy.** The Area Agency on Aging (AAA) takes a leadership role in assisting communities throughout the planning and service area (PSA) to target resources from all appropriate sources to meet the needs of older persons with greatest economic or social need, with particular attention to low income minority individuals. In addition to low income minority older persons, the groups of older persons targeted for special consideration under this Section include older:

(1) persons residing in rural or isolated areas;

(2) persons with severe disabilities;

(3) persons with limited English ~~speaking ability~~ proficiency;

(4) persons at risk for institutional placement;

(~~4~~5) persons with Alzheimer's disease ~~or~~ and related disorders with neurological and organic brain dysfunction and the caretakers of such ~~individuals~~ persons; and

(~~5~~6) Native Americans.

(b) **Authority.** The authority for this Section is Section 306(a)(1) and (4) of the Older Americans Act of 1965, as amended, and Part 1321.61(c) of Title 45 of the Code Of Federal Regulations~~, Part 1321.61(c)~~.

(c) **Procedures.** The AAA carries out its mandate to target resources to older ~~individuals~~ persons with greatest economic or social need, with particular emphasis on low income minority ~~individuals~~ persons and older ~~individuals~~ persons residing in rural areas ~~by:~~. The AAA:

(1) ~~locating~~ locates services in areas where older persons in greatest economic or social need reside or congregate;

(2) ~~funding~~ funds and ~~advocating~~ advocates for specialized services which meet the unique needs of those in greatest economic or social need;

(3) ~~including~~ includes representatives of older persons in greatest economic or social need in the planning of services for these groups ~~via:~~. The AAA:

(A) ~~appointing~~ appoints representatives from the target groups to the AAA advisory council;

(B) ~~requiring~~ requires Title III projects to appoint representatives from the target groups to the project advisory councils;

(C) ~~including~~ includes leaders of the targeted groups in the annual needs assessment process;

(D) ~~including~~ includes sources of minority, ~~disabled~~ disability, and bilingual professionals in recruitment efforts for AAA staff positions, such as recruitment announcements in publications with large minority and ~~disabled~~ readership with disabilities, or recruitment announcements at minority colleges and universities; and

(E) ~~maintaining~~ maintains written agreements with minority and disability entities;

(4) ~~providing~~ provides Title III services to low income minority older persons according to their need, to the maximum extent possible. At a minimum, the AAA must:

(A) determine the numbers and the specialized needs of low income minority older persons in the PSA through its annual needs assessment activities;

(B) require Title III grantees to outline specific objectives to serve the low income minority older persons in each PSA; and

(C) monitor program reports to ensure that low income minority older persons are receiving services in at least as great a proportion as their numbers bear to the total population of older persons in the PSA;

(5) ~~providing~~ provide sufficient outreach services to the targeted groups; and

(6) ~~providing~~ provide appropriate training for AAA and Title III project staff to improve their ability to outreach and serve the targeted groups.

(d) **Cross references.** See OAC 340:105-10-31(a)(5), 340:105-10-33, 340:105-10-51(a)(3), 340:105-10-52(a)(1)(A), 340:105-10-58(a), 340:105-10-60(c), and 340:105-10-62(c).

340:105-10-40. Funding local sponsors for the provision of direct Title III services

(a) **Policy.** The Area Agency on Aging (AAA) awards all Title III of the Older Americans Act (OAA) of 1965 service funds by grant or contract to community services provider agencies and organizations, except where a direct service waiver(s) has been granted by the State Agency, per OAC 340:105-10-41, for the purpose of developing or enhancing a comprehensive and coordinated community-based system of services for older persons in the planning and service area (PSA). OAC 340:105-10-50.1 lists the services that may be funded under Title III.

(b) **Authority.** The authority for this Section is Section 306(a) and Section 212(b)(1) of the OAA of 1965, as amended, and Section 1321.63(b) of Title 45 of the Code of Federal Regulations.

(c) **Procedures.** The AAA staff, advisory council, and board of directors follow the procedures in this Section prior to awarding Title III funds.

(1) AAA staff:

(A) conducts a needs assessment and identifies priority needs in the PSA;

(B) evaluates the current service system and identifies any gaps in the system;

(C) establishes a funding formula that describes the systematic procedure the AAA follows in allocating funds for services within the PSA, per OAC 340:105-10-100;

(D) develops the request for proposal (RFP) packages for all Title III services to be funded, per OAC 340:105-10-101;

~~(E) submits RFP packages to the State Agency for approval at least 30 days prior to the target date for the announcement;~~

(~~F~~E) publicly announces the RFP and distributes RFP packages to potential grantees;

(~~G~~F) reviews proposals for required documents and provides feedback and technical assistance, as appropriate, to potential grantees; and

(~~H~~G) rates each proposal using approved review criteria~~;~~.

(2) AAA advisory council evaluates and rates all proposals~~; and~~.

(3) AAA board of directors, or a subcommittee:

(A) reviews and evaluates all proposals, except for-profit applications that must be reviewed and approved by the State Agency; and

(B) considers the ratings of the AAA staff and advisory council, and the review findings of the board of directors, and awards funds for the proposals that best meet RFP specifications.

(d) **Cross references.** See OAC 340:105-10-31(a)(7), 340:105-10-41, 340:105-10-50.1, 340:105-10-100, and 340:105-10-101.

PART 7. PROGRAM STANDARDS FOR SERVICES FUNDED UNDER TITLE III

340:105-10-50.1. Title III services taxonomy

(a) **Rule.** Parts B, C, D, and E of Title III authorize the development of a variety of services to meet the needs of older persons. A comprehensive listing of services that may be funded, service definitions, and service units are included in (1) through (15) of this paragraph.

(1) Personal care - one hour; provides personal assistance, stand-by assistance, supervision, or cues.

(2) Homemaker - one hour; provides assistance preparing meals, shopping for personal items, managing money, using the telephone, or doing light housework.

(3) Chore - one hour; provides assistance with heavy housework, yard work, or sidewalk maintenance.

(4) Home delivered meal - one meal; provides a qualified person at ~~his or her~~ the person's place of residence a meal that:

(A) complies with the most recent Dietary Guidelines for Americans, published by the Secretary ~~of the United States Department of Health and Human Services (DHHS)~~ and the Secretary of Agriculture;

(B) provides, if one meal is served, a minimum of 33 and 1/3 percent of the current ~~daily recommended dietary allowances (RDA) and~~ dietary reference intakes (DRI) as established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences;

(C) provides, if two meals are served together, a minimum of 66 and 2/3 percent of the ~~current daily RDA. Although there is no requirement regarding the percentage of the current daily RDA an individual meal must provide, a second meal is balanced and proportional in calories and nutrients~~ allowances; and

(D) provides, if three meals are served together, 100 percent of the ~~current daily RDA~~ allowances. ~~Although there is no requirement regarding the percentage of the current daily RDA an individual meal must provide, a second and third meal is balanced and proportional in calories and nutrients.~~

(5) Adult day care or adult day health - one hour; provides personal care for dependent adults in a supervised, protective, and congregate setting during some portion of a day. Services offered in conjunction with adult day care or adult day health typically include social and recreational activities, training, counseling, and services such as rehabilitation, medications assistance, and home health aide services for adult day health.

(6) Case management - one hour; provides assistance either in the form of access or care coordination in circumstances where the older person is experiencing diminished functioning capacities, personal conditions, or other characteristics requiring the provision of services by formal service providers or family caregivers. Case management activities include:

(A) assessing needs;

(B) developing care plans;

(C) authorizing and coordinating services among providers; and

(D) providing follow-up and reassessment, as required.

(7) Congregate meal - one meal; provides a qualified person in a congregate or group setting, a meal that:

(A) complies with the most recent Dietary Guidelines for Americans, published by the Secretary ~~of DHHS~~ and the Secretary of Agriculture;

(B) provides, if one meal is served, a minimum of 33 and 1/3 percent of the ~~current daily RDA and~~ DRI as established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences;

(C) provides, if two meals are served together, a minimum of 66 and 2/3 percent of the ~~current daily RDA. Although there is no requirement regarding the percentage of the current daily RDA an individual meal must provide, a second meal is balanced and proportional in calories and nutrients~~ allowances; and

(D) provides, if three meals are served together, 100 percent of the ~~current daily RDA~~ allowances. ~~Although there is no requirement regarding the percentage of the current daily RDA an individual meal~~

~~must provide, a second and third meal is balanced and proportional in calories and nutrients.~~

(8) Nutrition counseling - one session per participant; provides individualized guidance to a person who is at nutritional risk because of health or nutrition history, dietary intake, medications use, or chronic illnesses, or to caregivers. Counseling is provided one-on-one by a registered dietician and addresses the options and methods for improving nutrition status.

(9) Assisted transportation - one one-way trip; provides assistance and transportation, including escort, to a person who has difficulties, physical or cognitive, using regular vehicular transportation.

(10) Transportation - one one-way trip; provides transportation using a vehicle for a person who requires help in going from one location to another. Does not include any other activity.

(11) Legal assistance - one hour; provides legal advice, counseling, and representation by an attorney or other person acting under the supervision of an attorney.

(12) Nutrition education - one session per participant; a program promoting better health by providing accurate and culturally sensitive nutrition, physical fitness, or health information, as it relates to nutrition, information, and instruction to participants, caregivers, or both, in a group or individual setting overseen by a dietitian or person of comparable expertise.

(13) Information and assistance - one contact; a one-on-one contact between a service provider and an older client or caregiver. Activities involving contact with multiple current or potential clients or caregivers, such as publications, publicity campaigns, and other mass media activities, are not counted as a unit of service. Internet Web site hits are counted only if information is requested and supplied. This service:

(A) provides older persons with current information on services available within their communities;

(B) links older persons with the opportunities and services available within their communities; and

(C) establishes adequate follow-up procedures, to the maximum extent practicable.

(14) Outreach - one contact; provides persons with intervention initiated by an agency or organization for the purpose of identifying potential clients or their caregivers and encouraging their use of existing services and benefits. Outreach is a one-on-one contact between a service provider and an older client or caregiver. Activities involving contact with multiple current or potential clients or caregivers, such as publications, publicity campaigns, and other mass media activities, are not counted as a unit of service.

(15) Funded "Other" category.

(A) Advocacy or representation - one hour; provides action taken on behalf of an older person to secure ~~his or her rights~~ the person's or benefits. Advocacy or representation includes receiving, investigating, and working to resolve disputes or complaints. It does not include services provided by an attorney or person under the supervision of an attorney.

(B) Education or training - one session; provides formal and informal opportunities for older persons to acquire knowledge, experience, or skills. Includes individual or group events designed to increase awareness.

(C) Health promotion - one event; provides health promotion or disease prevention information, instruction, or activities, such as exercise, to participants, caregivers, or both, in a group or individual setting. Examples include:

(i) individual health screenings, such as blood pressure screenings. The event is documented by a participant sign-in sheet at the time of the screening; or

(ii) a health promotion program in an individual or group setting. The program is counted as one event.

(D) Home repair - one job; provides minor repairs, modifications, or maintenance on a home owned and occupied by an eligible participant, up to $250 annually per participant.

(E) Coordination of services - unit to be determined by Aging Services Division (ASD); provides for the administration or delivery of a service for which direct cost is not funded by Title III. The AAA contacts ASD regarding use of this category.

(F) National Family Caregiver Support Program service categories are:

(i) information services - one activity; provides caregivers information on resources and services available to the public or persons within their communities. Information services are for activities directed to large audiences of current or potential caregivers, such as disseminating publications, conducting media campaigns, and other similar activities;

(ii) access assistance - one contact; assists caregivers in obtaining access to the services and resources available within their communities. To the maximum extent practicable, access assistance ensures persons receive the services needed by establishing adequate follow-up procedures. Internet Web site hits are counted only if information is requested and supplied;

(iii) counseling - one session; assists caregivers in the areas of health, nutrition, and financial literacy, and in making decisions and solving problems relating to their caregiver roles. This includes counseling to ~~individuals~~ persons, support groups, and caregiver training of individual caregivers and families;

(iv) respite care - one hour; provides temporary, substitute supports or living arrangements for care recipients in order to provide a brief period of relief or rest for caregivers. When the specific service units purchased via a direct payment, such

as cash or voucher, can be tracked or estimated, the service unit is reported by hour; otherwise, the unit of service is one payment. Respite care is:

(I) in-home respite, such as personal care, homemaker, and other in-home respite;

(II) respite provided by attendance of the care recipient at a senior center or other nonresidential program; or

(III) institution respite provided by placing the care recipient in an institutional setting, such as a nursing home for a short period of time as a respite to the caregiver or summer camp as a respite for grandparents caring for children; and

(v) supplemental services - provides services on a limited basis to complement the care provided by caregivers. The unit and service are determined by ASD. The AAA contacts ASD regarding use of this category.

(b) **Authority.** The authority for this Section is the Office of Management and Budget Notice of Action 0985-0008 and Sections 339 and 371 through 373 of the Older Americans Act of 1965, as amended.

(c) **Procedures.** The AAA:

(1) incorporates provisions of the rule into its policies and procedures manual;

(2) provides technical assistance to prospective service project applicants regarding the rule in the development of services; and

(3) utilizes the rule as an indicator in the evaluation of service project proposals.

(d) **Cross references.** See OAC 340:105-10-40 and 340:105-10-51.

340:105-10-54. Supportive services

(a) **Policy.** The Area Agency on Aging (AAA) makes grants to local agencies or organizations for the provision of supportive services to older persons. Providers of any such service must comply with all standards outlined in this Subchapter relating to the service(s) provided. Supportive services, for purposes of this Section, include:

(1) health, including mental health, education and training, welfare, informational, recreational, homemaker, counseling, or referral services;

(2) transportation services to facilitate access to supportive services or nutrition services, and services provided by an AAA in conjunction with local transportation service providers, public transportation agencies, and other local government agencies that result in increased provision of such transportation services for older persons;

(3) services designed to encourage and assist older persons to use the facilities and services, including information and assistance services, and language translation services to assist older persons with limited English speaking ability to obtain services;

(4) services designed to:

(A) assist older persons obtain adequate housing, including minor residential repair and renovation projects, up to $250 annually per client, designed to enable older persons maintain their homes in conformity with minimum housing standards;

(B) adapt homes to meet the needs of older persons who have physical disabilities;

(C) prevent unlawful entry into residences of older persons, through the installation of security devices and structural modifications or alterations of such residences; or

(D) assist older persons in obtaining housing for which assistance is provided under programs of the Department of Housing and Urban Development;

(5) services designed to assist older persons avoid institutionalization and assist persons in long-term care institutions who are able to return to their communities, including:

(A) client assessments, case management, and development and coordination of community services;

(B) supportive activities to meet the special needs of caregivers, including caregivers who provide in-home services to frail older persons; and

(C) in-home services and other community services, including home health, homemaker, and chore services to assist older persons to live independently in a home environment;

(6) services designed to provide to older persons legal assistance and other counseling services and assistance, including:

(A) tax counseling and assistance, financial counseling, and counseling regarding appropriate health and life insurance coverage;

(B) representation of persons who are wards, or are allegedly incapacitated, and in guardianship proceedings of older persons who seek to become guardians, if other adequate representation is unavailable in the proceedings;

(C) provision, to older persons who provide uncompensated care to their adult children with disabilities, of counseling to assist such older persons with permanency planning for such children;

(7) services designed to enable older persons to attain and maintain physical and mental well-being through programs of regular physical activity, exercise, music therapy, art therapy, and dance movement therapy;

(8) services designed to provide health screening, including mental health screening, to detect or prevent illnesses, or both, that occur most frequently in older persons;

(9) services designed to provide for older persons, pre-retirement counseling and assistance in planning for and assessing future post-retirement needs with regard to public and private insurance, public benefits, lifestyle changes, relocation, legal matters, leisure time, and other appropriate matters;

(10) services of an ombudsman at the state level to receive, investigate, and act on complaints by older persons who are residents of long-term care facilities and to advocate for the well-being of such persons;

(11) provision of services and assistive devices, including provision of assistive technology services and assistive technology devices, designed to meet the unique needs of older persons ~~who are disabled~~ with disabilities and older persons who provide uncompensated care to their adult children with disabilities;

(12) services to encourage the employment of older workers, including job and second career counseling, and where appropriate, job development, referral, and placement, and including the coordination of the services with programs administered by or receiving assistance from the Department of Labor, including programs carried out under the Workforce Investment Act of 1998, Section 2801 of ~~[~~Title 29 of the United States Code ~~2801]~~;

(13) crime prevention services and victim assistance programs for older persons;

(14) a program, to be known as Senior Opportunities and Services, designed to identify and meet the needs of older persons who are poor, 60 years of age or older, in one or more of the areas of:

(A) development and provision of new volunteer services;

(B) effective referral to existing health, including mental health, employment, housing, legal, consumer, transportation, and other services;

(C) stimulation and creation of additional services and programs to remedy gaps and deficiencies in presently existing services and programs; and

(D) other services as the Assistant Secretary for Aging of the Administration on Aging may determine are necessary or especially appropriate to meet the needs of older persons who are poor and ensure them greater self-sufficiency;

(15) services for the prevention of abuse of older persons in accordance with Section 307(a)(12) of the Older Americans Act (OAA) of 1965, as amended;

(16) in-service training and state leadership for legal assistance activities;

(17) health and nutrition education services, including information concerning prevention, diagnosis, treatment, and rehabilitation of age related diseases and chronic disabling conditions;

(18) services designed to enable mentally impaired older persons to attain and maintain emotional well-being and independent living through a coordinated system of support services;

(19) services designed to support family members and other persons providing voluntary care to older persons who need long-term care services;

(20) services designed to provide information and training for persons who are or may become guardians or representative payees of older persons, including information on the powers and duties of guardians and representative payees and alternatives to guardianships;

(21) services to encourage and facilitate regular interaction between ~~school-age children~~ students and older persons, including services for older persons with limited English proficiency and visits in long-term care facilities, multipurpose senior centers, and other settings;

(22) in-home services defined by the State Agency in the State Plan submitted under Section 307 of the OAA, taking into consideration the age, economic need, and noneconomic and nonhealth factors contributing to the frail condition and need for service of the persons described in this paragraph, and in-home services defined by an AAA in the Area Plan submitted under Section 306 of the OAA; ~~and~~

(23) services designed to support States, AAAs, and local service providers in carrying out and coordinating activities for older persons with respect to mental health services, including outreach for, education concerning, and screening for such services, and referral to such services for treatment;

(24) activities to promote and disseminate information about life-long learning programs, including opportunities for distance learning; and

(~~23~~25) any other services necessary for the general welfare of older persons, if the services meet standards prescribed by the Assistant Secretary for Aging and are necessary for the general welfare of older persons.

(b) **Authority.** The authority for this Section is Section 321 of the OAA of 1965, as amended.

(c) **Procedures.** The AAA:

(1) incorporates the provisions in this Section into the Title III policies and procedures manual;

(2) provides technical assistance to prospective service project applicants regarding the policy in the development of Title III-B services; and

(3) utilizes the policy as an indicator in the evaluation of Title III-B service project proposals.

(d) **Cross references.** See OAC 340:105-10-40, 340:105-10-50.1 and 340:105-10-51.

340:105-10-71. Congregate meals service facilities

(a) **Policy.** Each congregate meals service provider secures and maintains adequate facilities for the preparation and delivery of the meals service, nutrition education, and funded supportive services.

(b) **Authority.** The authority for this Section is Part 1321.11(a) of Title 45 of the Code of Federal regulations, ~~Part 1321.11(a)~~ and Section 1247 of Title 21 of the Oklahoma Statutes, as amended (21 O.S. § 1247).

(c) **Procedures.**

(1) The grantee agency locates congregate meals service sites in areas accessible to the target group of eligible ~~individuals~~ persons in a community and, where possible, within walking distance for concentrations of such ~~individuals~~ persons.

(2) The grantee agency arranges for all applicable health, fire, safety, and sanitation inspections for project offices and congregate meals sites in the manner described in (A) and (B) of this paragraph.

(A) The fire and safety inspections are conducted annually by local fire officials or other designated

local official in the absence of a local fire marshal using established local standards.

(B) In the absence of local standards, standards developed and adopted by the Oklahoma Department of Human Services (OKDHS) with the cooperation of the State Fire Marshal and the Oklahoma State Department of Health are applicable.

(C) Standards are based upon the use and occupancy of the site by Title III funded projects and are adequate to protect the health and safety of participants.

(D) County health department sanitation inspections are completed at least annually.

(E) All inspection reports are on file with the grantee agency.

(F) Grantee agency responds as directed by the inspecting agency to all cited deficiencies.

(3) The Area Agency on Aging annually conducts evaluations for Americans with Disabilities Act (ADA) compliance at all project offices and congregate meals sites. The grantee agency ~~develops a plan of action for any identified deficiencies.~~

~~(4) The grantee agency clearly designates no smoking areas by posting appropriate signs and removing ashtrays. At a minimum, areas designated as no smoking include~~ ensures that project facilities comply with Section 21 O.S. § 1247, as amended, that mandates all public facilities be smoke free and post such designation as required by law~~:~~.

~~(A) meeting rooms;~~

~~(B) classrooms;~~

~~(C) restrooms;~~

~~(D) elevators;~~

~~(E) food preparation areas;~~

~~(F) food serving areas; and~~

~~(G) dining areas~~.

(~~5~~4) The project arranges for the separation of dining and food preparation areas at sites where food is prepared and served in the same facility.

(~~6~~5) Where feasible, the project provides ample space and time for the provision of supportive services~~.~~ per ~~[~~OAC 340:105-10-54~~]~~.

(~~7~~6) The project provides appropriate furnishings for older persons, including sturdy tables and chairs, and arranges the furnishings to provide adequate aisle space for persons using mobility aids such as walkers and wheelchairs.

(~~8~~7) The project provides table settings that are approved by the project advisory council. If disposable dinnerware is used, it is of sturdy quality to prevent spillage, leakage, and breakage.

(~~9~~8) The project posts in conspicuous locations information regarding:

(A) the rights of eligible persons to equal opportunity and access to services;

(B) the full cost of the meal to be paid by ineligible persons, such as visitors under 60 years of age, who are served meals;

(C) the suggested contribution for eligible participants toward the cost of the meal, as determined by the project or site advisory council. All participant contributions are for the cost of the meal and are not solicited for other items such as utilities and coffee;

(D) menus for a minimum of one week in advance;

(E) grievance procedures for participants;

(F) an evacuation plan;

(G) a toll free information and assistance telephone number;

(H) a current health inspection certificate from the local health department; ~~and~~

(I) ~~no smoking signs, as appropriate~~ Smoke Free Facility; and

(J) a summary of the site or project, if applicable, emergency management plan including at a minimum the location of the nearest emergency shelter(s) available to participants.

(d) **Cross references.** See OAC 340:105-10-50.1(a)(7), 340:105-10-51, 340:105-10-54, 340:105-10-68 through 340:105-10-70, 340:105-10-72 through 340:105-10-80, and 340:105-10-86.

340:105-10-75. Congregate meals planning

(a) **Policy.** The congregate meals project conducts appropriate meal planning for the congregate meals service with the consultation of persons competent in the field of nutrition, food service, and the needs of older persons.

(b) **Authority.** The authority for this Section is Section 339 of the Older Americans Act of 1965, as amended and Section 1321.11 of Title 45 of the Code of Federal Regulations.

(c) **Procedures.** Menus:

(1) are prepared or approved by a registered dietitian (RD) who considers the special needs of older persons. The RD ensures that each meal served contains at least:

(A) one-third of the ~~current daily recommended~~ dietary ~~allowances~~ reference intakes as established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences; and

(B) 600 calories. The recommended level is 750 to 850 calories;

(2) are planned on a quarterly basis with a six week cycle repeated once each quarter. Nutritional adequacy is documented with computer analysis by the RD.

(A) Maintenance of optimal nutritional status through menu planning is reflected in menus moderate in fat, salt, and simple sugars and high in fiber.

(B) Form 02AG018E, Project Menu Plan - Nutrition Program for the Elderly, is submitted quarterly to the area agency on aging (AAA) and is available to the State Agency RD for random review upon request;

(3) are signed by the RD and posted at the nutrition site;

(4) reflect:

(A) special diets to meet the medical needs of eligible participants. When special diets are provided to meet the medical needs of eligible participants:

(i) a valid written physician's order is on file for each participant receiving a special diet. The

physician's order indicates the participant is restricted to the special diet and the duration of the special diet. If the participant is consuming a liquid supplement in addition to a meal, the supplement is not reimbursed through the Nutrition Services Incentive Program as a separate meal; and

(ii) special diets are planned and prepared under the supervision of the RD; and

(B) where feasible, religious, ethnic, cultural, or regional dietary requirements or preferences of a major portion of the group of participants at a congregate meals site;

(5) are served as planned unless the RD reviews and approves an appropriate substitution. A complete menu move from one day to another does not constitute a substitution. When substitutions are made, the project maintains and submits to the State Agency at the end of each month the:

(A) date of substitution;

(B) original menu item(s); and

(C) substituted menu item(s);

(6) are based on accurate production forecasting that does not include a margin for oversized portions or second servings. Leftover foods are not taken from the kitchen by staff, participants, or volunteers;

(7) may include, where feasible, provisions for the celebration of special occasions for participants, for example, birthdays and holidays; and

(8) allow for food items within the meat, vegetable and fruit, and dessert groups to vary for the same days of the week, from week to week, in order to provide a variety of foods and nutrients.

(d) **Cross references.** See OAC 340:105-10-50.1(a)(4) and (7), 340:105-10-51, 340:105-10-68 through 340:105-10-74, 340:105-10-76 through 340:105-10-80, and 340:105-10-86.

340:105-10-90.1. National Family Caregiver Support Program

(a) **Policy.** The Area Agency on Aging (AAA) awards grants to entities to provide support services, including information and assistance, counseling, support groups, respite, and other home- and community-based services to families caring for their frail older members. The National Family Caregiver Support Program (NFCSP) also recognizes the needs of ~~grandparents~~ a grandparent or step-grandparent who ~~are caregivers~~ is a relative caregiver of ~~grandchildren caregivers and~~ a child or other older ~~persons~~ person who ~~are~~ is a relative ~~caregivers~~ caregiver of ~~children~~ a child who ~~are age~~ is not more than 18 ~~and younger~~ years of age or who is a person with a disability. NFCSP services include:

(1) information ~~services~~ to caregivers about available services;

(2) ~~access~~ assistance to caregivers in gaining access to services;

(3) individual counseling, organization of support groups, and training to assist caregivers in areas related to their caregiver roles of:

(A) health;

(B) nutrition;

(C) financial literacy;

(D) decision making; and

(E) problem solving;

(4) respite care to enable caregivers to be temporarily relieved from their caregiving responsibilities; and

(5) supplemental services, on a limited basis, to complement the care provided by caregivers.

(b) **Authority.** The authority for this Section is the Office of Management and Budget Notice of Action 0985-0008 and Sections 371 through 374 of the Older Americans Act of 1965, as amended, Public Law ~~106-501~~ 109-365, Grants for State and Community Programs on Aging.

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

(1) incorporates the provisions of this Section into the Title III policies and procedures manual;

(2) provides technical assistance to prospective and funded Title III projects regarding this rule;

(3) monitors Title III project compliance according to OAC 340:105-10-43, except on specific projects where the State Agency has agreed with the AAA to provide a service and monitoring is not required. The project:

(A) gathers information on an approved intake form, including, at a minimum:

(i) the family caregiver's identifying information;

(ii) the caregiver's relationship to the care receiver;

(iii) the care receiver's identifying information; and

(iv) a written description of the caregiver's current situation, including the care receiver's need for assistance due to inability to perform specific activities of daily living (ADLs) or need for supervision due to Alzheimer's disease or other neurological and organic brain dysfunction or disability;

(B) conducts a reassessment of NFCSP service recipients annually, at a minimum, to evaluate service provision and update participant status;

(C) ensures the safety and protection of the participants; and

(D) receives in-service training each fiscal year specifically designed to increase the project's knowledge and understanding of the programs and participants served;

(4) targets services to caregivers who are older persons in greatest social and economic need ~~and older persons who~~, giving priority to:

(A) family caregivers providing care for persons with Alzheimer's disease and related disorders with neurological and organic brain dysfunction; and

(B) grandparents or older persons who are relative caregivers providing care for a person or child with ~~mental retardation or developmental disabilities~~ a severe disability;

(5) may provide support services to caregivers providing care for frail older family members who are 60 years or older and unable to perform at least two ADLs without substantial human assistance or require substantial supervision due to a cognitive or other mental impairment.

~~(A)~~ ADLs include:

(~~i~~A) dressing;

(~~ii~~B) bathing;

(~~iii~~C) eating;

(~~iv~~D) transferring;

(~~v~~E) toileting; and

(~~vi~~F) walking~~.~~;

~~(B) A caregiver is an adult family member or another person who is an informal provider of in-home and community care to an older person.~~

~~(C) Informal means the care is not provided as part of a public or private formal service program;~~

(6) may provide support services on a limited basis to grandparents and older persons who are relative caregivers of a child who is 18 years of age or younger.

(A) Child means a person who is not older than 18 years of age or who is a person with a disability.

(B) Grandparent or older person who is a relative caregiver means a grandparent or ~~stepgrandparent~~ step-grandparent of a child, or a relative of a child by blood, ~~or~~ marriage, or adoption who is ~~60~~ 55 years of age or older and:

(i) lives with the child;

(ii) is the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregiver of the child; and

(iii) has a legal relationship to the child, such as legal custody or guardianship, or is raising the child informally;

(7) ensures the cost of carrying out the program meets the requirement of a minimum non-federal share of 25 percent. The non-federal share is provided from state and local sources;

(8) may not use funds to supplant, replace, or in substitution for, any funds expended under any federal, state, or local law for the same purposes; and

(9) considers awarding funds to expand successful caregiver activities currently in communities, such as respite providers, support groups, outreach, information and assistance, adult day services, counseling, and case management.

(d) **Cross references.** See OAC 340:105-10-37, 340:105-10-38, 340:105-10-40, 340:105-10-41, 340:105-10-43, 340:105-10-44, and 340:105-10-50.1(a)(15)(F).

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

340:105-10-96. Title III-B priority supportive services

(a) **Policy.** The Area Agency on Aging (AAA) ensures that an adequate proportion of its federal allotment for Title III-B services is expended for priority services unless the AAA has been granted a waiver on this rule by the State Agency~~.~~ per ~~[~~OAC 340:105-10-97~~]~~. The Title III-B priority services include:

(1) access services:

(A) transportation;

(B) outreach;

(C) information and assistance;

(D) assisted transportation; ~~and~~

(E) case management; and

(F) health services, including mental health services;

(2) in-home services:

(A) homemaker;

(B) chore;

(C) personal care; and

(D) home repair; and

(3) legal assistance services:

(A) legal counseling and representation;

(B) community education on legal matters; and

(C) information and assistance on legal matters.

(b) **Authority.** The authority for this Section is Section 306(a)(2) of the Older Americans Act of 1965, as amended.

(c) **Procedures.** The AAA develops its annual budget in consultation with the State Agency and incorporates the allocations listed in (1) - (3) of this subsection into the budget. The AAA:

(1) ~~The AAA~~ expends at least 30 percent of its federal Title III-B funds overall for the three priority service categories, and not less than five percent of these funds for any single priority service~~.~~;

(2) ~~The AAA~~ expends at least as much federal funds in any given fiscal year for the priority services categories as the AAA expended for the priority services in the previous fiscal year; unless the AAA allocation of these funds is reduced, in which case, the AAA priority services expenditure is reduced proportional to the AAA reduction in Title III-B funds~~.~~; and

(3) ~~The AAA~~ allocates federal funds to legal assistance services in accordance with minimum funding levels established by the State Agency and issued annually under State memo.

(d) **Cross references.** See OAC 340:105-10-97.

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

(a) **Policy.** All Older Americans Act pass through funds are awarded in an open, competitive, and fair manner via the request for proposal (RFP) process. Awards are made to applicants whose proposals include all components of the service(s) outlined in the RFP and who best meet the specifications of the RFP.

(1) The Area Agency on Aging (AAA) board of directors:

(A) is directly responsible for reviewing proposals and awarding funds. This responsibility may not be delegated;

(B) may not award funds to the AAA or to another subdivision of the sponsoring agency under the auspices of the same board of directors; and

(C) may not award funds to board members or the agencies or organizations they represent.

(2) Awarding funds through the RFP process during the plan year is required when:

(A) funds are allocated to the AAA at the beginning of the fiscal year;

(B) there is significant expansion of a service(s) already funded;

(C) funding a new service(s); or

(D) funding of an existing service is transferred from a defunct or terminated grantee.

(b) **Authority.** The authority for this Section is Section 1321.11 of Title 45 of the Code of Federal Regulations and Section 212(b)(1) of the Older Americans Act of 1965, as amended.

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

(1) To initiate RFP, the AAA:

(A) develops specifications for each service to be procured that clearly define the service and how units of service are measured. The specifications include the minimum units of services to be provided, the minimum unduplicated number to be served, if required, and geographic service areas as appropriate;

(B) develops an RFP guide and grant application package;

~~(C) submits the RFP guide and grant application package to the State Agency for approval at least 30 days prior to the announcement of availability of funds as outlined in (1)(D) of this subsection;~~

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

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

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

(iii) All announcements include:

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

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

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

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

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

~~(E) makes State Agency approved RFP guides available for pick up at the AAA office;~~

(~~F~~D) mails copies of the RFP guide upon request;

(~~G~~E) conducts a conference for proposers prior to the deadline for submitting applications and requires applicants to attend the conference in order to be considered for funding. At a minimum, the information discussed during the conference includes:

(i) the RFP guide and all requirements pertaining to submitting an application; and

(ii) all responsibilities associated with the acceptance of Title III funds, including applicable federal and state statute, policy, certifications, and assurances;

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

(~~I~~G) informs the State Agency following the close of the proposers' conference if there are no applicants for a service; and

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

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

(3) The AAA board of directors:

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

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

(C) issues notification of grant awards (NGAs) to not for profit applicants who are approved for funding and to profit-making applicants with State Agency approval; and

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

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

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

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

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

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

(5) When an Older Americans Act Title III funded project elects to voluntarily terminate the contract before the end of a grant year, procedures must be followed as outlined on Form 02AG006E, Voluntary Withdrawal of ~~a~~ Title III Project. Form 02AG006E must be acknowledged, signed, and included as part of the original grant application.

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

[OAR Docket #08-960; filed 5-20-08]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 20. MANUFACTURERS, PACKAGERS AND WHOLESALERS

[OAR Docket #08-1022]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 3. Manufacturers
535:20-3-1. Manufacturer permit; Purpose [AMENDED]
535:20-3-1.1. Definitions [RESERVED]
535:20-3-2. Registration; manufacturer licensing, registration or permit requirement [AMENDED]
535:20-3-3. Minimum required information for licensure [AMENDED]
535:20-3-4. Minimum qualifications [AMENDED]
535:20-3-5. Personnel [AMENDED]
535:20-3-6. Minimum requirements for Rx Only drug storage, handling, maintenance and records [AMENDED]
535:20-3-6.1. Facility requirements [NEW]
535:20-3-6.2. Multiple Licensing [NEW]
535:20-3-6.3. Security [NEW]
535:20-3-6.4. Storage [NEW]
535:20-3-6.5. Examination of materials [NEW]
535:20-3-6.6. Returned, damaged, and outdated drugs [NEW]
535:20-3-6.7. Recordkeeping [NEW]
535:20-3-6.8. Written policies and procedures [NEW]
535:20-3-6.9. Responsible persons [NEW]
535:20-3-6.10. Compliance with federal, state and local laws [NEW]
535:20-3-6.11. Salvaging and reprocessing [NEW]
535:20-3-9. Prohibited Conduct [NEW]
AUTHORITY:
Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.18, and 353.24 through 353.26.
DATES:
Adoption:
April 2, 2008
Approved by Governor:
May 12, 2008
Effective:
Immediately upon Governor's approval
Expiration:
Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTION:
n/a
INCORPORATED BY REFERENCE:
n/a
FINDING OF EMERGENCY:
Background:
Changes in Title 59 O.S. 353.18 by SB-640 effective 6/07/2005 and HB-1347 effective 11/01/2005 required the Board to write rules regarding Wholesaler / Pedigree rules. These rules were revised and promulgated. In revising the wholesale rules, staff failed to note that the manufacturer rules included references to wholesaler rules and would be changed.

The Legislature did not intend, nor did the Board intend, that the new rules for wholesalers be applied to manufacturers. For these reasons the manufacturer rules need to be modified to include the rules text intended for manufacturers while eliminating references to the new wholesaler rules. This will simplify the manufacturer rules by including rules for manufacturers in one chapter.
Finding of emergency:
A **compelling public interest exists** to the preservation of public health safety and welfare. Applying the new Wholesaler rules to manufacturers would disrupt manufacturers and manufacturer's distribution of prescription drugs and is unintended. There is inadequate time to allow notice for permanent rulemaking to occur and to get the rules to the legislature before the April 1 deadline, therefore these manufacturer rules need to be changed by emergency.
ANALYSIS:
A new purpose statement is added in 535:20-3-1, Section 535:20-3-2 is reserved for definitions, 535:20-3-3 was formerly 535:20-3-2 and is revised to correct citations and add subsections. 535:20-3-4 formerly 535:20-3-3, 535:20-3-5 formerly 535:20-3-4, 535:20-3-6 formerly 535:20-3-5, 535:20-3-7 formerly 535:20-3-6 bring the requirements that were referred in the wholesaler rules before they were changed the manufacturer rules. Section 353:20-3-7 which referred to wholesaler rules 535:20-7-7 through 535:20-7.10 is changed to new manufacturer sections 535:20-3-6.1 through 535:20-3-6.11. Added is new Section 535:20-3-9
CONTACT PERSON:
Bryan Potter, Executive Director, Oklahoma State Board of Pharmacy, 4545 N Lincoln, Suite 112, Oklahoma City, OK 73105-3488, Phone: 405-521-3815.

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

SUBCHAPTER 3. MANUFACTURERS

535:20-3-1. Manufacturer permit; Purpose

(a) The rules in this Subchapter set the minimum standards and requirement for persons who must license as a manufacturer as defined in 59 O.S. 353.1 before engaging in manufacturing as required in 59 O.S. Section 353.18 (B) and (C).

(b) The rules of this Subchapter are to implement the requirement in the Pharmacy Practice Act and may include requirements for the Utilization of Used Prescription Medication Act.

~~(a) A manufacturer permit entitles the permit holder to manufacture and wholesale Rx Only drugs (prescription drugs) from the licensed location.~~

~~(b) A manufacturer permit is only valid for the name, ownership and location listed on the permit.~~

~~(c) A new permit is required within 10 days if name, ownership or location changes.~~

~~(d) Each manufacturing location must be licensed.~~

~~(e) Each manufacturer whose product is sold in Oklahoma is required to obtain and maintain an Oklahoma manufacturer permit.~~

AGENCY NOTE: *(a)-(e) of this section are moved to 535:20-3-2 (b)-(f)*

535:20-3-1.1. Definitions [RESERVED]

535:20-3-2. Registration; manufacturer licensing or permit requirement

(a) All manufacturers of Rx Only (dangerous) drugs conducting interstate and/or intrastate transactions in Oklahoma shall register annually with the Board of Pharmacy.

(1) Permits shall be issued only to those manufacturers which satisfy the provisions of Title 59, O.S., Section 353.18 (B)(1)(2) et seq., and all rules of this Title, et seq.

(2) Each manufacturer must comply with the Federal Food, Drug and Cosmetic Act Good Manufacturing Practices Act (GMPA, 21 U.S.C., Sec. 331 et seq.), the Prescription Drug Marketing Act of 1987 (PDMA, 21 U.S.C., Sec. 331 et seq.) and/or any other applicable federal, state, or local laws and regulations.

(b) A manufacturer permit entitles the permit holder to manufacture and wholesale Rx Only drugs (prescription drugs) from the licensed location.

(c) A manufacturer permit is only valid for the name, ownership and location listed on the permit.

(d) A new permit is required within 10 days if name, ownership or location changes.

(e) Each manufacturing location must be licensed.

(f) Each manufacturer whose product is sold in Oklahoma is required to obtain and maintain an Oklahoma manufacturer permit.

AGENCY NOTE: *(b)-(f) of this section were formerly 535:20-3-1 (a)-(e)*

535:20-3-3. Minimum required information for licensure

~~The minimum required information for manufacturer licensure shall be as set forth in 535:20-7-4 regarding wholesalers and in 535:25 and this Title.~~

(a) Applicants shall be registered with the federal Food and Drug Administration (FDA) as a manufacturer.

(b) All manufacturer applicants must meet the requirements under the Oklahoma Pharmacy Act, this Title and the rules in 535:25 for applicants.

(c) Manufacturer applicants must submit a satisfactorily completed application together with the required fee annually. This application shall include, at least, the following:

(1) The name, full business address, and telephone number;

(2) All trade or business names used by the manufacturer applicant;

(3) Address, telephone numbers, and the names of contact persons for the manufacturing facility;

(4) The type of ownership or operation (e.g., partnership, corporation, or sole proprietorship);

(5) The name(s) of the owner and/or operator of the manufacturer applicant; and

(6) Any other information the Board deems necessary to protect the public health.

535:20-3-4. Minimum qualifications

(a) All manufacturers must conform to the federal Good Manufacturing Practices GMPA, and/or any other applicable federal, state or local laws and regulations.

(b) The minimum qualifications for manufacturers shall be the same as those set forth ~~in 535:20-7-5 regarding wholesalers and~~ in 535:25 and this Chapter.

(c) The Board shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in manufacturer of drugs or devices:

(1) Any convictions of the applicant under any federal, state, or local laws relating to drug samples, manufacturer, wholesale or retail drug distribution, or distribution of controlled substances;

(2) Any felony convictions of the applicant under federal, state, or local laws;

(3) The applicant's past experience in the manufacture or distribution of drugs, including controlled substances;

(4) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug or device manufacturing or distribution;

(5) Suspension, sanction, or revocation by federal, state, or local government of any license currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances; or by any of its owners for violation of state or federal laws regarding drugs or devices;

(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; and,

(8) Any other factors or qualifications the Board considers relevant to and consistent with the public health and safety.

(d) The Board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be consistent with the public health and safety.

535:20-3-5. Personnel

~~(a)~~ Personnel employed in manufacturing shall have sufficient education, training and/or experience to perform assigned functions and comply with federal, state and local licensing requirements.

~~(b) The Board shall as required in 353.18(B), at a minimum, consider those qualifications listed in 535:20-3-5-535:20-7-5 for personnel employed in wholesale distribution.~~

535:20-3-6. Minimum requirements for Rx Only drug storage, handling, maintenance and records

~~The minimum requirements for RX Only (dangerous) drug storage, handling, maintenance and records for manufacturers shall be the same as those set forth in 535:20-7-7 through 535:20-7-7.10 regarding wholesalers.~~ The following decimal sections shall describe the minimum requirements for the storage and handing of drugs, and for the establishment and maintenance of drug records by manufacturers and their officers, agents, representatives, and employees.

535:20-3-6.1. Facility requirements

(a) All manufacturers of drugs shall conform to U. S. Food and Drug Administration (FDA) Current Good Manufacturing Practice Regulations (CGMP).

(b) All manufacturers shall conform to the Oklahoma Pharmacy Act and the rules of this Title.

(c) Each facility at which drugs are stored, warehoused, handled, held, offered, marketed, or displayed shall:

(1) Be licensed by the Board;

(2) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;

(3) Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment and security conditions;

(4) Have a quarantine area for storage of drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed, secondary containers that have been opened;

(5) Be maintained in a clean and orderly condition; and,

(6) Be free from infestation by insects, rodents, birds, or vermin of any kind.

535:20-3-6.2. Multiple Licensing

(a) A manufacturing facility shall not be in a facility where a retail pharmacy is located.

(b) The manufacturing facility shall be located apart and separate from any retail pharmacy, licensed by the Board of Pharmacy, as set forth in this Title and 535:25-3-5.

535:20-3-6.3. Security

(a) Each facilities used for manufacturing shall be secure from unauthorized entry.

(1) Access from outside the premises shall be kept to a minimum and be well-controlled.

(2) The outside perimeter of the premises shall be well-lighted.

(3) Entry into areas where drugs are held shall be limited to authorized personnel.

(b) All facilities shall be equipped with an alarm system to detect entry after hours.

(c) All facilities shall be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

535:20-3-6.4. Storage

All drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or with the requirements in the current edition of an official compendium, such as the United States Pharmacopeia/National Formulary (USP/NF).

(1) If no storage requirements are established for a drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(2) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, and/or logs shall be utilized to document proper storage of drugs.

(3) The recordkeeping requirement in this Title for manufacturers shall be followed for all stored drugs.

535:20-3-6.5. Examination of materials

(a) Upon receipt, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated drugs or chemicals that are unfit. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.

(b) Each outgoing shipment shall be carefully inspected for identity of the drug products and to ensure that there is no delivery of drugs that have been damaged in storage or held under improper conditions.

(c) The recordkeeping requirement in this Title for manufacturers shall be followed for all incoming and outgoing drugs.

535:20-3-6.6. Returned, damaged, and outdated drugs

(a) Drugs that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other drugs until they are destroyed.

(b) If the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, then the drug shall be destroyed, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, quality, strength, and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, the manufacturer shall consider, among other things:

(1) The conditions under which the drug has been held, stored or shipped before or during its return; and,

(2) The condition of the drug and its container, carton, or labeling, as a result of storage or shipping.

(c) The recordkeeping requirements for manufacturers in this Title shall be followed for all outdated, damaged, deteriorated, misbranded or adulterated drugs.

535:20-3-6.7. Recordkeeping

(a) Manufacturers shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of drugs.

(b) Inventories and records shall be made available for inspection and photocopying by authorized federal, state, or local law enforcement agency officials for a period of two (2) years following disposition of the drugs.

(c) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.

(d) Each manufacturer should maintain an ongoing list of persons with whom they do business.

535:20-3-6.8. Written policies and procedures

(a) Manufacturers shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of drugs, including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories.

(b) Manufacturers shall include in their written policies and procedures the following:

(1) A procedure to be followed for handling recalls and withdrawals of drugs. Such procedure shall be adequate to deal with recalls and withdrawals due to any:

(A) Action initiated at the request of the Food and Drug Administration (FDA) or other federal, state, or local law enforcement or other government agency, including the Board of Pharmacy;

(B) Voluntary action by the manufacturer to remove defective or potentially defective drugs from the market; or

(C) Action undertaken to promote public health and safety by replacing of existing merchandise with an improved product or new package design.

(2) A procedure to ensure that manufacturers prepare for, protect against, and handle a crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state or national emergency.

(3) A procedure to ensure that any outdated drugs shall be segregated from other drugs and destroyed.

(A) This procedure shall provide for written documentation of the disposition of outdated drugs.

(B) This documentation shall be maintained for two (2) years after disposition of the outdated drugs.

535:20-3-6.9. Responsible persons

Manufacturers shall establish and maintain lists of officers, directors, managers and other persons in charge of drug manufacturer, distribution, storage, and handling, including a description of their duties and a summary of their qualifications.

535:20-3-6.10. Compliance with federal, state and local laws

(a) Manufacturers shall operate in compliance with applicable federal, state, and local laws and regulations.

(b) Manufacturers shall permit the Board of Pharmacy and authorized federal, state, and local law enforcement officials to enter and inspect their premises and delivery vehicles, and to audit their records and written operating procedures and to confiscate records, to the extent authorized by law and rule.

(c) Manufacturers that deal in controlled substances shall register with the appropriate state controlled substance authority and with the Drug Enforcement Administration (DEA), and shall comply with all applicable state, local and DEA regulations.

535:20-3-6.11. Salvaging and reprocessing

Manufacturers shall be subject to the provisions of any applicable federal, state or local laws or regulations that relate to drug product salvaging or reprocessing including U.S. 21 CFR Parts 207, 210 and 211.

535:20-3-9. Prohibited Conduct

(a) The following shall be considered prohibited conduct and be a violation of these rules:

(1) Engaging in the manufacturing of drugs

(A) with intent to defraud or deceive, failing to maintain or provide a complete and accurate record, when required;

(B) destroying, altering, concealing, or failing to maintain complete and accurate records for any drug manufactured, when required;

(C) knowingly purchasing or receiving drugs from a person, not authorized to distribute drugs, or,

(D) selling, bartering, brokering, or transferring drugs to a person not authorized to purchase drugs, under the jurisdiction in which the person receives the drug(s).

(2) Forging, counterfeiting, or falsely creating any label for a drug(s) or who falsely represents any factual matter contained in any label of a drug(s).

(3) Altering, mutilating, destroying, obliterating, or removing the whole or any part of the labeling of a drug or the commission of any other act with respect to a drug that results in the drug being misbranded.

(4) Manufacturing, purchasing, selling, delivering or bringing into the state contraband drug(s), or any one who illegally possesses any amount of contraband drug(s); or,

(b) Any violation of the rules of registrant conduct in 535:25:9 is prohibited conduct.

[OAR Docket #08-1022; filed 5-22-08]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 25. WILDLIFE RULES

[OAR Docket #08-910]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 7. General Hunting Seasons
Part 19. Season on Areas Owned or Managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service
800:25-7-92.1. Cimarron Bluff Wildlife Management Area [NEW]
AUTHORITY:
Title 29 O.S., Section 3-103 and 5-401; Section 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation.
DATES:
Adoption:
April 1, 2008
Effective:
Upon Governor's Approval
Approved by Governor:
May 6, 2008
Expiration:
Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTION:
n/a
INCORPORATED BY REFERENCE:
n/a
FINDING OF EMERGENCY:
Property was recently purchased and emergency rules are needed to establish hunting season dates and regulations for this fall.
ANALYSIS:
This property was just recently purchased. Before the sportsmen of the state can utilize this area, hunting season dates and rules governing the use of the area have to be established.
CONTACT PERSON:
Alan Peoples, Chief of Wildlife Division, 405/521-2739 or APA Liaison, Rhonda Hurst, Administrative Assistant, 405/522-6279.

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

SUBCHAPTER 7. GENERAL HUNTING SEASONS

PART 19. SEASON ON AREAS OWNED OR MANAGED BY THE OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION AND THE U.S. FISH AND WILDLIFE SERVICE

800:25-7-92.1. Cimarron Bluff Wildlife Management Area

The following hunting and trapping seasons apply to the Cimarron Bluff WMA:

(1) Quail: Same as statewide season dates, except open the Monday following the close of deer gun season. Hunting hours close at 12:00 noon daily.

(2) Pheasant: Same as statewide season dates, except open the Monday following the close of deer gun season. Hunting hours close at 12:00 noon daily.

(3) Prairie chicken: Closed season.

(4) Turkey-Fall:

(A) Archery: Same as statewide season dates, except closed during muzzleloader season and deer gun season. One (1) bird either-sex.

(B) Gun: Same as statewide season dates, except closed during deer muzzleloader season. One (1) bird either-sex, shotgun only.

(5) Turkey-Spring: Same as statewide season dates, One (1) tom limit.

(6) Squirrel: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.

(7) Rabbit: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.

(8) Crow: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.

(9) Dove: Same as statewide season dates, except closed during deer muzzleloader season.

(10) Rail and gallinule: Same as statewide season dates, except closed during deer muzzleloader season.

(11) Common snipe: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.

(12) Woodcock: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.

(13) Deer-archery: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.

(14) Deer-primitive firearms: Controlled Hunts Only.

(15) Deer-gun: Controlled Hunts Only.

(16) Trapping: Open to water sets and live box traps only.
(17) Pursuit with hounds: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(18) Predator/furbearer calling: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.
(19) Waterfowl: Same as statewide season dates, except closed during deer muzzleloader season and deer gun season.

[OAR Docket #08-910; filed 5-15-08]

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 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #08-942]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Individual Procedures
35:1-9-1. Filing of papers, Administrative Law Judge, and Administrative Law Clerk [AMENDED]
35:1-9-2. Contents of ~~petition~~Notice of Violation and initiation of actions [AMENDED]
35:1-9-3. Notice to parties [AMENDED]
35:1-9-4. Methods of serving notice [REVOKED]
35:1-9-5. Time notice is completed [REVOKED]
35:1-9-6. Time of hearing; request for extension [REVOKED]
35:1-9-7. Hearing procedures~~; presiding officer~~ [AMENDED]
35:1-9-8. Assistance of counsel to Board [AMENDED]
35:1-9-9. Record of hearing [AMENDED]
35:1-9-10. Reporter and transcripts [REVOKED]
35:1-9-11. Findings of fact [AMENDED]
35:1-9-12. Testimony of witnesses [AMENDED]
35:1-9-13. Notice of facts [AMENDED]
35:1-9-14. Right to counsel [REVOKED]
35:1-9-15. Final orders, proposed findings of fact and conclusions of law [REVOKED]
35:1-9-17. Subpoenas [AMENDED]
35:1-9-18. Refusal to obey subpoenas or to testify [REVOKED]
35:1-9-20. Requests for disqualifications [AMENDED]
35:1-9-21. Proof of service [REVOKED]
35:1-9-22. Administration of oaths; ruling upon offers of evidence [REVOKED]
35:1-9-23. Rehearing; reopening or reconsideration [AMENDED]
35:1-9-24. Informal ~~hearing~~disposition of an individual proceeding [AMENDED]
35:1-9-25. Stipulation of an orderOrders [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4, 2A-1 et seq., 10-9 et seq., and 10-9.16; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
February 15, 2008 through March 17, 2008
Public hearing:
March 17, 2008
Adoption:
March 19, 2008
Submitted to Governor:
March 20, 2008
Submitted to House:
March 20, 2008
Submitted to Senate:
March 20, 2008
Gubernatorial approval:
April 23, 2008
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 14, 2008
Final adoption:
May 14, 2008
Effective:
July 1, 2008
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The purpose of the proposed rules is to amend the Department's organizational procedures related to hearings, rulemaking, licensing, and declaratory rulings. The hearing procedures are amended to allow for consistency with the Administrative Procedures Act. The revisions also provide for clean up to old and obsolete 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 JULY 1, 2008:

SUBCHAPTER 9. INDIVIDUAL PROCEDURES

35:1-9-1. Filing of papers, Administrative Law Judge, and Administrative Law Clerk

(a) All papers required to be filed by this Subchapter shall be filed with the ~~Department~~Administrative Law Clerk.

(b) The Commissioner or designee may appoint an Administrative Law Clerk to maintain the administrative hearing dockets and records and perform any other duties assigned.

(c) The Commissioner or designee may appoint an Administrative Law Judge for any administrative hearing.

(1) The Administrative Law Judge shall not have had any prior involvement in the matter at issue other than as an Administrative Law Judge, unless the parties file a written waiver.

(2) The Administrative Law Judge shall have authority to conduct individual proceedings and may take any action consistent with the Administrative Procedures Act and the rules of this subchapter, including but not limited to the following:

(A) Arrange and issue notice of the date, time, and place of hearings and conferences;

(B) Establish the methods and procedures to be used in the presentation of the evidence;
(C) 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;
(D) Administer oaths and affirmations;
(E) Regulate the course of the hearing and govern the conduct of participants;
(F) Examine witnesses;
(G) Rule on, admit, exclude, and limit evidence, at or before hearings;
(H) Establish the time for filing motions, testimony, and other written evidence, briefs, findings, and other submissions, and hold the record open for those purposes;
(I) Rule on motions and pending matters;
(J) Divide the hearing into stages or join claims of parties whenever the number of parties is large or the issues are numerous and complex;
(K) Restrict attendance by persons not parties to the hearing in appropriate cases;
(L) Admit attorneys from other jurisdictions to practice law before the Department in accordance with Rules of the Oklahoma Bar Association, 5 O.S. Chapter 1, Appendix 1, Article II, § 5, and administer the oath required by 5 O.S. § 2;
(M) Require briefs on any relevant issues; and
(N) Request proposed findings of fact, conclusions of law, and proposed orders from all parties.

(3) At the request of the Administrative Law Judge, the Commissioner may designate a Department representative who has had no assigned responsibilities related to the matter at issue to serve as technical adviser to the Administrative Law Judge.

35:1-9-2. Contents of ~~petition~~Notice of Violation and initiation of actions

(a) The Office of General Counsel of the Oklahoma Department of Agriculture, Food, and Forestry by and through any attorney employed by the Department is hereby an authorized agent of the State Board of Agriculture for the following purposes:

(1) To initiate and prosecute in the name of the Office of General Counsel on behalf of the State Board of Agriculture any administrative, civil, or criminal actions and proceedings necessary under the Oklahoma Agricultural Code or rules promulgated thereunder; and
(2) To apply to and obtain from a district court an administrative warrant as necessary to enforce the right of access and inspection as authorized and described in Section 2-14 of Title 2 of the Oklahoma Statutes.

(b) ~~In every~~An individual proceeding~~, whether~~pursuant to the Administrative Procedures Act shall be initiated by the ~~Board or by other petitioners, there shall be filed a petition~~filing of a Notice of Violation containing ~~a brief statement setting forth the relief requested and the facts alleged to give rise to the right to the relief and naming the persons against whom relief is sought.~~the following:

(1) A statement of the 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 reference to the particular sections of the statutes and rules involved; and
(4) A short and plain statement of the matters asserted; however, if the agency is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved and thereafter upon application a more definite and detailed statement shall be furnished.

(c) Individual proceedings may be initiated by the Office of General Counsel by filing a Notice of Violation with the Administrative Law Clerk.
(d) The Department shall comply with the Oklahoma Small Business Regulatory Flexibility Act, 75 O.S. § 506, where applicable.

35:1-9-3. Notice to parties

(a) As soon as possible after the filing of the ~~petition~~Notice of Violation, the Department shall notify the respondents of the filing and of the date set for hearing.
(b) The notice shall include a copy of the petition and the date, time, and place of the hearing, which shall be at least twenty (20) days after notice of the hearing is sent, unless otherwise provided by law or agreed by the parties.
(c) Service of notice shall be made in accordance with the Oklahoma Pleading Code, 12 O.S. § 2001 et seq.
(d) Where the Department is serving notice, personal service may be made by any agriculture law enforcement agent pursuant to 2 O.S. 6-310.

35:1-9-4. Methods of serving notice [REVOKED]

~~(a) Service shall be made in accordance with Oklahoma law except as provided in this section.~~
~~(b) Where the Department is serving notice, personal service may be made by any authorized agent of the Board.~~
~~(c) Service by certified mail shall be effective on the date of receipt or, if refused, on the date of refusal by the respondent.~~

35:1-9-5. Time notice is completed [REVOKED]

~~Service of notice shall be complete upon personal service, or upon the deposit of certified mail in the post office, or upon the posting of notice, or first publication thereof, as the case may be.~~

35:1-9-6. Time of hearing; request for extension [REVOKED]

~~The time set for a hearing, specified in the notice thereof, shall be not less than twenty (20) days after the date the notice is completed by the Executive Secretary. If the notice deems that the date specified gives inadequate time for preparation~~

~~for the hearing, the notice may apply in writing for an extension, stating the time desired and the reasons for the request. The application shall be acted upon promptly by the Executive Secretary; and, if the extension is denied, the party may renew the request and make proper showing for a continuance at the hearing~~

35:1-9-7. Hearing procedures~~; presiding officer~~

~~The hearings shall be conducted in an orderly manner by the Board. The order of procedure will follow generally that which obtains in civil proceedings at law; however, strictness of procedures shall not be required, the objective being that fairness and orderliness prevail to afford a full hearing which protects the rights of all concerned. The rules of evidence shall be those specified by the Oklahoma Administrative Procedures Act. The President of the Board shall be the presiding officer at the hearing or proceeding; however, in his absence, or for other reasonable cause, the Board shall appoint some other Board member or Assistant Attorney General, or Board's attorney, or staff member to serve as the presiding officer.~~

(a) The Administrative Law Judge may schedule and conduct prehearing conferences as necessary.

(1) The prehearing conference may be held by telephone.

(2) Upon request of either party, prehearing conferences shall be on the record.

(3) Prehearing conferences may address any of the following:

(A) Identification and simplification of issues, including the elimination of frivolous claims or defenses;

(B) Amendments to the pleadings;

(C) The plan, schedule, and limitations of discovery;

(D) Identification of admissions of fact to avoid unnecessary proof and cumulative evidence;

(E) The identification of witnesses and substance of testimony, exhibits, and documents;

(F) The use of prehearing briefs and prefiled testimony in the form of sworn affidavits;

(G) Settlement of all or some of the issues prior to the hearing;

(H) Adoption of special procedures for managing difficult or protracted actions that may involve complex issues, multiple parties, novel or difficult legal questions, or evidence problems;

(I) Scheduling; and

(J) Any other matters as may aid in disposition of the case.

(4) A prehearing conference may result in a scheduling or other prehearing order and subsequent changes to any prehearing or scheduling order may be made by the Administrative Law Judge by modifying the order for good cause.

(b) The order of procedure in all individual proceedings shall be governed by the Administrative Procedures Act and this subchapter.

(1) At the hearing, each party may make a brief opening statement, present witnesses, documents and exhibits on its behalf, and cross-examine adverse witnesses.

(2) The right to make a closing statement or argument shall be at the discretion of the assigned administrative law judge.

(3) The rules of evidence shall be those specified by the Administrative Procedures Act.

(4) At the discretion of the Administrative Law Judge, any party may reopen the case in chief, even after the adverse party has rested.

(5) Parties may stipulate to any lawful matter.

(c) The Administrative Law Judge shall rule on the admissibility of evidence and objections to evidence, and on motions or objections raised during hearings. All objections shall be made promptly or be deemed waived.

(d) 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. In all other matters the standard of proof shall be a substantial evidence.

(e) The Administrative Law Judge shall hear all evidence and arguments applicable in a case and shall prepare the final order in the proceeding that shall include findings of fact and conclusions of law, separately stated.

(1) The Administrative Law Judge may allow the parties to submit briefs or proposed findings of fact and conclusions of law prior to ruling on the matter at issue.

(2) The Administrative Law Judge may take the cause of action under advisement for a period not to exceed thirty (30) days and shall then issue a final order in writing to the parties.

35:1-9-8. Assistance of counsel to Board

The Board may seek the assistance of ~~the Attorney General or an Assistant Attorney General, if requested and available at the time of the hearing,~~ a representative of the Office of General Counsel to sit with the Board as a law member. Nothing contained herein shall, however, prevent the Board from employing outside counsel when in the opinion of the Board, it is necessary to do so in order to administer and enforce the provisions of the Oklahoma Agricultural Code and the rules promulgated thereunder.

35:1-9-9. Record of hearing

~~The report of a hearing shall be set forth in such form and detail as the President or Board may direct, unless the hearing is fully transcribed, and shall be placed on file in the Executive Secretary's office. The record shall include all pleadings, motions, and intermediate rulings; evidence received or considered; a statement of matters officially noticed; questions and offers of proof, objections, and rulings thereon; any decision opinion, or report by the officer presiding at the hearing; and all staff memoranda or data submitted to the hearing officer or members of the agency in connection with their consideration of the case.~~

(a) A record of the hearing shall be made, which shall be a oral recording unless otherwise agreed by the parties and the Administrative Law Judge. The recording will not be transcribed as a matter of course, however, any party may request a copy of the oral recording and pay all costs for transcribing the oral record

(b) Any party may request a court reporter. The requesting party shall pay the costs, and the original transcript shall be filed in the case file as part of the record in the case.

(c) The record of a proceeding and the file containing the notices and the pleadings shall be maintained by the Administrative Law Clerk. All pleadings, motions, orders and other papers submitted for filing in a proceeding shall be file stamped by the Administrative Law Clerk upon receipt. The burden of showing substantial prejudice by any failure to correctly file-stamp any submittal shall be upon the asserting party.

(d) The administrative record of all individual proceedings shall contain documents required by the APA, 75 O.S. § 309, and shall include but not be limited to all pleadings, motions, and intermediate rulings; evidence received or considered; a statement of matters officially noticed; questions and offers of proof, objections, and rulings thereon; and any decision opinion.

35:1-9-10. Reporter and transcripts [REVOKED]

~~The full proceedings of any hearing shall be transcribed on the request of any party. The fee for the reporter shall be paid by the party requesting the services of a reporter, but may be taxed as costs to another party at the direction of the Board in appropriate circumstances.~~

35:1-9-11. Findings of fact

All findings of fact ~~made by the Board~~ shall be based exclusively on the evidence, on matters officially noticed during the hearing; and, upon the information received ~~by the Board~~ through investigation and examination made by ~~its agents and employees~~the Department prior to or during the hearing~~, which shall be reduced to writing, sworn to, and filed and made a part of the record, or the testimony of such employees or agents shall be taken under oath, in the discretion of the Board~~.

35:1-9-12. Testimony of witnesses

The testimony of witnesses and documentary evidence may be admitted on behalf of any party at the hearing~~, subject to objections as to relevancy by the opposing party~~pursuant to the Oklahoma Evidence Code. ~~Written documentary evidence submitted shall be by affidavit, and oral testimony shall be by sworn statements. A~~The Administrative Law Judge may allow a party ~~may~~to conduct cross-examinations required for a full and true disclosure of the facts.

35:1-9-13. Notice of facts

The Board shall give notice to all parties, prior to or at the hearing, of any facts of which it proposes to take official notice. Any party ~~or his attorney~~ may request that official notice be taken of any fact qualified for ~~such~~ notice by the statutes of this State. If ~~such~~ official notice is taken, it shall be stated in the record, and all parties shall have opportunity to contest and give evidence in rebuttal or derogation of the official notice.

35:1-9-14. Right to counsel [REVOKED]

~~Any party shall at all times have the right to be represented by counsel duly licensed to practice law by the Supreme Court of Oklahoma, provided that persons admitted to the Bar in other jurisdiction may be permitted to appear as associate counsel, if the party is represented by a member, or members, of the Oklahoma Bar present and actively participating in the matters.~~

35:1-9-15. Final orders, proposed findings of fact and conclusions of law [REVOKED]

~~All final orders 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. Any party to a proceeding before the Board may file proposed findings of fact and conclusions of law; and, if proposed findings of fact are filed, the final order of the Board shall include a ruling upon each proposed finding. All parties shall be notified, either in person or by mail, of any order. Upon request, a copy of the order shall be delivered or shall be mailed forthwith to each party and to his attorney of record at the address specified in the request.~~

35:1-9-17. Subpoenas

(a) Subpoenas for the attendance of witnesses, or for the furnishing of information required by the ~~Board~~Administrative Law Judge, or for the production of evidence or records of any kind, shall be issued ~~by the Executive Secretary of the Board at the direction of the President or upon order of the Board~~in accordance with the Administrative Procedures Act and the Okahoma Pleading Code. ~~In like manner, and for like purpose, subpoenas shall be issued by the Executive Secretary at the request of any party to a proceeding before the Board for the attendance of witnesses or for the production of evidential materials at a hearing in such proceeding. The signature of the Executive Secretary shall be sufficient authentication for any subpoena. Subpoenas shall be served in any manner prescribed by these rules for the service of notices.~~

(b) Subpoenas shall be issued by the Executive Secretary of the Board or designee and the signature shall be sufficient authentication for any subpoena.

(c) Subpoenas shall be served in any manner prescribed by these rules for the service of notices.

(d) The Department may seek an appropriate judicial order 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 may proceed despite the refusal but the Administrative Law Judge may continue the proceedings as necessary to secure a court ruling.

35:1-9-18. Refusal to obey subpoenas or to testify [REVOKED]

~~Upon the failure of any person to obey a subpoena, or upon the refusal of any witness to be sworn or make an affirmation or to answer a question put to him in the course of a hearing in any rulemaking proceeding, proceeding for a declaratory ruling, or in an individual proceeding, or in any other authorized action of the Board, the Board as soon as convenient shall consider the matter. By resolution, it may direct the institution of appropriate judicial proceedings under the law of the State for an order to compel compliance with the subpoena or the giving of testimony, as the case may be. Meanwhile, the hearing or other matters shall proceed, so far as is possible; but the Board, at its discretion at anytime, may continue the proceedings for such time as may be necessary to secure a final ruling in the compliance proceedings.~~

35:1-9-20. Requests for disqualifications

(a) Requests for the disqualification of a member or members of the Board shall be embodied in an affidavit stating with particularity the grounds alleged therefore. ~~Such requests must~~Any request shall be filed prior to the commencement of the hearing unless it is made to appear in the affidavit that the ground of disqualification was not previously known and that the application has been made promptly upon discovery.

(b) Upon the filing of ~~such~~the affidavit, the President of the Board or the Executive Secretary, if the affidavit is filed against the President, shall set the matters for hearing at the earliest date at which the Board can be convened, giving notice thereof personally or by telephone to the party or his counsel.

(c) The Board, or those members thereof qualified to sit at the hearing, shall take evidence and make prompt decisions. In the event the disqualification is sustained or in the event of a mandamus requiring disqualification, the hearing shall be continued to such time as is necessary for the appointment of members pro tem to proceed with the matters, and due notice of the continuance shall be given to all parties.

(d) Requests for disqualification of an Administrative Law Judge shall follow the same procedure as that for disqualification of a member of the Board, however, the Commissioner shall take evidence and make prompt decisions, rather than the Board.

35:1-9-21. Proof of service [REVOKED]

~~Proof of service of all notices, subpoenas or other documents requiring service may be made by affidavit of the party making service, specifying dates and manner of service. Such proof shall be prima facie evidence of the fact of service as stated, and the burden of proof shall be upon any person or party contesting the same to establish its invalidity.~~

35:1-9-22. Administration of oaths; ruling upon offers of evidence [REVOKED]

~~The President of the Board or any members presiding at a hearing shall administer oaths or require affirmations for the purposes of the hearing. He shall rule upon all motions, objections, offers of proof or other incidents of the hearing, but his ruling may be overruled by a majority of the membership conducting the hearing; and, upon request of a party or his attorney, the presiding officer shall submit the sustention or rejection of his ruling to the Board.~~

35:1-9-23. Rehearing; reopening or reconsideration

A petition for rehearing, reopening or reconsideration of a final order ~~must~~shall be filed with the Executive Secretary within ten (10) days from the entry of the order. ~~It must~~The petition shall be signed by the party or ~~his~~ attorney and ~~must~~shall set forth with particularity ~~such of~~ the statutory grounds upon which it is based; however, a petition based upon fraud ~~practised~~practiced by the prevailing party or upon procurement of the orders by perjured testimony or fictitious evidence may be filed at any time. All petitions for rehearing, reopening or reconsideration will be considered and ruled upon as soon as the convenient conduct of the Board's business will permit.

35:1-9-24. Informal ~~hearing~~disposition of an individual proceeding

~~The parties to any individual proceeding may present the matter to the Board or to any authorized representative in informal conference; and, upon mutual consent of all parties and of the Board, the matters may be submitted and determined and an order may be issued without resort to formal procedures. The order shall be in writing and shall be furnished to the parties as prescribed for orders issued after formal hearing in individual proceedings.~~

(a) Informal disposition may be made of any individual proceeding by stipulation, agreed settlement, consent order, or default.

(1) Resolution by stipulation, agreed settlement, or consent order shall be approved by the State Board of Agriculture.

(2) Any Respondent who fails to appear after receipt of notice may be determined to have waived the right to appear and present a defense and a default may be presented by the Department to the Board at a regularly schedule meeting proposing the relief requested by the Notice of Violation.

(b) Proposed final administrative orders shall be prepared and issued in accordance with the Administrative Procedures Act and presented to the Board of Agriculture.

(c) Administrative penalties, civil penalties, and other fines imposed by the Board shall be enforced pursuant to the procedure outlined in 2 O.S. § 2-7(B) and the Uniform Enforcement of Foreign Judgments Act, 12 O.S. § 719 et seq.

35:1-9-25. ~~Stipulation of an order~~Orders

~~At anytime in an individual proceeding, the parties thereto may enter into a stipulation for the issuance of an order specifying its terms, or may enter into an agreement for settlement upon specified terms, or may consent to the issuance of an order upon specified terms. In either event, the stipulation, the settlement agreement, or the consent, shall be reduced to writing duly executed by the parties, or shall be entered upon the~~

~~record in open hearing. Orders made under this rule shall be in writing and shall be served as other orders are served.~~

(a) Proposed final administrative orders shall be prepared and issued in accordance with the Administrative Procedures Act and presented to the Board of Agriculture for approval.

(b) Administrative penalties, civil penalties, and other fines imposed by the Board shall be enforced pursuant to the procedure outlined in 2 O.S. § 2-7(B) and the Uniform Enforcement of Foreign Judgments Act, 12 O.S. § 719 et seq.

[OAR Docket #08-942; filed 5-16-08]

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

[OAR Docket #08-943]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
35:10-1-3. Handbook and publication editions [NEW]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(A)(2), 16, and (29); 14-31 et seq. and 14-61 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
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March 20, 2008
Submitted to House:
March 20, 2008
Submitted to Senate:
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Gubernatorial approval:
April 23, 2008
Legislative approval:
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SUPERSEDED EMERGENCY ACTIONS:
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INCORPORATIONS BY REFERENCE:
Incorporated standards:
National Institute of Standards and Technology:
Handbook 44 "Specifications, Tolerances and Other Technical Requirements for Commercial Weighing & Measuring Devices" (2008 Edition).
Handbook 130 "Uniform Laws and Regulations" (2008 Edition).
Handbook 133 "Checking the Net Contents of Packaged Goods" (2005 Edition).
Handbook 105-1 "Specifications and Tolerances for Field Standard Weights" (1990 Edition).
Handbook 105-2 "Specifications and Tolerances for Field Standard Measuring Flasks" (1996 Edition).
Handbook 105-3 "Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards" (2004 Edition).
National Conference on Weights and Measures:
Publication 14 (2008 Edition).
Publication 12 (1991 Edition).
United States Department of Agriculture:
Federal Grain Inspection Service Moisture Handbook (2006 Edition).
Incorporating rules:
35:15-1-3 [NEW]
Availability:
8:00 a.m. to 5:00 p.m., Monday through Friday at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.
ANALYSIS:
The proposed rule provides the incorporation by reference dates for the various handbooks utilized in the Department's Service Agency and Weights and Measures statutes and 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 JULY 1, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

35:10-1-3. Handbook and publication editions

References to a Handbook or publication in these rules shall mean the following edition, unless a different reference is made in the text of the rule:

(1) Handbook 44 "Specifications, Tolerances and Other Technical Requirements for Commercial Weighing & Measuring Devices" (2008 Edition).

(2) Handbook 130 "Uniform Laws and Regulations" (2008 Edition).

(3) Handbook 133 "Checking the Net Contents of Packaged Goods" (2005 Edition).

(4) Handbook 105-1 "Specifications and Tolerances for Field Standard Weights" (1990 Edition).

(5) Handbook 105-2 "Specifications and Tolerances for Field Standard Measuring Flasks" (1996 Edition).

(6) Handbook 105-3 "Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards" (2004 Edition).

(7) Publication 14 (2008 Edition).

(8) Publication 12 (1991 Edition).

(9) Federal Grain Inspection Service Moisture Handbook (2006 Edition).

[OAR Docket #08-943; filed 5-16-08]

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

[OAR Docket #08-944]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 22. Swine Pseudorabies
Part 1. General Provisions

35:15-22-1 [AMENDED]
Part 7. Requirements for Swine Exhibitions
35:15-22-71 [AMENDED]
Subchapter 24. Swine Brucellosis
Part 1. General Provisions
35:15-24-2 [AMENDED]
35:15-24-3 [AMENDED]

AUTHORITY:
Oklahoma State Board of Agriculture and the Oklahoma Agricultural Code; 2 O.S. 2001 §§ 2-4(2), (7), (17), (27) and (29), and 6-2; Article 6, Section 31, Constitution of the State of Oklahoma

DATES:
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Failure of the Legislature to disapprove the rules resulted in approval on May 14, 2008
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July 1, 2008

SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
These rules are necessary to ensure that all swine exhibitions in the state of Oklahoma are consistently held responsible for all animal health requirements. The proposed changes state that the official in charge of the swine exhibition event is responsible for ensuring that all swine present at the event have complied with all pseudorabies and swine brucellosis testing requirements.

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 JULY 1, 2008:

SUBCHAPTER 22. SWINE PSEUDORABIES

PART 1. GENERAL PROVISIONS

35:15-22-1. Definitions

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

"Approved market" means a stockyard, livestock market, or other premises approved by the Board where swine are assembled for sale.

"Approved slaughtering establishment" means a slaughtering establishment operated under the provisions of the Federal Meat Inspection Act (21 U.S.C. § 601 et seq.), a state-inspected slaughtering establishment, or any other facility approved by the Board.

"Breeding swine" means all sexually intact swine six (6) months of age or older as determined by an accredited veterinarian.

"Commercial production swine" means swine that are continuously managed and have adequate facilities and practices to prevent exposure to either transitional production or feral swine.

"Commuter herd" means two or more groups of swine under common ownership or supervision that are located on more than one premise in more than one state and that have an interchange or movement of swine between the premises in those states as part of the normal feeding, breeding, or growing operation without a change of ownership.

"Commuter herd agreement" means a written herd management and testing agreement made by the chief animal health officials of all states where the commuter herd resides and the herd owner.

"Direct consignment" means the shipment of swine from the point of origin to the destination point without diversion of any type, unloading the swine enroute, or permitting contact ~~any~~ with any other animals, including other swine.

"Entry permit" means official permission from the State Veterinarian obtained prior to moving swine into Oklahoma valid for thirty (30) days after the date of issuance that may be obtained by telephone by providing the following information: name and address of the consignor; name and address of the consignee; and the number, age, sex, and breed of the swine to be imported.

"Exposed swine" means swine that have been in contact with, associated with, or adjacent to any animal known to be pseudorabies positive.

"Farm of origin" means the farm where the swine were born or where the swine have resided for at least the previous ninety (90) consecutive days.

"Feeder swine" means swine intended to be fed to a finished slaughter weight and not intended for breeding or exhibition.

"Feral swine" means swine that are free roaming or wild.

"Herd" means one or more swine maintained on common ground and includes all swine under common ownership or supervision that are geographically separated but have an interchange or movement of swine between the groups.

"Infected herd" means a herd in which an animal has been determined by the designated epidemiologist to be infected with pseudorabies using an official pseudorabies test or diagnosed as having pseudorabies by an accredited veterinarian.

"Isolation" means separation of swine by a physical barrier so that other swine do not have access to the isolated swine's body, excrement, or discharges and the swine do not share a building with a common ventilation system with other swine and are kept at a distance from other swine as determined by the designated epidemiologist.

"Official pseudorabies test" means a test approved by the USDA to be conducted on swine for the diagnosis of pseudorabies and performed in a laboratory listed in a Veterinary Services Notice and shall not include the G-1 deletion test, except for use by the Oklahoma designated epidemiologist.

"Official 95/10 random sample test" means a sampling protocol utilizing official pseudorabies tests that provide a ninety-five (95) percent probability of detecting infection in a herd in which at least ten (10) percent of the swine are seropositive for pseudorabies. Each segregated group of swine shall be considered a separate herd and sampled as follows:

(A) less than 100 head - test 25.
(B) 100-200 head - test 27.
(C) 201 - 999 head - test 28.
(D) 1,000 head and over - test 29.

"Owner-shipper statement" means a statement signed by the owner or shipper of swine which includes the number of swine to be moved, the points of origin and destination, the names of the consignor and consignee, and any additional required information.

"Pseudorabies" means the infectious and communicable disease of livestock and other animals also known as Aujeszky's disease, mad itch, or infectious bulbar paralysis.

"Pseudorabies monitored herd" means a swine herd that has negative test results from an official pseudorabies serologic test during the last twelve (12) months at the following rate:

(A) 10 head - test all.
(B) 11-35 head - test 10.
(C) 36 or more - test thirty (30) percent or thirty (30) swine, whichever is less.

"Quarantine feedlot" means a confined area under official state quarantine and approved by the State Veterinarian.

"Qualified pseudorabies negative herd" means a herd where all swine over six (6) months of age have been tested using an official pseudorabies test and all swine tested negative. The herd shall not have been a known infected herd within the past thirty (30) days. A minimum of ninety (90) percent of the swine in the herd shall have been on the premises and a part of the herd for at least ninety (90) days prior to the qualifying official pseudorabies tests or have entered directly from another qualified pseudorabies negative herd. All requirements in Part 5 of this Subchapter shall be met in order to maintain qualified pseudorabies negative status.

"Shipping Permit" means an official document issued by the State Veterinarian for the movement of pseudorabies infected, exposed, or vaccinated swine under this Subchapter. The permit shall be obtained prior to any movement of the swine and shall include the number of swine to be moved; the purpose for moving the swine; the points of origin and destination; the names and addresses of the consignor and the consignee; and any additional information required by this Subchapter.

"Slaughter swine" means swine intended for or consigned directly to a slaughter establishment.

"Swine Exhibition" means any swine gathering that allows opportunity for commingling of swine under separate ownership, including but not limited to fairs, livestock shows, breed association shows, or sales.

"Transitional production swine" means feral swine that are captive or swine that have reasonable opportunities to be exposed to feral swine.

PART 7. REQUIREMENTS FOR SWINE EXHIBITIONS

35:15-22-71. Exhibition requirements

(a) All Oklahoma origin swine shall have an official ear tag and shall be accompanied with 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 pseudorabies test or the qualified pseudorabies negative herd number and current quarterly herd test date and show the corresponding official ear tag for each pig.

(b) All out-of-state swine 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 pseudorabies test or the qualified pseudorabies negative herd number and current quarterly herd test date and show the corresponding official ear tag for each pig.

(c) Testing requirements.

(1) Oklahoma origin exhibition swine shall have a negative official pseudorabies 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 pseudorabies.

(2) Out of state swine shall have either a negative official pseudorabies test within thirty (30) days prior to each exhibition or shall have evidence that the swine are from a qualified pseudorabies negative herd and show the corresponding official ear tag for each pig.

(3) Owners or immediate family members of owners of a qualified pseudorabies negative herd may exhibit swine originating from the qualified herd without a negative official pseudorabies 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.

(d) All swine, after being exhibited, shall be kept isolated from all non-exhibition swine until the swine ~~are retested~~retest negative for pseudorabies 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) The official in charge shall obtain a permit from the Department prior to conducting a swine exhibition.

(f) The official in charge shall verify that all swine present meet all testing and recordation requirements.

SUBCHAPTER 24. SWINE BRUCELLOSIS

PART 1. GENERAL PROVISIONS

35:15-24-2. Definitions

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

"Approved Laboratory" means a laboratory having State-Federal approval to conduct specific tests for Brucellosis and staffed with personnel approved to conduct such tests.

"Exposed Swine" means swine which have had contact with Brucellosis infected swine as determined by the Designated Epidemiologist.

"Herd Test" means a blood test for Brucellosis conducted on a group of breeding swine six (6) months of age and older and any additional animals in the group which the designated epidemiologist determines should be tested to help evaluate the potential of Brucellosis infection within the group. All swine tested shall be identified with an official eartag, tattoo or other permanent identification.

"Infected Herd" means a group of swine in which evidence of B. suis has been disclosed as is determined by the Designated Epidemiologist.

"Negative" means that no evidence of Brucellosis exists in an animal as determined by blood testing and classification by the Designated Epidemiologist.

"Official Sample" means a blood sample obtained by State-Federal personnel or an accredited veterinarian and submitted to an approved laboratory.

"Permit for Entry" means permission granted by the Board or its authorized agent to move swine into the state of Oklahoma. A permit shall contain the name and address of the consignor and consignee and the number, age, sex and breed of swine being imported. A permit shall be void fifteen (15) days after date of issuance.

"Reactor" means a response to testing which indicates Brucellosis infection in animals as determined by the Designated Epidemiologist.

"Swine Exhibition" means any swine gathering that allows opportunity for commingling of swine under separate ownership, including but not limited to fairs, livestock shows, breed association shows, or sales.

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~~c) ~~**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~~retest 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.

(6) The official in charge shall obtain a permit from the Department prior to conducting a swine exhibition.

(7) The official in charge shall verify that all swine present meet all testing and recordation requirements.

(~~e~~d) ~~**Change of ownership requirements.**~~ All swine shall be tested and found negative to Brucellosis within the previous thirty (30) days 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~~e) ~~**Penalties.**~~ The ~~Oklahoma~~State Board of Agriculture shall have the authority to impose administrative penalties for any person ~~found guilty~~found to be in violation of ~~violating~~

the provisions of this rule. The Administrative Procedures Act shall be utilized in determining ~~such~~any action.

[OAR Docket #08-944; filed 5-16-08]

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

[OAR Docket #08-945]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 34. Feral Swine [NEW]
35:15-34-1 through 35:15-34-17 [NEW]
AUTHORITY:
Oklahoma State Board of Agriculture and the Oklahoma Agricultural Code; 2 O.S. 2001 §§ 2-4(2), (7), (17), (27) and (29); and 6-601 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
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N/A
ANALYSIS:
These rules are necessary to implement the provisions of House Bill 1914 of the 2007 Legislative session. The Feral Swine Control Act became effective on November 1, 2007 and is intended to regulate the transportation, breeding, and hunting of feral swine.
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 JULY 1, 2008:

SUBCHAPTER 34. FERAL SWINE

35:15-34-1. Purpose

The purpose of these rules is to implement the provisions of the Feral Swine Control Act.

35:15-34-2. Definitions

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

"Breeding facility" means a premise containing feral swine that are bred to domestic or feral swine.

"Buying station" means a premise utilized for the purchase of feral swine to be sent directly to slaughter.

"Feral swine" means any hog, pig, or swine species (Sus scrofa) including, but not limited to, Russian and European wild boar that are running at large, free roaming, or wild upon public or private lands in this state, and shall also include any hog, pig, or swine species that has lived any part of its life running at large, free roaming, or wild. The term feral swine shall also include any feral phenotype swine, whether or not running at large, free roaming, or wild.

"Feral swine facility" means a breeding facility, buying station, gathering station, holding facility, or sporting facility.

"Gathering station" means a temporary holding facility for feral swine prior to transporting or disposing in an authorized manner.

"Holding facility" means a temporary holding facility where feral swine are held for no more than thirty (30) days with cleaning and disinfection between groups of feral swine.

"Sporting facility" means a premise containing feral swine intended for hunting and feral swine are only removed from the premises through hunting, directly to slaughter, or to a licensed sporting facility.

"Transport" means to move more than fifteen (15) feral swine fifty (50) miles or more.

"Validated/qualified herd" means a swine herd that meets the requirements of a qualified pseudorabies negative herd and a validated brucellosis negative herd.

35:15-34-3. Importation of feral swine

(a) Any person importing live feral swine into this state shall be accompanied by a Certificate of Veterinary Inspection signed by an accredited veterinarian that contains the following:

(1) Individual identification of each feral swine; and

(2) Negative brucellosis and pseudorabies test results.

(b) Any person importing live feral swine into this state shall be accompanied by a written entry permit approved by the State Veterinarian.

(c) A person shall obtain a negative brucellosis and pseudorabies test within fifteen (15) days prior to entry.

(d) All live feral swine imported into this state shall be quarantined and isolated to retest for brucellosis and pseudorabies. The testing shall be conducted no earlier than thirty (30) days and no later than sixty (60) days following the date of importation, except for feral swine going directly to an approved slaughter facility.

35:15-34-4. Intrastate testing of feral swine

(a) Feral swine may be moved directly to a recognized slaughtering facility, an authorized market, a licensed sporting facility, a licensed buying station, or to a licensed gathering station without testing.

(b) Feral swine moved to locations other than those listed in (a), including licensed breeding facilities, shall be segregated from all other swine and test negative for pseudorabies and brucellosis on two consecutive tests conducted no less than thirty (30) and no more than sixty (60) days apart.

(c) The Department may conduct sampling of feral swine for the purpose of disease traceback at any time.

(d) The owner of a feral swine facility shall cooperate with the Department in the event of a sampling event.

(e) All feral swine in this state that test positive for brucellosis or pseudorabies shall be immediately sent directly to slaughter or slaughtered on the premises pursuant to an order issued by the State Veterinarian.

35:15-34-5. Transporter license

(a) All persons that transport live feral swine in this state shall be required to obtain a transporter license from the Department.

(b) The transporter license shall be good for a period of (3) years and shall not be transferable.

(c) Application for a transporter license shall be on a form prescribed by the Department and shall include the following:

(1) Name, mailing address, and telephone number of the applicant,

(2) Drivers license number of the transporter;

(3) A brief statement describing the area the applicant typically transports feral swine,

(4) A description of the vehicles, including trailers, used to transport feral swine, including any license tag numbers or other individual identification; and

(5) A description of the typical locations where feral swine may be transported by the applicant.

(d) Any person transporting feral swine shall not under any circumstances release the feral swine to any property other than a licensed feral swine facility.

(e) Live feral swine shall only be transported to the following:

(1) A licensed sporting facility;

(2) A licensed breeding facility;

(3) A licensed buying station;

(4) A licensed gathering station;

(5) Directly to an approved market or slaughter facility, or

(6) Pursuant to an order issued by the State Veterinarian.

(f) Any person that holds a sporting facility, buying station, gathering station, or holding facility license may obtain a transporter license with no additional application required.

35:15-34-6. Sporting facilities

(a) An owner or operator shall obtain a Category I or Category II sporting facility license prior to operation of any new sporting facility.

(b) The requirements for a Category I license shall be as follows:

(1) The owner or operator maintains a double fence adequate to reasonably prevent the escape of enclosed feral swine, the unsolicited additions of feral swine from outside the enclosure, and nose to nose contact between feral swine and any feral swine outside the enclosure.

(2) All additions of feral swine to the sporting facility originate from a validated/qualified herd or test negative for pseudorabies and brucellosis on two consecutive tests conducted no less than thirty (30) and no more than (60) days apart.

(3) The owner or operator shall keep records of the following:

(A) Number of head of feral swine added to the facility;

(B) Name, address, and telephone number of the person who provided the feral swine;

(C) Records of all animal health testing for a period of three (3) years;

(D) Date of release of the feral swine into the facility; and

(E) Number of head removed from the facility, method of removal, and the date of removal.

(4) Any person applying for a Category I sporting facility license shall provide the following information on a form prepared by the Department:

(A) Name, mailing address, and telephone number of the applicant;

(B) Name, mailing address, and telephone number of the owner of the property, if different from the applicant;

(C) Name, physical address, and county of the sporting facility;

(D) Legal description to the nearest quarter section and GPS coordinates, if available, of the sporting facility;

(E) Name, address and telephone number of the location where records are kept;

(F) A map showing topography of the area with a diagram of the facility structures, fencing plan, and perimeter clearly marked;

(G) 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;

(H) Whether the property where the sporting facility is located is owned or leased;

(I) Driving directions from the nearest town; and

(J) 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."

(5) Each Category I sporting facility shall be inspected at least annually.

(c) The requirements for a Category II license shall be as follows:

(1) The owner or operator maintains a fence adequate to reasonably prevent the escape of enclosed feral swine and the unsolicited additions of feral swine from outside the enclosure.

(2) The owner or operator accepts feral swine of unknown disease status.

(3) The sporting facility is located a minimum of one and one-half (1 1/2) miles from commercial swine or validated/qualified herds, unless the sporting facility was in existence on the effective date of these rules.

(4) The owner or operator shall only allow feral swine to leave the facility when they are killed or sold directly to slaughter, or transported to another licensed sporting facility.

(5) The owner or operator shall keep records of the following:

(A) Number of head of feral swine added to the facility;

(B) Name, address, and telephone number of the person who provided the feral swine;

(C) Date of release of the feral swine into the facility; and

(D) Number of head removed from the facility, method of removal, and the date of removal.

(6) Any person applying for a Category II sporting facility license shall provide the following information on a form prepared by the Department:

(A) Name, mailing address, and telephone number of the applicant;

(B) Name, mailing address, and telephone number of the owner of the property, if different from the applicant;

(C) Name, physical address, and county of the sporting facility;

(D) Legal description to the nearest quarter section and GPS coordinates, if available, of the sporting facility;

(E) Name, address and telephone number of the location where records are kept;

(F) A map showing topography of the area with a diagram of the facility structures, fencing plan, and perimeter clearly marked;

(G) 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;

(H) Whether the property where the sporting facility is located is owned or leased;

(I) Driving directions from the nearest town; and

(J) 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."

(7) Each Category II sporting facility shall be inspected at least biannually.

35:15-34-7. Breeding facilities

(a) An owner or operator of a breeding facility shall obtain a license to operate and shall comply with all animal health requirements for domestic swine.

(b) In no case shall feral swine from a breeding facility be removed from the breeding facility unless they meet all of the requirements for movement of domestic swine.

(c) The breeding facility shall be located a minimum of one and one-half (1 1/2) miles from commercial swine or a validated/qualified herd, unless the breeding facility qualifies as a validated/qualified herd, or was in existence on the effective date of these rules.

(d) The owner or operator of a breeding facility shall maintain a double fence adequate to reasonably prevent the escape of enclosed feral swine, the unsolicited additions of feral swine from outside the enclosure, and nose to nose contact between feral swine and any feral swine outside the enclosure.

(e) The owner or operator shall keep records of the following:

(1) Number of head of feral swine added to the facility;

(2) Name, address, and telephone number of the person who provided the feral swine;

(3) Records of all animal health testing for a period of three (3) years; and

(4) Number of head removed from the facility, method of removal, and the date of removal.

(f) Any person applying for a breeding facility license shall provide the following information on a form prepared by the Department:

(1) Name, mailing address, and telephone number of the applicant;

(2) Name, mailing address, and telephone number of the owner of the property, if different from the applicant;

(3) Name, physical address, and county of the breeding facility;

(4) Legal description to the nearest quarter section and GPS coordinates, if available, of the breeding facility;

(5) Name, address and telephone number of the location where records are kept;

(6) A map showing topography of the area with a diagram of the facility structures, fencing plan, and perimeter clearly marked;

(7) Method of carcass disposal for the facility, including carcass storage sites, carcass burial areas, incineration approval, rendering company, composting plan, or landfill.

(8) 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;
(9) Whether the property where the breeding facility is located is owned or leased;
(10) Driving directions from the nearest town; and
(11) 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."

35:15-34-8. Buying stations

(a) An owner or operator shall obtain a buying station license prior to operation of any new buying station.
(b) The owner or operator of a buying station shall maintain a fence adequate to reasonably prevent the escape of enclosed feral swine and the unsolicited additions of feral swine from outside the enclosure.
(c) A buying station shall only be utilized as a premise for the purchase of feral swine to be sent directly to slaughter.
(d) The owner or operator shall keep records of the following:
(1) Date and number of head of feral swine added to the facility;
(2) Number of head removed from the facility, method of removal, and the date of removal; and
(3) Destination of the removed feral swine.
(e) A buying station shall be located a minimum of one and one-half (1 1/2) miles from commercial swine or validated/qualified herds, unless the buying facility was in existence on the effective date of these rules.
(f) Any person applying for a buying station license shall provide the following information on a form prepared by the Department:
(1) Name, mailing address, and telephone number of the applicant;
(2) Name, mailing address, and telephone number of the owner of the property, if different from the applicant;
(3) Name, physical address, and county of the buying station;
(4) Legal description to the nearest quarter section and GPS coordinates, if available, of the buying station;
(5) Name, address and telephone number of the location where records are kept;
(6) A map showing topography of the area with a diagram of the facility structures, fencing plan, and perimeter clearly marked;
(7) 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;
(8) Whether the property where the buying station is located is owned or leased;
(9) Driving directions from the nearest town; and
(10) 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."

35:15-34-9. Gathering stations

(a) An owner or operator of a gathering station shall obtain a license to operate.
(b) The owner or operator of a gathering station shall maintain a fence adequate to reasonably prevent both the escape of enclosed feral swine and the unsolicited additions of feral swine from outside the enclosure.
(c) The owner or operator shall ensure that no individual feral swine is held for more than sixty (60) days at the gathering station.
(d) The gathering station shall be located a minimum of one and one-half (1 1/2) miles from commercial swine or validated/qualified herds, unless the gathering station was in existence on the effective date of these rules.
(e) The owner or operator shall keep records of the following:
(1) Number of head of feral swine added to the facility;
(2) Name, address, and telephone number of the person who provided the feral swine;
(3) Date of release of the feral swine into the facility;
(4) Number of head removed from the facility, method of removal, and the date of removal; and
(5) Destination of the removed feral swine.
(f) Any person applying for a gathering station license shall provide the following information on a form prepared by the Department:
(1) Name, mailing address, and telephone number of the applicant;
(2) Name, mailing address, and telephone number of the owner of the property, if different from the applicant;
(3) Name, physical address, and county of the gathering station;
(4) Legal description to the nearest quarter section and GPS coordinates, if available, of the gathering station;
(5) Name, address and telephone number of the location where records are kept;
(6) A map showing topography of the area with a diagram of the facility structures, fencing plan, and perimeter clearly marked;
(7) 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;

(8) Whether the property where the gathering station is located is owned or leased;
(9) Driving directions from the nearest town; and
(10) 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."

35:15-34-10. Carcass disposal

(a) Owners and operators of feral swine facilities shall comply with all carcass disposal requirements.
(b) The following methods may be used for disposal of carcasses from a feral swine facility:
(1) Rendering,
(2) Landfill,
(3) Burial,
(4) Incineration,
(5) Taxidermy, or
(6) Composting.
(c) Carcass disposal areas shall be located a minimum of thirty (30)feet from any live swine.
(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.

35:15-34-11. Inspections

(a) Each licensed feral swine facility shall be inspected by the Department 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 feral swine facility.
(2) The Department shall review the location of the feral swine 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 feral swine facility design.
(4) In no case shall a license for a feral swine 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.

35:15-34-12. 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.

35:15-34-13. License fees

(a) Category I sporting facility:
(1) Application fee - $225.
(2) Renewal fee - $125.
(b) Category II sporting facility:
(1) Application fee - $325.
(2) Renewal fee - $200.
(b) Breeding facility:
(1) Application fee - $500.
(2) Renewal fee - $250.
(c) Buying station:
(1) Application fee - $125.
(2) Renewal fee - $75.
(d) Gathering station:
(1) Application fee - $125.
(2) Renewal fee - $75.

35:15-34-14. 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.
(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.
(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 domestic swine.

35:15-34-15. Holding facilities

(a) A gathering station license shall not be required of any feral swine facility that is a temporary holding facility where no individual feral swine is held for more than thirty (30) days with cleaning and disinfection between groups of feral swine.
(b) Any owner or operator shall consent to inspections by the Department to determine compliance with this provision and shall provide any available documentation to show compliance with this provision.

35:15-34-16. Closure of the facility

(a) The owner or operator may take up to sixty (60) days to dispose of all feral swine at the facility upon expiration of a license or if ordered to close by the Department.

(b) In no case shall the feral swine 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.

35:15-34-17. Existing facilities

Facilities in existence on the effective date of these rules shall not be required to comply with the 1 $\frac{1}{2}$ mile setback contained in these rules.

[OAR Docket #08-945; filed 5-16-08]

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

[OAR Docket #08-946]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 38. Bovine Trichomoniasis [NEW]
35:15-38-1. Definitions [NEW]
35:15-38-2. Import requirements for breeding bulls [NEW]
35:15-38-3. Import requirements for reproductive bovine females [NEW]
35:15-38-4. Voluntary T. foetus free herd certification [NEW]
35:15-38-5. Exceptions [NEW]
AUTHORITY:
Oklahoma State Board of Agriculture and the Oklahoma Agricultural Code; 2 O.S. 2001 §§ 2-4(2), (7), (17), (27) and (29), and 6-1 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
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ANALYSIS:
These rules are necessary to protect the Oklahoma cattle industry by requiring all imported cattle to test negative for Trichomonas fetus (T. fetus). Other states have implemented similar rules, including New Mexico and Colorado. Trichomoniasis is a venereal disease of cattle, characterized primarily by early pregnancy loss and, occasionally, by abortion and uterine infections. Oklahoma ranks as one of the top five cattle producing states in the US so it is imperative that this devastating disease is controlled.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 38. BOVINE TRICHOMONIASIS

35:15-38-1. Definitions

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

"Acceptable specimen" means a specimen determined satisfactory for diagnostic testing by the testing laboratory, including complete documentation.

"Approved laboratory" means any laboratory designated and approved by the state veterinarian for examining T. foetus samples.

"Approved veterinarian" means an accredited veterinarian who has attended trichomoniasis training that is approved by the state veterinarian, and the training shall include preputial sampling, sample handling and shipping, appropriate record keeping, and official bull trichomoniasis identification.

"Bovine" means any sexually intact male and female animal of the genus bos.

"Commingle" means animals of opposite sex and belonging to different owners in the same enclosure or pasture with a reasonable opportunity for sexual contact.

"Complete herd test" means an official T. foetus test from each non-virgin bull in the herd.

"Herd" means the group of animals consisting of all male and female bovines over twelve (12) months of age that have commingled during the last twelve (12) months.

"Official T. foetus laboratory testing" means the laboratory procedures that shall be approved by the state veterinarian for culture and identification of T. foetus.

"Official T. foetus bull test" means the sampling of the preputial content of a bull by a licensed, accredited and trich test certified veterinarian or a veterinarian from the Oklahoma Department of Agriculture, Food, and Forestry. The test shall be conducted after a one week separation from all female bovine and the bull and sample shall be positively and individually identified and documented for laboratory submission.

"Positive T. foetus bull" means a bull that has had a positive T. foetus test.

"Positive T. foetus herd" means the group of all bovines which have had any opportunity for sexual contact in the previous breeding season and in which any male or female animal has had a positive diagnosis for T. foetus.

"Negative T. foetus bull" means a bull that qualifies by one of the following:

(A) originate from a herd not known to be infected and has had a negative official T. foetus bull test within the last year;

(B) originate from a positive herd but has a series of three

(C) negative official T. foetus bull tests at intervals of at least one week; or

(D) a negative import and negative in-state official T. foetus bull test within thirty (30) days prior to and post entry and prior to sexual activity.

"Suspect T. foetus bull" means a bull from a positive T. foetus herd that has not yet had three (3) consecutive negative official T. foetus bull tests.

"Trichomonas (Tritrichomonas) foetus" or **"T. foetus"** means a contagious venereal protozoan parasite disease of the trichomonas foetus species that frequently results in lifetime infection of male bovidae as an inapparent carrier and causes infertility, pyometra, abortions and reproductive inefficiency in female bovidae.

"Unacceptable sample" means a sample that is deemed not diagnostic by the official testing laboratory.

"Virgin bull" means a sexually intact male bovine less than twelve (12) months of age or a sexually intact male bovine between twelve (12) and twenty-four (24) months that is accompanied by signed affidavit from the owner or manager as having had no potential breeding contact with females.

35:15-38-2. Import requirements for breeding bulls

(a) All bulls entering Oklahoma shall be accompanied by a certificate of veterinary inspection. All non-virgin bulls shall have a negative T. foetus test within thirty (30) days prior to entry.

(b) The pre-entry test shall be conducted at a laboratory approved by the American Association of Veterinary Diagnostic Laboratories or the Oklahoma state veterinarian. In state post entry test shall be required within thirty (30) days of entry into Oklahoma and prior to any sexual activity.

(c) No bull that has ever previously tested positive for T. foetus shall enter Oklahoma unless the bull is consigned directly to slaughter and is individually identified for movement on a USDA form 1-27.

(d) No bull from a known positive T. foetus herd shall enter Oklahoma unless the bull has three (3) consecutive negative tests at least a week apart within thirty (30) days prior to entry, in addition to the post entry test and the bulls shall be isolated from all females until the in-state test results are known.

(e) The veterinarian issuing the certificate of veterinary inspection shall forward a copy of all official negative T. foetus tests for the bulls represented on the certificate of veterinary inspection to the Oklahoma state veterinarian's office.

(f) Exceptions to the importation requirements are:

(1) transient rodeo or exhibition bulls that have had no sexual contact with a female bovine and are held in a secure facility to prevent contact (does not include pasture) while in Oklahoma;

(2) bulls consigned direct to slaughter; or

(3) bulls consigned to a feedlot for feeding purposes where they will be isolated from all females:

(A) bulls moved from a feedlot shall have three (3) consecutive official negative T. foetus tests at least one week apart unless consigned directly to slaughter; and

(B) any known positive T. foetus bull quarantined in a feedlot shall go directly to slaughter from the feedlot.

35:15-38-3. Import requirements for reproductive bovine females

No female bovine originating from a known positive T. foetus herd shall enter Oklahoma, except in one of the following circumstances:

(1) The female bovine has a calf at side and no exposure to other than known negative bulls since parturition;

(2) The female bovine are at least one hundred twenty (120) days pregnant;

(3) The female bovine are known to be virgin heifers;

(4) The female bovine are heifers exposed only to known negative bulls and are not yet one hundred twenty (120) days pregnant;

(5) The female bovine are documented to have had at least one hundred twenty (120) days of sexual isolation; or

(6) The female bovine are consigned directly to slaughter or to a quarantined feedlot.

35:15-38-4. Voluntary T. foetus free herd certification

(a) All non-virgin breeding bulls shall be tested annually for T. foetus for the three (3) years following the effective date of this rule.

(1) During the initial three (3) year period, all non-virgin breeding bulls with changes of ownership, leased, or rented shall be tested for T. foetus within thirty (30) days prior to the change unless consigned directly to slaughter. The test shall be completed and test results known prior to the time a bull is physically transferred to the receiving premises or herd.

(2) Negative T. foetus bulls shall be identified with an official Oklahoma negative T. foetus tag.

(3) All slaughter bulls removed from the herd shall be tested for T. foetus. The test may be performed at a slaughter facility if prior arrangement with a veterinarian and an appropriate agreement with the slaughter facility management are made.

(4) Bovine females added to a certified herd shall not originate from known T. foetus infected herd. Female herd additions shall originate from an Oklahoma certified T. foetus free herd or qualify in one of the following categories:

(A) calf at side and no exposure to other than known negative T. foetus bulls;

(B) checked by an accredited veterinarian at least one hundred twenty (120) days pregnant and properly documented;

(C) virgin; or

(D) heifers exposed as virgins only to known negative T. foetus infected bulls and not yet one hundred twenty (120) days pregnant.

(5) Records shall be maintained for all tests including all non-virgin bulls entering the herd and made available for inspection by a designated accredited veterinarian or state animal health official.

(6) Following successful completion of the three (3) year testing requirement, the participating entity shall receive a T. foetus free certification from the state veterinarian's office. Annual recertification shall require documented evidence that all male herd additions were virgin or that non-virgin breeding bulls added to the herd had three (3) official negative T. foetus test within thirty (30) days prior to commingling with female bovine and that all slaughter bulls removed from the herd have been negative for T. foetus prior to or at slaughter.

(7) A herd in which a bull has a confirmed T. foetus infection shall be classified as a positive T. foetus herd and shall be removed from the free status. The herd shall be quarantined until positive T. foetus bulls are sent to slaughter and all other bulls in the herd test negative to three (3) consecutive official T. foetus tests at least seven (7) days apart. The initial negative T. foetus test is included in the three (3) negative tests.

(b) A non-tested non-virgin bull that commingles with a herd that holds or is actively working toward the Oklahoma certified trich free status by fence breach or any commingled situation shall obligate the owner of the non-tested bull to test the bull from one to three times at the option of the state veterinarian in consultation with the owner and veterinarian of the negative herd.

(c) A bull from a herd holding a current or has a pending free certification and commingles with a non-tested herd shall undergo one to three official T. foetus tests prior to return to the herd of origin. In the event of a positive test, all bulls from both herds may be subject to test. The state veterinarian in consultation with the herd owner and herd veterinarian shall require all bulls to be tested negative on three (3) consecutive cultures or PCR prior to reinstatement of status.

35:15-38-5. Exceptions

The state veterinarian may grant a written exception to this rule only on an individual basis.

[OAR Docket #08-946; filed 5-16-08]

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

[OAR Docket #08-947]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. ~~Concentrated Animal~~Swine Feeding Operations [AMENDED]
Subchapter 4. Concentrated Animal Feeding Operations [NEW]

AUTHORITY:
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ANALYSIS:
These rules incorporate the changes made by House Bill 1796 and 1797 creating the Oklahoma Swine Feeding Operations Act and creating a new Oklahoma Concentrated Animal Feeding Operations Act. The rules do not make any substantive changes, rather they create separate sets of rules for swine and other types of livestock operations in compliance with the new statutes.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 3. ~~CONCENTRATED ANIMAL~~SWINE FEEDING OPERATIONS

35:17-3-1. Purpose

These rules are for regulating ~~animal~~swine feeding operations, especially Licensed Managed Feeding Operations (LMFOs), pursuant to Section ~~9-201~~20-1 et seq. of Title 2 of the Oklahoma Statutes and known as the Oklahoma ~~Concentrated Animal~~Swine Feeding Operations Act. These rules provide that all ~~animal~~swine feeding operations be conducted so as to protect the waters of the State of Oklahoma from contamination. The rules applicable to the licensing process are designed to provide harmony within agricultural production while providing protection to the waters of the State of Oklahoma and to establish procedures for obtaining a ~~Concentrated~~

~~Animal Feeding Operations (CAFO)~~swine feeding operation license by establishing a consistent application process, insuring public participation opportunities, providing for uniform notice requirements, and establishing other relevant requirements.

35:17-3-2. Definitions

In addition to terms defined in the Oklahoma ~~Concentrated Animal~~Swine 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~~Swine Feeding Operations Act beginning at Section ~~9-201~~20-1 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, Food, and Forestry for the purpose of obtaining an Oklahoma ~~CAFO License~~swine feeding operation 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~~20-6 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~~Swine 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~~20-3 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.

35:17-3-5. License required

In addition to ~~CAFOs~~concentrated swine feeding operations, any person who has filed a Notice of Intent (NOI) to be covered under the National Pollution Discharge Elimination Systems (NPDES) General Permit on Concentrated Animal Feeding Operations issued by the Environmental Protection Agency (EPA) on February 8, 1993 or its replacement or possessing an NPDES Permit for a swine feeding operation shall be required to obtain an Oklahoma ~~CAFO License~~swine feeding operation license. Any ~~animal~~swine feeding operation may be required to obtain an Oklahoma ~~CAFO License~~swine feeding operation license if it is specifically identified as a significant contributor of pollution by either the Director of EPA Region 6 or the State Board of Agriculture.

35:17-3-5.1. Expanding operations

(a) A facility shall only be deemed an expanding operation if an increase in swine animal unit capacity involves construction of facilities, including waste retention structures or barns.

(b) The swine animal unit capacity or licensed capacity of a facility shall be based on the maximum one time capacity of the existing or new facility.

35:17-3-6. License application for new facilities or expanding operations

(a) In addition to the items required by the Oklahoma ~~Concentrated Animal~~Swine Feeding Operations Act, the application for a ~~CAFO~~swine feeding operation license of a new facility or an expanding operation shall contain, as a minimum, the following information:

(1) Name and address of the owner of the facility.

(2) Name and address of the ~~animal~~swine feeding operation, including driving directions from the nearest municipality and legal description of the facility.

(3) Name and address of the operator if other than the owner.

(4) Capacity in swine animal units and number and type of ~~animals~~swine housed or confined.

(5) If owner is a firm, partnership, corporation, or other legal entity, the name and address of each member with an ownership interest of ten percent (10%) or more.

(6) If owner is a corporation, the name and address of the corporation and the name and address of each officer and registered agent of the corporation.

(7) Environmental history of the past three (3) years of any ~~CAFO~~swine feeding operation or CAFO established or operated by the owner or any other operation with common ownership in Oklahoma or any other state, including all citations, administrative orders or penalties, civil injunctions or other civil actions, and criminal actions, past, current, and ongoing, taken by any person, agency, or court relating to noncompliance with any environmental law, rule, agency order, or court action in conjunction with the operation of ~~an animal~~a swine feeding operation.

(8) List of all environmental awards or citations received or pollution prevention or voluntary remediation efforts undertaken by the owner.

(9) Copy of deed, contract to purchase, or option to purchase the proposed site of the facility, waste retention structures, and land application sites. If land application sites are not owned by the applicant, provide a notarized signed copy of spreading or effluent agreement.

(10) A map of all property owners within one (1) mile of the facility and waste retention structures and a corresponding mailing list. Applications for LMFOs with more than two thousand (2,000) swine animal units shall include a map of all property owners within two (2) miles of the facility and waste retention structures and a corresponding mailing list.

(11) A plat showing:

(A) Location of the facility, waste retention structures, and all land application sites.

(B) Location and distance of all occupied residences within one (1) mile of the facility and waste retention structures. The distances shall be measured from the nearest point of the waste retention structure to the nearest point of the occupied residence. Applications for LMFOs with more than two thousand (2,000) swine animal units shall include the location and distance of all occupied residences within two (2) miles of the facility and waste retention structures.

(C) Location and distance of all occupied residences within six-hundred (600) feet of any land application site. The distances shall be measured from the nearest point of the land application site to the nearest point of the occupied residence.

(D) Location and distance of all existing public or private drinking water wells within four-hundred (400) feet of any land application site. The distance shall be measured from the nearest point of the land application site to the nearest point of the drinking water well.

(E) All open roads surrounding the facility and all land application sites.

(12) All LMFOs shall submit an affidavit certifying compliance with applicable setbacks found in Sections ~~9-201.1~~20-19 and ~~9-210.3~~20-21 of Title 2 of the Oklahoma Statutes.

(13) If applicable, a copy of the written waiver by a property owner releasing specified setback requirements as provided by the Act.

(14) To assist the Department, applications for LMFOs shall include an introductory narrative summary describing the facility and operation. The description shall include the following general information:

(A) Both narrative and legal location of the facility, including driving directions.

(B) The type of operation, including whether a BGF, nursery, finisher, or other type.

(C) The type and number of swine planned for the facility.

(D) The planned ~~animal~~swine waste management system and structures.

(E) A general narrative description of planned swine growth and movement activities.

(F) Other general information the owner believes to be helpful to the Department in beginning review of the application.

(15) Characterization of the physical and environmental setup of the facility, including but not limited to the following:

(A) Description of topography using a current USGS 7.5 minute topographic map highlighting the location of waters of the state within three (3) miles of the facility, waste retention structures and all land application sites, an outline of the watershed drainage area, and arrows indicating general direction of surface water drainage from the facility, waste retention sites, and land application sites. Applications for LMFOs shall indicate all manmade terracing and other changes to the topography of the site.

(B) Soil map showing soil types at the facility, waste retention structure, and all land application sites. Applications for LMFOs shall provide a description of soil resources including soil survey information of the licensed area containing the following:

(i) A map delineating different soil types on a scaled serial photograph.

(ii) Location of all soil sampling sites.

(iii) Soil description of all soils used for land application pursuant to USDA description.

(iv) An assessment of suitability of the soil for land application purposes. The assessment shall be certified by a Professional Engineer registered in the State of Oklahoma.

(C) 100 year flood plain map, if applicable. In no event shall a waste storage structure be located within the 100 year flood plain as established by the Federal Emergency Management Agency (FEMA).

(D) Applications for LMFOs shall provide a description of existing land uses and land use classification pursuant to local law or ordinance, if any, of the proposed license area and adjacent areas. The burden shall be upon the owner to comply with local and use law and ordinances.

(E) Applications for LMFOs shall provide a description of geologic information, including at a minimum:

(i) The geology of the proposed license area down to and including the first aquifer, but not more than one hundred (100) feet below the bottom of the waste retention structure.

(ii) Geological information based on published geological literature and subsurface investigation otherwise required for the license application, including lithology from water wells on site and seismicity information. Geologic information may be provided by an agency review of the project performed by the Oklahoma Geological Survey and provided to the Department with the license application.

(F) Applications for LMFOs shall include a description of water resources, including the following:

(i) Quality of surface water resources.

(I) Identification of all surface waters of the state within a three (3) mile distance of the waste retention structure as identified on a current USGS 7.5 minute topographic map.

(II) Location, name, and description of all surface water bodies identified in (I) including streams, lakes, discharges, and impoundments within the three (3) mile radius.

(III) Beneficial uses, limitations, and remarks of all listed streams in the drainage area of the facility as listed in Appendix A of Chapter 45 of Title 785 of the Oklahoma Administrative Code.

(ii) Quality of groundwater resources.

(I) An inventory of all existing and abandoned wells, springs, and known or reasonably discoverable test holes.

(II) Groundwater description shall include a measurement of seasonal static water levels, direction of flow, and delineation of recharge areas pursuant to the Oklahoma Water Resources Board or other agency's data.

(III) Baseline sampling for groundwaters accessible at the facility shall include electrical conductivity, pH, ammonium-nitrogen, nitrate-nitrogen, total phosphorus, and fecal coliform bacteria.

(G) Applications for LMFOs shall include a description of the climatological factors that are representative of the proposed license area and adjacent areas as available from published sources, including average seasonal precipitation, average direction and velocity of prevailing winds, seasonal temperature changes, average evaporation rate, and other information requested by the Department.

(H) Applications for LMFOs shall include a map delineating existing vegetation types and a description of the plant communities within the proposed permit area and adjacent areas pursuant to information available from the Oklahoma Biological Survey.

(I) Applications for LMFOs shall include a description of fish and wildlife resources information for the license area and adjacent areas. The scope and level of detail to be provided may be expanded by the Department in consultation with State and Federal agencies with responsibility for fish and wildlife propagation. Site specific information necessary to address the respective species shall be required when the license area or adjacent areas are likely to include endagered or threatened species of plants or animals or their critical habitat.

(J) Applications for LMFOs shall include an identification and description of cultural and historical resources listed on the National Register and known archeological features as found in the Oklahoma Archeological Survey and Oklahoma State Historic Preservation Society of those located within the proposed license area.

(16) Report from an independent soil testing laboratory containing the following:

(A) Site map showing the location of all soil borings in relation to the facility and waste retention structure.

(i) The test boring shall be in the immediate vicinity of the proposed waste retention structure.

(ii) Bore holes shall be left open for a minimum of 48 hours for the groundwater to recover.

(iii) All bore holes shall be plugged according to Oklahoma Water Resources Board requirements.

(B) Soil tests per ASTM standards on all soils to be used in construction of the liner, with the following procedures and results reported:

(i) Grain size particle distribution analysis according to ASTM standards.

(ii) A standard Proctor compaction testbased on ASTM D698 procedure.

(iii) Perform Atterberg limits test per ASTM standards.

(iv) Permeability tests on remolded samples compacted at ninety-five percent (95%) of standard Proctor maximum dry density at optimum moisture content conducted in accordance with ASTM D-5084 for the measurement of Hydraulic Conductivity of Saturated Porous Materials using a Flexible Wall Permeameter.

(v) Laboratory tests of representative samples presented in summary tables and on boring logs.

(vi) Applications for LMFOs shall include the basis for estimating available volume of soil (ft^3) to be used in the soil liner. Estimated values shall be verified in the field during construction.

(C) Provide a soil boring log showing lithology, the above test results, and the classification of soils based on the Unified Soil Classification system.

(D) USDA Natural Resources Conservation Service (NRCS) soil testing standards and procedures shall only be substituted if the retention structure is designed by USDA NRCS Engineers.

(E) Where required by the Oklahoma Water Resources Board, all applications for LMFOs shall include a copy of a properly prepared Multi-Purpose Completion Form as submitted to the Oklahoma Water Resources Board for all soils investigation.

(17) All applications for LMFOs shall provide documentation relating to and verifying that a minimum ten (10) foot separation exists between the bottom of each waste retention structure and the highest annual or seasonal level of groundwater elevation at the waste retention structure site based on all data available, including the perched water table and regional water table or aquifer. The perched water table shall include all local zones of saturation above the regional water table.

(A) Documentation of a ten (10) foot separation shall be established by submission of a soil log from a soil boring extending a minimum of ten (10) feet below the bottom of all waste retention structures to ascertain the presence of groundwater or bedrock.

(B) Documentation containing a statement from a Professional Engineer registered in the state of Oklahoma certifying existence of the ten (10) foot separation distance.

(18) Laboratory test reports showing the amount of Nitrogen as Nitrate and total Phosphorous contained in the following:

(A) Groundwater from all existing water wells located at the facility and land application sites.

(B) All surface water impoundments located at the facility and land application sites.

(C) Composite soil samples from each land application site. Applications for LMFOs shall, at a minimum, include analysis of soils for electrical conductivity, pH, nitrate-nitrogen, ammonium-nitrogen, organic matter, sodium, potassium, calcium, magnesium, available phosphorus, and total nitrogen. Additional parameters may be required upon request of the Department. A map showing the location of each soil sample shall be provided. All soil sampling at LMFOs shall be performed pursuant to one of the following procedures:

(i) Soil sampling shall be conducted using Oklahoma State University Fact Sheet #PT 97-37 and F-2207, or current equivalents.

(ii) A total of thirteen (13) soil samples shall be collected from each forty (40) acre land application area, one sample from each corner of a six hundred and sixty (660) foot or ten (10) acre grid, with one sample from the center of each grid. One single composite soil sample may be prepared for analysis if the proposed land application area is dominated by one soil type. Where land application is achieved by center pivot irrigation, only those grid points within the application area shall be sampled.

(19) A Pollution Prevention Plan (PPP) which contains ~~an Animal~~a Swine Waste Management Plan~~ (AWMP)~~, a carcass disposal plan, an erosion control plan, and Best Management Practices (BMPs). Applications for LMFOs shall also include an Odor Abatement Plan (OAP), a Pest Management Plan (PMP), and any other plan required by the Department.

(20) A notarized sworn statement signed by the owner accepting full responsibility for properly closing all waste retention structures upon termination of the ~~CAFO~~swine feeding operation.

(21) All applications for LMFOs shall include a closure plan pursuant to OAR 35:17-3-25.

(22) A financial statement declaring the financial ability of an owner to operate ~~an animal~~a swine feeding operation with a liquid waste management system in order to comply with the surely requirements of the Act. The financial statement shall be confidential and shall not be opened to public inspection.

(23) A notarized certification signed by the person applying for a license, which states: "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."

(24) All documentation deemed necessary and requested by the Oklahoma Department of Agriculture, Food, and Forestry to assure the quality of waters of the state are not compromised, including waste retention structure liner specifications and design plans providing a minimum of a ten (10) foot separation between the bottom of each liquid waste retention structure and the highest annual or seasonal elevation of groundwater for LMFOs and any other information required by the Department directly related to the construction, installation, or future modification or operation of a ~~CAFO~~swine feeding operation.

(b) All items listed in subpart (a) of this section shall be received by the Department before the application is considered complete. At the Department's discretion, no action will be taken on the application until all items have been received by the Department, including but not limited to presite inspections.

(c) All supporting documentation regarding methods used for preparing the license application for an LMFO, including calculation of waste retention structure capacity and land application rates, shall be based on published methods approved by the Department. Any other methods shall be used only upon

approval by the Department prior to submission of the license application.

(d) A change in location of a waste retention structure for an LMFO after the initial application date shall result in a new application date assigned to that application and all requirements in effect at the new application date shall apply, including setbacks. A reconfiguration of barns or waste retention structures shall not be considered a change, but a new presite approval shall be obtained prior to the change. If the change in location is required by the Department, the initial application date continues to apply.

(e) Adjacent areas for purposes of the LMFO application review shall include all property within one (1) mile of the facility, or two (2) miles if the facility is an LMFO with a capacity of more than two thousand (2,000) animal units.

35:17-3-7. Notice requirements

(a) Individual notice to all affected property owners shall be documented. Proof of notice shall include a sample letter and a certificate of mailing corresponding to the names on the mailing list provided with the ~~CAFO~~swine feeding operation license application. The certificate of mailing shall be verified by the owner and include a U.S. Post Office certified mailing number and the name and address of each affected property owner. U.S. Post Office stamped certified mail receipts, letters returned as undeliverable or refused, and domestic return receipts evidencing receipt of the notice shall be kept on file by the owner and provided to the Department upon request. Notice shall provide the following information:

(1) An application for ~~an animal~~a swine feeding operation has been submitted to the Department.

(2) The legal location and name of the proposed or expanding facility.

(3) The opportunity to send written comments to the Oklahoma Department of Agriculture, Food, and Forestry, ~~2800 North Lincoln Boulevard~~P.O. Box 528804, Oklahoma City, OK ~~73105-4298~~73152-8804.

(4) A twenty (20) working day public review period shall begin no earlier than the day following the certified mailing of all required individual notices. In the event a hearing is requested, the application shall be available for public review until the date of the hearing.

(5) The opportunity to request a hearing within twenty (20) working days from the date the application is first available for public viewing. Notice as required by this rule shall include the following language: "A hearing must be requested, in writing, within twenty (20) working days of the availability of this application for public review, or your right to the hearing is waived. Do not rely on the request of another party to insure a hearing. A hearing requested by another party may be dismissed without your permission if you have not personally filed a request for a hearing with the Department of Agriculture."

(6) Individual notice shall occur to all affected property owners, regardless of state residency or property location.

(7) Notice shall be given to the applicable tribal chairperson, where ascertainable, and to the United States Bureau of Indian Affairs (USBIA) when tribally owned land or former reservation land is within one (1) mile of the facility, or within two (2) miles of an LMFO with more than two thousand (2,000) animal units.

(b) In addition to the individual notice, proof of publication notice of a new or expanding application for a ~~CAFO~~swine feeding operation license shall be given by the owner which complies with the provisions of the Act.

35:17-3-8. Application for license renewal

(a) An application for renewal shall be submitted prior to July 1 of each year the license is to be renewed.

(b) Any license for which a renewal application is received prior to the renewal date established by statute is considered to be valid until a final determination is made. The determination shall be made after a review by the Department.

(1) Renewals meeting the requirements shall be reissued a license unless sufficent cause to terminate or revoke the license is shown. If corrections of the renewal application are required, the owner shall have twenty (20) working days from the date of notification to make all necessary revisions.

(2) If corrections are not made within twenty (20) working days, the license may be referred to the Board for denial. Applications shall be considered to meet the requirements for renewal if:

(A) The application is filled out completely and accurately.

(B) The correct renewal fee is paid within the time specified.

(C) All plans and amended plans for the ~~animal~~swine feeding operation are being followed.

(D) The Department determines that there have been no significant changes in the operation since the last renewal which would require that the license be denied due to failure of the facility to meet the requirements of the Act.

(3) In addition to the renewal fee established by Section ~~9-209(B)~~20-16(B) of Title 2 of the Oklahoma Statutes, each owner of an LMFO shall also be required to pay eighty cents ($0.80) per licensed swine animal unit.

35:17-3-9. Issuance or expansion of license; hearings

(a) For new, previously unlicensed, or expansion applications for a ~~CAFO~~swine feeding operation license, a maximum of sixty (60) working days from the date the application is received by the Department is allocated for investigation, evaluation, and review for completeness of application. For good cause, the Department may take an additional thirty (30) working days to review the application. Good cause shall include but not be limited to a heavier than normal receipt of applications by the Department. The Department shall:

(1) Evaluate applications for administrative and technical completeness and when necessary, request changes, revisions, corrections, or supplemental submissions. Any request made by the Department shall cause a new sixty (60) working day period to begin following receipt of the requested additional information.

(2) Evaluate individual and public notices related to new applications for accuracy and completeness of content, compliance with procedural requirements, and require that omissions or inaccuracies be cured.

(b) Requests for a hearing received after the prescribed twenty (20) working day time frame shall not be valid. The ALJ shall, within seven (7) working days of setting a scheduling conference, notify the parties seeking a hearing and the owner of the time and place of the scheduling conference by certified mail, return receipt requested. All further dates and time periods shall be set at the scheduling conference.

(c) The public comment period shall automatically be extended to the close of the hearing. The ALJ shall, within thirty (30) working days following the comment period, make a full written report and a recommendation to the Department and the Board regarding the application.

(d) If all persons who requested a hearing provide a written waiver of the hearing, the Department shall dismiss the hearing, and at the next regularly scheduled meeting of the Board, present the application for consideration.

(e) If the Board does not issue a license, the Department shall provide the owner written notification within twenty (20) working days following date of denial. The notification shall set forth the reasons for the denial and what steps are necessary to meet the requirements for issuance of a license.

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~~Swine 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~~a Swine 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~~swine waste management plan 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 contingency plan for releases of potential pollutants shall also be included. The PPP shall contain a log of any pollutant releases and clean up of those materials. Documentation of 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~~swine 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 Oklahoma Department of Agriculture, Food, and Forestry at least annually. The analysis of the water samples shall be performed by a qualified environmental laboratory 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 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.

35:17-3-12. Documentation of no hydrologic connection

USDA NRCS design specifications in the USDA NRCS Agricultural Waste Management Field Handbook Chapter 10 (formerly Tech Note 716) shall satisfy documentation of no hydrologic connection so long as the facility is designed by USDA NRCS and does not exceed one thousand (1,000) swine animal units.

35:17-3-14. ~~Animal~~Swine Waste Management Plans ~~(AWMPs)~~

(a) ~~An AWMP~~A swine waste management plan or its equivalent shall be prepared, according to Departmental policy, for each facility prior to the submission of a CAFO license application.

(b) The ~~AWMP~~swine waste management plan shall include:

(1) A plan with a proposed schedule for liquid and solid ~~animal~~swine waste removal, including sludge.

(2) A date log indicating weekly inspection of wastewater level in the retention structure, including specific measurement of wastewater level. Facilities using pits, ponds, or other waste retention structures for storage and treatment of storm water, manure, and process generated wastewater, including flush water waste handling systems, shall maintain in their wastewater retention structure sufficient capacity to contain rainfall and rainfall runoff from a 25-year, 24-hour rainfall event. The owner shall immediately restore sufficient capacity to contain a 25-year, 24-hour rainfall event after any rainfall event or accumulation of wastes or process generated wastewater which reduces capacity, weather permitting. The 25-year, 24-hour rainfall event capacity shall be in addition to the one (1) foot of freeboard required.

(3) All ~~calaculations~~calculations and all factors and assumptions used in determining land application rates, acreage, and crops for both solid and liquid ~~animal~~swine wastes. Land application rates shall take into account the plant available nutrient contribution of any land applied ~~animal~~swine wastes. The following requirements shall apply to land application of ~~animal~~swine waste on land owned or leased by the owner:

(A) Runoff from ~~animal~~swine waste is prohibited where it results in a discharge to surface or groundwaters of the State. The owner shall provide controls for runoff and erosion as appropriate for site conditions.

(B) ~~Animal~~Swine wastes shall not be applied when the ground is frozen or saturated or during rainfall events.

(C) It shall be considered acceptable emergency procedures for a facility which has been properly designed, constructed, and operated and is in danger of an imminent overflow due to chronic or catastrophic rainfall to discharge wastewaters to land application sites for filtering prior to discharging to surface or groundwaters of the State.

(D) Land application practices shall be managed so as to reduce or minimize the following:

(i) Ponding or puddling of wastewater on the site.

(ii) Adverse conditions that invite pests including flies and rodents.

(E) Facilities including waste retention structures, waste storage sites, land application sites, ponds, pipes, ditches, pumps, and diversion and irrigation equipment shall be maintained to insure the ability to fully comply with the terms of these rules and the Pollution Prevention Plan.

(F) Adequate equipment and land application area shall be available for removal of waste and wastewater as required to maintain the proper operating volume of the retention structure. A list of proposed or actual equipment shall be included.

(G) If ~~animal~~swine wastes are sold or given to other persons for disposal, the owner of the LMFO shall maintain a log of the following:

(i) Date of removal from the operation.

(ii) Name of hauler.

(iii) Amount in wet tons, dry tons, gallons, or cubic yards of waste removed from the operation.

(H) Surface disposal of ~~animal~~swine wastes in the 100-year flood plain, as established by the Federal Emergency Management Agency (FEMA), or near water courses is prohibited unless protected from inundation and damage that may occur during that flood event by adequate berms or other structures. The land application of ~~animal~~swine wastes at agronomic rates shall not be considered surface disposal and is not prohibited.

(I) Runoff from ~~animal~~swine waste storage piles shall be retained on site.

(J) Accumulation of water in ~~animal~~swine waste storage areas shall be avoided.

(K) Timing and rate of applications shall be in response to crop needs, assuming usual nutrient losses, expected precipitation, and soil conditions. Timing and rate of land application of ~~animal~~swine waste shall be based on published materials approved by the Department.

(L) Land application shall not occur in areas defined as do not apply areas in the waste application criteria of the USDA NRCS Waste Utilization Standard 633, or its current replacement.

(M) The ~~AWMP~~swine waste management plan shall identify areas which due to topography, activities, or other factors have a high potential for significant soil erosion. Where these areas have the potential to contribute pollutants to surface or groundwaters of the State, the Pollution Prevention Plan shall identify measures used to limit erosion and pollutant runoff. Land subject to excessive erosion shall be avoided.

(4) LMFO nutrient loading.

(A) Liquid manure and bottom sludge of a waste retention structure shall be applied to land in accordance with the ~~AWMP~~swine waste management plan as approved by the Department.

(B) Liquid contents of the waste retention structure shall be applied at agronomic rates and shall not exceed the nitrogen uptake of the crop. Where local water quality is threatened by phosphorus, in no case shall the owner exceed the application rates in the most current USDA NRCS Waste Utilization Standard. Watersheds that are nutrient limited and groundwaters that are nutrient vulnerable shall be deemed to be threatened by phosphorus.

(C) Calculation of loading rates shall be based upon the existing nitrogen content of the receiving soil and the optimum nitrogen requirement of a particular crop.

(D) All soil and waste sampling shall occur on an annual basis.

(c) Sludge material of LMFOs shall be analyzed pursuant to United States Environmental Protection Agency (USEPA) biosolids testing parameters.

35:17-3-15. Odor Abatement Plans (OAPs)

(a) An Odor Abatement Plan (OAP) shall be prepared for each LMFO and submitted as a part of the ~~CAFO~~ license application. Odor reducing facilities shall be designed, constructed; and managed so as to minimize adverse impacts on neighboring citizens.

(b) The OAP shall include specific methods of odor reduction which shall be tailored to each LMFO and created to address each cause of odor listed in (c).

(c) The OAP shall address all methods used for reducing odors in relationship to ~~animal~~swine maintenance, waste storage, land application, and carcass disposal.

(d) The owner shall examine the OAP at least annually to evaluate the effectiveness of the plan, modify for changed conditions at the facility, and determine if economically feasible technological advances are available and appropriate for the LMFO.

(e) The Department shall approve the OAP on a case by case basis taking into account site specific conditions which may impact the plan. The Department shall document reasons for disapproval of an OAP.

35:17-3-17. Carcass disposal

(a) Dead ~~animals~~swine shall be disposed of in accordance with a carcass disposal plan developed by the owner and approved by the Department which shall decrease the possibility of the spread of disease, reduce odors, and preclude contamination of ground and surface waters of the state. Dead ~~animals~~swine shall be disposed of properly and in an environmentally safe manner in accordance with Federal, State, and local requirements. At all times the facility shall comply with the provisions of Section 1223 of Title 21 of the Oklahoma Statutes, in addition to compliance with the carcass disposal plan.

(b) The plan shall include provisions for the disposal of carcasses associated with normal mortality and shall include provisions for emergency disposal when a major disease outbreak or other emergency results in deaths significantly higher than normal mortality rates.

(c) Accepted methods of carcass disposal include the following:

(1) Rendering.

(A) The owner shall obtain a contract with a rendering service that insures disposal of all carcasses within a reasonable period of time. The name, address, and telephone number of the rendering service shall be provided. In addition, the frequency and schedule of carcass pickup shall be included.

(B) Storage facilities shall be sealed or have lids and maintained so as to prevent pests and odors in accordance with a Department approved OAP and PMP.

(C) Sealed storage facilities shall not be required for animals weighing 300 pounds or more, but the prevention of pests and odors shall be addressed by a Department approved OAP and PMP.

(2) Burial.

(A) Burial shall only be allowed as a method of carcass disposal if no reasonable alternative exists and the disposal plan contains specific measures and practices which are utilized to protect the ground and surface waters of the state.

(B) In no event shall burial be used by an LMFO unless the burial area meets the requirements of ~~an Animal~~a Swine Waste Management System, including but not limited to the use of liners.

(C) Prior approval by the Department is required of any carcass disposal plan listing burial as the method of disposal.

(3) Composting.

(A) Prior approval by the Department is required of any carcass disposal plan listing composting as the method of disposal.

(B) The Department may require another method of carcass disposal other than composting if the Department determines that a more feasible and effective method of carcass disposal exists.

(4) Incineration shall only be used as method of carcass disposal if the ~~animal~~swine feeding operation has a valid air quality permit from the Oklahoma Department of Environmental Quality, Air Quality Division.

35:17-3-18. Employee education and training

(a) Employees responsible for work activities which relate to compliance shall be regularly trained and informed of any information pertinent to the proper operation and maintenance of the facility and waste disposal. Employee training shall inform personnel at all levels of the general components and goals of the Pollution Prevention Plan. Training shall include but not be limited to the following topics:

(1) Proper operation and maintenance of waste retention structures, including proper water level maintenance.

(2) Land application of wastes, proper operation, and maintenance of the facility.

(3) Good housekeeping and material management practices.

(4) Necessary record keeping requirements.

(5) Spill response and clean up.

(b) The owner is responsible for determining the appropriate training frequency for different levels of personnel and the PPP shall identify periodic dates for training.

(c) All LMFOs with employees whose duties include treatment, storage, or application of ~~animal~~swine waste shall provide proof of certification of satisfactory completion of formal education and training in the areas of waste management and odor control.

(d) Curricula and course content shall be developed under the supervision of Oklahoma State University Cooperative Extension Service and topics shall include:

(1) Proper operation and management of waste retention structures.

(2) ~~Animal~~Swine waste nutrient management, including land application of wate.

(3) Air quality and odor control.

(4) Regulation and record keeping requirements.

(5) Water quality.

35:17-3-20. Best Management Practices (BMPs)

(a) The owner shall document all Best Management Practices (BMPs) used to comply with the required effluent limitations. Equivalent measures contained in a site-specific ~~AWMP~~swine waste management plan prepared by NRCS may be substituted for the BMPs.

(b) The criteria for BMPs shall be established in writing by the Department and shall include but not be limited to the following:

(1) There shall be no water quality impairment to public and neighboring private drinking water wells due to waste handling at the facility. Wastewater retention structures or land application of wastewater shall not be located within three hundred (300) feet of an existing public or private drinking water well.

(2) ~~Animal~~Swine waste handling, treatment, and management shall not knowingly or reasonably result in the destruction of endangered or threatened species or contribute to the taking of any federally endangered

or threatened species of plant, fish or wildlife, nor shall disposal knowingly interfere with or cause harm to migratory birds. The owner shall notify the appropriate fish and wildlife agency in the event of any significant fish, wildlife, or migratory bird or endangered species kill or die-off on or near retention ponds or in fields where waste has been applied and which could reasonably have resulted from waste management at the facility.

(3) Solids, sludges, manure, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner designed to prevent pollutants from being discharged to surface or groundwaters of the State.

(4) The owner shall prevent the discharge of pesticide contaminated waters into surface or groundwaters of the State. All wastes from dipping vats, pest, and parasite control units and other facilities utilized for the application of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner which prevents pollutants from entering the surface or groundwaters of the State.

(5) Fresh water entering into contaminated areas shall be managed to prevent contamination. Preventing the drainage of fresh surface waters into or onto waste contaminated areas shall be accomplished by one of the following:

(A) Terracing and the construction of other diversion structures to redirect fresh water drainage from entering waste contaminated areas.

(B) Rainwaters falling directly on waste contaminated areas of the facility shall be collected and dispersed as a waste.

(6) Actions as deemed necessary shall be taken to retain all ~~animal~~swine waste on the premises until proper waste utilization is accomplished.

(c) The owner shall describe how each BMP shall be implemented and complied with at the facility.

35:17-3-22. Violation points system

The following violation points system shall be utilized by the Department to assess points prior to suspension, revocation, or nonrenewal of a ~~CAFO~~swine feeding operation license. This system shall operate in addition to penalties provided for in the Oklahoma ~~Concentrated Animal~~Swine Feeding Operations Act, and shall not alter the authority to the Board to revoke a license under other sections of the Act.

(1) When any ~~animal~~swine feeding operation accrues a total of fifteen (15) or more points in any two (2) year time period, the license of the ~~animal~~swine feeding operation shall be suspended, revoked, or not renewed by the Board.

(2) Points shall accrue based on violations of the Oklahoma ~~Concentrated Animal~~Swine Feeding Operations Act and rules.

(A) Failure of any ~~CAFO~~concentrated swine feeding operation to apply for a license when required by the provisions of the Oklahoma ~~Concentrated Animal~~Swine Feeding Operations Act shall accrue three (3) to five (5) points.

(B) Failure to obtain a building permit prior to construction of an LMFO shall be a significant violation and accrue four (4) to five (5) points.

(C) Failure to obtain a license prior to operation of an LMFO shall accrue four (4) to five (5) points.

(D) Failure to obtain or renew education requirements for all employees of an LMFO whose duties include treatment, storage, or application of ~~animal~~swine waste shall accrue two (2) to three (3) points.

(E) Knowingly making any false statement, representation, or certification in, omitting material data from, or tampering with any application for a license, or notice relating to the determination of affected property owners shall be a significant violation and accrue four (4) to five (5) points.

(F) Failure to follow the Pollution Prevention Plan and the failure results in actual harm to natural resources of the state, ground or surface water quantity or quality, public health, or the environment shall be a significant violation and accrue five (5) points.

(G) Failure to follow the Pollution Prevention Plan and the failure results in potential harm to natural resources of the state, ground or surface water quantity or quality, public health, or the environment shall accrue three (3) to four (4) points.

(H) Failure to provide full closure of a facility pursuant to a closure plan shall accrue three (3) to five (5) points.

(I) Failure by ~~an animal~~a swine feeding operation to utilize or comply with Best Management Practices and the failure results in actual harm to natural resources of the state, ground or surface water quantity or quality, public health, or the environment shall be a significant violation and accrue five (5) points.

(J) Failure by ~~an animal~~a swine feeding operation to utilize or comply with Best Management Practices and the failure results in potential harm to natural resources of the state, ground or surface water quantity or quality, public health, or the environment shall accrue three (3) to four (4) points.

(K) Failure by ~~an animal~~a swine feeding operation to report a discharge shall accrue two (2) to four (4) points.

(L) Failure by ~~an animal~~a swine feeding operation to utilize or comply with ~~an Animal~~a Swine Waste Management Plan and the failure results in actual harm to natural resources of the state, ground or surface water quantity or quality, public health, or the environment shall be a significant violation and accrue five (5) points.

(M) Failure by ~~an animal~~a swine feeding operation to utilize or comply with ~~an Animal~~a Swine Waste Management Plan and the failure results in potential harm to natural resources of the state, ground or surface water quantity or quality, public health, or the environment shall accrue three (3) to four (4) points.

(N) Failure by ~~an animal~~a swine feeding operation to follow a carcass disposal plan shall accrue one (1) to three (3) points.

(O) Failure by ~~an animal~~a swine feeding operation to follow a erosion control plan shall accrue one (1) to two (2) points.

(P) Failure by an LMFO to utilize and comply with an Odor Abatement Plan shall accrue one (1) to four (4) points.

(Q) Failure by an LMFO to establishment or maintain groundwater monitoring wells or a leak detection system shall accrue four (4) to five (5) points.

(R) Failure of any LMFO to annually evaluate a site for liner integrity shall accrue two (2) to three (3) points.

(S) Failure of any LMFO to pay swine animal unit fees in a timely fashion shall accrue three (3) to five (5) points.

(T) Failure to take such actions as are reasonable and necessary to avoid pollution of any stream, lake, river or creek or violate any rule to prevent water pollution shall be a significant violation and accrue five (5) points.

(U) Knowingly making false statements, representation, or certification in any water pollution form, notice, or report shall be a significant violation and accrue five (5) points.

(V) Knowingly rendering inaccurate any monitoring device or method required to be maintained by ~~an~~any water pollution rules shall be a significant violation and accrue five (5) points.

(3) All violations which are assessed four (4) or five (5) points shall only accrue points upon approval by the State Board of Agriculture. All other violations shall accrue points upon approval by the ~~Water Quality~~Agricultural Environmental Management Services Division of the Department. Assessment of points by the ~~Water Quality~~Agricultural Environmental Management Services Division may be appealed in writing to the Division Director. If the accumulated number of points reaches a total of fifteen (15) points, the owner may appeal to the State Board of Agriculture.

(4) Even if the violation points do not add up to a total of fifteen (15) points, the State Board of Agriculture may deem a violation that results in serious harm to be so significant as to warrant immediate revocation, nonrenewal, or suspension of the license.

(5) Any owner whose license is suspended, revoked, or not renewed shall remain without the license for a minimum of one (1) year. At the Department's discretion, the license may be renewed so long as the owner complies with all conditions which the Department imposes on the ~~animal~~swine feeding operation.

(6) Conditions for renewal shall at a minimum include compliance during the entire period of revocation with all aspects of the Oklahoma ~~Concentrated Animal~~Swine Feeding Operations Act and its rules, and correction of all conditions which caused the license nonrenewal, suspension, or revocation.

35:17-3-24. Biosecurity

If direct contact with ~~animals~~swine or ~~animal~~swine quarters becomes necessary, disease prevention measures outlined by the owner will be followed by the inspector.

35:17-3-25. Closure of ~~animal~~swine waste retention structures

(a) If for any reason the facility ceases to function or by action of the Board is ordered to cease operations, the owner is responsible for proper closure of all waste retention structures.

(b) The owner shall submit a closure plan as part of the permit application including at a minimum:

(1) The sequence of closing process including but not limited to handling of waste retention structure wastewater, solids, and handling and safe disposal of bottom sludge.

(2) Demonstrate the availability of sufficient land area for land application of the liquid, solid, and sludge component of the waste retention structure.

(3) Provide a copy of a written estimate, in current dollars, of the cost of hiring an independent third party to decommission each waste retention structure.

(c) All future changes or modifications to the closure plan shall be approved by the Department.

(d) A post closure monitoring program shall be conducted for a period of at least three (3) years.

(e) A certificate of post closure performance shall be submitted to the Department at the end of the post closure period. The certificate shall be signed by the owner and by a Professional Engineer registered in the State of Oklahoma, indicating that all waste retention structures were maintained and monitored in accordance with the approved closure plan.

(f) Closure requirements shall be as follows:

(1) The Department shall be notified in writing whenever ~~an animal~~a swine waste retention structure becomes inactive, is abandoned, full of solids, or operation of the structure ceases for any reason. Any ~~animal~~swine waste retention structure shall be considered by the Department to have ceased to function or to be inactive in the following circumstances:

(A) The facility is closed by the Department because of repeated violations which result in the filing of a Board order to cease operations.

(B) The owner is unable to furnish documentation to show that there has been receipt of ~~animal~~swine waste into the retention structure during the previous twenty-four (24) months.

(2) The Department shall be notified in writing within ninety (90) calendar days of cessation of operation of ~~an animal~~a swine waste retention structure. Closure of all retention structures shall commence within six (6) months and be completed within one (1) year of cessation of operations. Closure shall be in accordance with a closure plan approved by the Department. Any extension of time

for closure shall be requested in writing by the owner and approved by the Department. A legal change other than a transfer of the owner of any ~~animal~~swine waste retention structure shall not extend the time limit for closure.

(A) Liquid contents of a waste retention structure may be pumped out and land applied according to Department rules.

(B) Solids from the waste retention structure shall be removed and disposed of in an environmentally safe manner.

(C) Sludge from the bottom of the waste retention structure shall be removed without compromising the integrity of the liner. Sludge may be land applied according to Department rules.

(3) Exemption from closure and transfer of responsibility for any ~~animal~~swine waste retention structure to any other party shall be requested in writing for approval by the Department.

35:17-3-27. Licensed facilities not yet constructed

All structures and facilities licensed but not yet constructed shall be subject to all construction requirements of the Oklahoma ~~Concentrated Animal~~Swine Feeding Operations Act in effect at the date of construction. Prior to commencement of construction, the Pollution Prevention Plan shall be updated, and the Department shall be notified of construction prior to commencement.

35:17-3-30. Commencement of construction

(a) Construction of a new or expanding operation shall not commence until an administrative hearing has been completed. Completion of an administrative hearing shall occur when the Administrative Law Judge submits final recommendations to the Oklahoma Department of Agriculture, Food, and Forestry and the State Board of Agriculture issues a building permit.

(b) If an administrative hearing is not requested by an affected property owner, construction shall commence upon the State Board of Agriculture issuing a building permit.

SUBCHAPTER 4. CONCENTRATED ANIMAL FEEDING OPERATIONS

35:17-4-1. Purpose

These rules are for regulating animal feeding operations pursuant to Section 20-40 et seq. of Title 2 of the Oklahoma Statutes and known as the Oklahoma Concentrated Animal Feeding Operations Act. These rules provide that all animal feeding operations be conducted so as to protect the waters of the State of Oklahoma from contamination. The rules applicable to the licensing process are designed to provide harmony within agricultural production while providing protection to the waters of the State of Oklahoma and to establish procedures for obtaining a Concentrated Animal Feeding Operations (CAFO) license by establishing a consistent application process, insuring public participation opportunities, providing for uniform notice requirements, and establishing other relevant requirements.

35:17-4-2. 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 20-40 of Title 2 of the Oklahoma Statutes.

"ALJ" means Administrative Law Judge.

"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, Food, and Forestry for the purpose of obtaining an Oklahoma CAFO License from the State Board of Agriculture.

"ASTM" means the most current version of the American Society of Testing Materials standards.

"CAFO" means Concentrated Animal Feeding Operation as defined in Section 20-41 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 20-44 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.

"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.

"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.

35:17-4-3. License required

In addition to CAFOs, any person who has filed a Notice of Intent (NOI) to be covered under the National Pollution Discharge Elimination Systems (NPDES) General Permit on Concentrated Animal Feeding Operations issued by the Environmental Protection Agency (EPA) on February 8, 1993 or its replacement or possessing an NPDES Permit shall be required to obtain an Oklahoma CAFO License. Any animal feeding operation may be required to obtain an Oklahoma CAFO License if it is specifically identified as a significant contributor of pollution by either the Director of EPA Region 6 or the State Board of Agriculture.

35:17-4-4. License application for new facilities or operations

(a) In addition to the items required by the Oklahoma Concentrated Animal Feeding Operations Act, the application for a CAFO license of a new facility or an operation shall contain, as a minimum, the following information:

(1) Name and address of the owner of the facility.

(2) Name and address of the animal feeding operation, including driving directions from the nearest municipality and legal description of the facility.

(3) Name and address of the operator if other than the owner.

(4) Capacity in animal units and number and type of animals housed or confined.

(5) If owner is a firm, partnership, corporation, or other legal entity, the name and address of each member with an ownership interest of ten percent (10%) or more.

(6) If owner is a corporation, the name and address of the corporation and the name and address of each officer and registered agent of the corporation.

(7) Environmental history of the past three (3) years of any CAFO operation established or operated by the owner or any other operation with common ownership in Oklahoma or any other state, including all citations, administrative orders or penalties, civil injunctions or other civil actions, and criminal actions, past, current, and ongoing, taken by any person, agency, or court relating to noncompliance with any environmental law, rule, agency order, or court action in conjunction with the operation of an animal feeding operation.

(8) List of all environmental awards or citations received or pollution prevention or voluntary remediation efforts undertaken by the owner.

(9) Copy of deed, contract to purchase, or option to purchase the proposed site of the facility, waste retention structures, and land application sites. If land application sites are not owned by the applicant, provide a notarized signed copy of spreading or effluent agreement.

(10) A map of all property owners within one (1) mile of the facility and waste retention structures and a corresponding mailing list.

(11) A plat showing:

(A) Location of the facility, waste retention structures, and all land application sites.

(B) Location and distance of all occupied residences within one (1) mile of the facility and waste retention structures. The distances shall be measured from the nearest point of the waste retention structure to the nearest point of the occupied residence.

(C) Location and distance of all occupied residences within six-hundred (600) feet of any land application site. The distances shall be measured from the nearest point of the land application site to the nearest point of the occupied residence.

(D) Location and distance of all existing public or private drinking water wells within four-hundred (400) feet of any land application site. The distance shall be measured from the nearest point of the land application site to the nearest point of the drinking water well.

(E) All open roads surrounding the facility and all land application sites.

(12) If applicable, a copy of the written waiver by a property owner releasing specified setback requirements as provided by the Act.

(13) Characterization of the physical and environmental setup of the facility, including but not limited to the following:

(A) Description of topography using a current USGS 7.5 minute topographic map highlighting the location of waters of the state within three (3) miles of the facility, waste retention structures and all land application sites, an outline of the watershed drainage area, and arrows indicating general direction of surface water drainage from the facility, waste retention sites, and land application sites.

(B) Soil map showing soil types at the facility, waste retention structure, and all land application sites.

(C) 100 year flood plain map, if applicable. In no event shall a waste storage structure be located within the 100 year flood plain as established by the Federal Emergency Management Agency (FEMA).

(14) Report from an independent soil testing laboratory containing the following:

(A) Site map showing the location of all soil borings in relation to the facility and waste retention structure.

(i) The test boring shall be in the immediate vicinity of the proposed waste retention structure.

(ii) Bore holes shall be left open for a minimum of 48 hours for the groundwater to recover.

(iii) All bore holes shall be plugged according to Oklahoma Water Resources Board requirements.

(B) Soil tests per ASTM standards on all soils to be used in construction of the liner, with the following procedures and results reported:

(i) Grain size particle distribution analysis according to ASTM standards.

(ii) A standard Proctor compaction testbased on ASTM D698 procedure.

(iii) Perform Atterberg limits test per ASTM standards.

(iv) Permeability tests on remolded samples compacted at ninety-five percent (95%) of standard Proctor maximum dry density at optimum moisture content conducted in accordance with ASTM D-5084 for the measurement of Hydraulic Conductivity of Saturated Porous Materials using a Flexible Wall Permeameter.

(v) Laboratory tests of representative samples presented in summary tables and on boring logs.

(C) Provide a soil boring log showing lithology, the above test results, and the classification of soils based on the Unified Soil Classification system.

(D) USDA Natural Resources Conservation Service (NRCS) soil testing standards and procedures shall only be substituted if the retention structure is designed by USDA NRCS Engineers.

(15) Laboratory test reports showing the amount of Nitrogen as Nitrate and total Phosphorous contained in the following:

(A) Groundwater from all existing water wells located at the facility and land application sites.

(B) All surface water impoundments located at the facility and land application sites.

(C) Composite soil samples from each land application site.

(16) A Pollution Prevention Plan (PPP) which contains an Animal Waste Management Plan (AWMP), a carcass disposal plan, an erosion control plan, and Best Management Practices (BMPs).

(17) A notarized sworn statement signed by the owner accepting full responsibility for properly closing all waste retention structures upon termination of the CAFO operation.

(18) A financial statement declaring the financial ability of an owner to operate an animal feeding operation with a liquid waste management system in order to comply with the surely requirements of the Act. The financial statement shall be confidential and shall not be opened to public inspection.

(19) A notarized certification signed by the person applying for a license, which states: "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."

(20) All documentation deemed necessary and requested by the Oklahoma Department of Agriculture, Food, and Forestry to assure the quality of waters of the state are not compromised, including waste retention structure liner specifications and design plans and any other information required by the Department directly related to the construction, installation, or future modification or operation of a CAFO.

(b) All items listed in subpart (a) of this section shall be received by the Department before the application is considered complete. At the Department's discretion, no action will be taken on the application until all items have been received by the Department, including but not limited to presite inspections.

35:17-4-5. Notice requirements

(a) Individual notice to all affected property owners shall be documented. Proof of notice shall include a sample letter and a certificate of mailing corresponding to the names on the mailing list provided with the CAFO license application. The certificate of mailing shall be verified by the owner and include a U.S. Post Office certified mailing number and the name and address of each affected property owner. U.S. Post Office stamped certified mail receipts, letters returned as undeliverable or refused, and domestic return receipts evidencing receipt of the notice shall be kept on file by the owner and provided to the Department upon request. Notice shall provide the following information:

(1) An application for an animal feeding operation has been submitted to the Department.

(2) The legal location and name of the proposed or facility.

(3) The opportunity to send written comments to the Oklahoma Department of Agriculture, Food, and Forestry, P.O. Box 528804, Oklahoma City, OK 73152-8804.

(4) A twenty (20) working day public review period shall begin no earlier than the day following the certified mailing of all required individual notices. In the event a hearing is requested, the application shall be available for public review until the date of the hearing.

(5) The opportunity to request a hearing within twenty (20) working days from the date the application is first available for public viewing. Notice as required by this rule shall include the following language: "A hearing must be requested, in writing, within twenty (20) working days of the availability of this application for public review, or your right to the hearing is waived. Do not rely on the request of another party to insure a hearing. A hearing requested by another party may be dismissed without your permission if you have not personally filed a request for a hearing with the Department of Agriculture."

(6) Individual notice shall occur to all affected property owners, regardless of state residency or property location.

(7) Notice shall be given to the applicable tribal chairperson, where ascertainable, and to the United States Bureau of Indian Affairs (USBIA) when tribally owned land or former reservation land is within one (1) mile of the facility.

(b) In addition to the individual notice, proof of publication notice of a new or application for a CAFO license shall be given by the owner which complies with the provisions of the Act.

35:17-4-6. Application for license renewal

(a) An application for renewal shall be submitted prior to July 1 of each year the license is to be renewed.

(b) Any license for which a renewal application is received prior to the renewal date established by statute is considered to be valid until a final determination is made. The determination shall be made after a review by the Department.

(1) Renewals meeting the requirements shall be reissued a license unless sufficent cause to terminate or revoke the license is shown. If corrections of the renewal application are required, the owner shall have twenty (20) working days from the date of notification to make all necessary revisions.

(2) If corrections are not made within twenty (20) working days, the license may be referred to the Board for denial. Applications shall be considered to meet the requirements for renewal if:

(A) The application is filled out completely and accurately.

(B) The correct renewal fee is paid within the time specified.

(C) All plans and amended plans for the animal feeding operation are being followed.

(D) The Department determines that there have been no significant changes in the operation since the last renewal which would require that the license be denied due to failure of the facility to meet the requirements of the Act.

35:17-4-7. Issuance or expansion of license; hearings

(a) For new, previously unlicensed, or expansion applications for a CAFO license, a maximum of sixty (60) working days from the date the application is received by the Department is allocated for investigation, evaluation, and review for completeness of application. For good cause, the Department may take an additional thirty (30) working days to review the application. Good cause shall include but not be limited to a heavier than normal receipt of applications by the Department. The Department shall:

(1) Evaluate applications for administrative and technical completeness and when necessary, request changes, revisions, corrections, or supplemental submissions. Any request made by the Department shall cause a new sixty (60) working day period to begin following receipt of the requested additional information.

(2) Evaluate individual and public notices related to new applications for accuracy and completeness of content, compliance with procedural requirements, and require that omissions or inaccuracies be cured.

(b) Requests for a hearing received after the prescribed twenty (20) working day time frame shall not be valid. The ALJ shall, within seven (7) working days of setting a scheduling conference, notify the parties seeking a hearing and the owner of the time and place of the scheduling conference by certified mail, return receipt requested. All further dates and time periods shall be set at the scheduling conference.

(c) The public comment period shall automatically be extended to the close of the hearing. The ALJ shall, within thirty (30) working days following the comment period, make a full written report and a recommendation to the Department and the Board regarding the application.

(d) If all persons who requested a hearing provide a written waiver of the hearing, the Department shall dismiss the hearing, and at the next regularly scheduled meeting of the Board, present the application for consideration.

(e) If the Board does not issue a license, the Department shall provide the owner written notification within twenty (20) working days following date of denial. The notification shall set forth the reasons for the denial and what steps are necessary to meet the requirements for issuance of a license.

35:17-4-8. Transfer of license

In addition to the provisions of the Act, transfer of a license to a new owner or lessee shall meet the following conditions:

(1) Upon approval of the transfer of a license, the transferee shall provide to the Department within thirty (30) calendar days, a notarized statement and other proof of transfer of ownership or occupancy as the Department requires;

(2) If a transfer is denied by the Department, the transferee may, within thirty (30) calendar days after receiving notification of the denial, request in writing a hearing to review the denial of the transfer. In addition to the items which are considered at the hearing, the ALJ may also hear evidence and witnesses on the issue of whether a substantial change of condition has occurred since the issuance of the original license and whether the changes should result in a denial of the transfer of the license.

35:17-4-9. 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.

(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 contingency plan for releases of potential pollutants shall also be included. The PPP shall contain a log of any pollutant releases and clean up of those materials. Documentation of 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.

(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.

(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. 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. 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.

(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.

(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.

(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.

35:17-4-10. Documentation of no hydrologic connection

USDA NRCS design specifications in the USDA NRCS Agricultural Waste Management Field Handbook Chapter 10 (formerly Tech Note 716) shall satisfy documentation of no hydrologic connection so long as the facility is designed by USDA NRCS and does not exceed one thousand (1,000) animal units.

35:17-4-11. Criteria for liners

(a) Soil liners shall be constructed to meet the following minimum requirements:

(1) Constructed in lifts or layers no more than six (6) inches thick when compacted.

(A) Soils used in the liner shall be free of foreign material, including trash, brush, and fallen trees.

(B) All side slopes and the floor of the retention structures shall be checked to ensure proper compaction and moisture content. All readings shall be recorded and properly documented. Minimum information required for documentation shall include:

(i) Project name.

(ii) Date.

(iii) Test method used per ASTM specification.

(iv) Site name.

(v) Technician name.

(vi) Location of reading, include sketch.

(vii) Percent compaction

(viii) Wet density in pounds per cubic foot (pcf).

(ix) Dry density in pounds per cubic foot (pcf).

(x) Moisture content, percent.

(xi) Lift number.

(xii) Soils lab name, report number, and Proctor Test results used to obtain field measurements.

(2) Compaction to ninety-five percent (95%) of Standard Proctor (ASTM D-698) at optimum moisture content.

(3) Hydraulic conductivities of no greater than 1×10^{-7} cm/sec. The field permeability of the liner shall be verified by using one of the following methods:

(A) If a sealed Double Ring Infiltrometer is used to determine the field permeability of the liner, at least one representative location on each corner and one location in the center of the waste retention structure bottom shall be selected for Double Ring Infiltrometer determination.

(B) At least four (4) representative undisturbed core samples, one from each corner of the waste retention structure bottom shall be retrieved for permeability determination in the laboratory. The permeability shall be determined using a Flexible Wall Permeameter.

(4) Minimum thickness of one and one half (1.5) feet.

(5) Maximum hydrostatic head of ten and one half (10.5) feet.

(6) Hydrostatic head or water depth may be increased above ten and one half (10.5) feet in one of the following circumstances:

(A) Liner thickness above the minimum shall be increased by an amount needed to maintain the allowable seepage rate, which shall not exceed eighty three one hundredths (0.83) feet per year pursuant to Darcy's Velocity.

(B) Soils with permeabilities less than 1×10^{-7} cm/sec are used to maintain the allowable seepage rate, which shall not exceed eighty three one hundredths (0.83) feet per year pursuant to Darcy's Velocity. Soils which do not meet the maximum criteria of 1×10^{-7} cm/sec can be mixed with a sufficient amount of bentonite clay to achieve the desired standard.

(C) Any combination of (A) or (B). In no case shall hydraulic conductivity be used to reduce the minimum thickness of one and one half (1.5) feet or shall thickness be used to increase the maximum hydraulic conductivity of 1×10^{-7} cm/sec.

(b) The owner shall maintain the liner to inhibit infiltration of wastewaters. Liners shall be protected from burrowing and other animals by fences or other protective devices. Liners shall also be protected from the potential root zone of all trees.

(c) Any mechanical or structural damage to the liner shall be evaluated by an environmental, agricultural, or other Department approved professional engineer registered in the state of Oklahoma within thirty (30) calendar days of the damage. Documentation of liner maintenance shall be kept with the Pollution Prevention Plan.

(d) USDA NRCS Agricultural Waste Management Field Handbook Chapter 10 Appendix D shall only be used when an NRCS Engineer designs the retention structures.

(e) Flexible membrane or synthetic liners may be used in connection with a soil liner or as a substitute for a soil liner. Geosynthetic liners and flexible membrane liners shall be installed so as to protect waters of the State from contamination.

(1) The subgrade soil shall be prepared according to the design standards. A subgrade verification form shall be submitted with liner documentation.

(2) The surface to be lined shall be rolled and compacted and free of irregularities, undulations, protrusions, vegetation, excessive moisture, loose soil, or abrupt changes in slope.

(3) The subgrade surface shall be free of foreign material including stones, cobbles, broken pieces of wood, plastic, or glass.

(4) The owner shall provide a copy of a completed Surface Acceptance Form indicating acceptable locations. In no case shall the installer deploy any geomembrane or flexible membrane liner in areas not acceptable within these rules.

(5) If at any time during the installation the subgrade surface deteriorates or is damaged, or in any way deemed unacceptable by the regulatory authority, all work shall stop until proper repair is performed.

(6) The anchor trench shall be constructed according to the standard industry practices. The trench shall be adequately drained to prevent ponding or softening of the side walls. After installation of the liner, the trench shall be back filled, compacted, and anchored according to the standards.

(7) The liner placement plan shall take into consideration the site drainage, low lying areas, temperature, and prevailing wind velocity and direction. Field panels shall be deployed one at a time and seamed as soon as possible to minimize the risk of wind or water damage.

(8) Field panel deployment shall not proceed at an ambient temperature below forty degrees (40°) F, unless Low Temperature Welding Procedures are used. All deployed panels should be amply ballasted or sand bagged at all times to avoid wind damage.

(9) Personnel responsible for placement of the liner shall not smoke, wear damaging shoes, or engage in other activities which may cause damage to the liner. The method of deployment shall not cause scratches, crimps, or tear the liner or damage the subgrade. Adequate sand bags shall be placed on the edges of the liner to avoid wind uplifting.

(10) The installer shall visually inspect the panels as soon as possible after deployment for damage or distressed surfaces.

(11) A seam is considered a separate entity if it joins two panels. Repairs are not considered seams in this context. Seams shall be generally oriented parallel to the line of maximum slope, or along instead of across the slope. In corners and odd shaped geometric locations the number of seams should be minimized.

(12) The Extrusion Process shall be used only for repairs and patching and shall not be used for the overall operation. The Fusion Process shall be used for seaming panels together using hot-wedge type or solid wedge type automated self-propelled apparatus equipped with temperature gauges.

(13) The nondestructive seam continuity test shall be performed during daylight hours and certified by the owner.

35:17-4-12. Animal Waste Management Plans (AWMPs)

(a) An AWMP or its equivalent shall be prepared, according to Departmental policy, for each facility prior to the submission of a CAFO license application.

(b) The AWMP shall include:

(1) A plan with a proposed schedule for liquid and solid animal waste removal, including sludge.

(2) A date log indicating weekly inspection of wastewater level in the retention structure, including specific measurement of wastewater level. Facilities using pits, ponds, or other waste retention structures for storage and treatment of storm water, manure, and process generated wastewater, including flush water waste handling systems, shall maintain in their wastewater retention structure sufficient capacity to contain rainfall and rainfall runoff from a 25-year, 24-hour rainfall event. The owner shall immediately restore sufficient capacity to contain a 25-year, 24-hour rainfall event after any rainfall event or accumulation of wastes or process generated wastewater which reduces capacity, weather permitting. The 25-year, 24-hour rainfall event capacity shall be in addition to the one (1) foot of freeboard required.

(3) All calculations and all factors and assumptions used in determining land application rates, acreage, and crops for both solid and liquid animal wastes. Land application rates shall take into account the plant available nutrient contribution of any land applied animal wastes. The following requirements shall apply to land application of animal waste on land owned or leased by the owner:

(A) Runoff from animal waste is prohibited where it results in a discharge to surface or groundwaters of the State. The owner shall provide controls for runoff and erosion as appropriate for site conditions.

(B) Animal wastes shall not be applied when the ground is frozen or saturated or during rainfall events.

(C) It shall be considered acceptable emergency procedures for a facility which has been properly designed, constructed, and operated and is in danger of an imminent overflow due to chronic or catastrophic rainfall to discharge wastewaters to land application sites for filtering prior to discharging to surface or groundwaters of the State.

(D) Land application practices shall be managed so as to reduce or minimize the following:

(i) Ponding or puddling of wastewater on the site.

(ii) Adverse conditions that invite pests including flies and rodents.

(E) Facilities including waste retention structures, waste storage sites, land application sites, ponds, pipes, ditches, pumps, and diversion and irrigation equipment shall be maintained to insure the ability to fully comply with the terms of these rules and the Pollution Prevention Plan.

(F) Adequate equipment and land application area shall be available for removal of waste and wastewater as required to maintain the proper operating volume

of the retention structure. A list of proposed or actual equipment shall be included.

(G) Surface disposal of animal wastes in the 100-year flood plain, as established by the Federal Emergency Management Agency (FEMA), or near water courses is prohibited unless protected from inundation and damage that may occur during that flood event by adequate berms or other structures. The land application of animal wastes at agronomic rates shall not be considered surface disposal and is not prohibited.

(H) Runoff from animal waste storage piles shall be retained on site.

(I) Accumulation of water in animal waste storage areas shall be avoided.

(J) Timing and rate of applications shall be in response to crop needs, assuming usual nutrient losses, expected precipitation, and soil conditions. Timing and rate of land application of animal waste shall be based on published materials approved by the Department.

(K) Land application shall not occur in areas defined as do not apply areas in the waste application criteria of the USDA NRCS Waste Utilization Standard 633, or its current replacement.

(L) The AWMP shall identify areas which due to topography, activities, or other factors have a high potential for significant soil erosion. Where these areas have the potential to contribute pollutants to surface or groundwaters of the State, the Pollution Prevention Plan shall identify measures used to limit erosion and pollutant runoff. Land subject to excessive erosion shall be avoided.

35:17-4-13. Carcass disposal

(a) Dead animals shall be disposed of in accordance with a carcass disposal plan developed by the owner and approved by the Department which shall decrease the possibility of the spread of disease, reduce odors, and preclude contamination of ground and surface waters of the state. Dead animals shall be disposed of properly and in an environmentally safe manner in accordance with Federal, State, and local requirements. At all times the facility shall comply with the provisions of Section 1223 of Title 21 of the Oklahoma Statutes, in addition to compliance with the carcass disposal plan.

(b) The plan shall include provisions for the disposal of carcasses associated with normal mortality and shall include provisions for emergency disposal when a major disease outbreak or other emergency results in deaths significantly higher than normal mortality rates.

(c) Accepted methods of carcass disposal include the following:

(1) Rendering.

(A) The owner shall obtain a contract with a rendering service that insures disposal of all carcasses within a reasonable period of time. The name, address, and telephone number of the rendering service shall be provided. In addition, the frequency and schedule of carcass pickup shall be included.

(B) Storage facilities shall be sealed or have lids and maintained so as to prevent pests and odors.

(C) Sealed storage facilities shall not be required for animals weighing 300 pounds or more, but the prevention of pests and odors shall be addressed.

(2) Burial.

(A) Burial shall only be allowed as a method of carcass disposal if no reasonable alternative exists and the disposal plan contains specific measures and practices which are utilized to protect the ground and surface waters of the state.

(C) Prior approval by the Department is required of any carcass disposal plan listing burial as the method of disposal.

(3) Composting.

(A) Prior approval by the Department is required of any carcass disposal plan listing composting as the method of disposal.

(B) The Department may require another method of carcass disposal other than composting if the Department determines that a more feasible and effective method of carcass disposal exists.

(4) Incineration shall only be used as method of carcass disposal if the animal feeding operation has a valid air quality permit from the Oklahoma Department of Environmental Quality, Air Quality Division.

35:17-4-14. Employee education and training

(a) Employees responsible for work activities which relate to compliance shall be regularly trained and informed of any information pertinent to the proper operation and maintenance of the facility and waste disposal. Employee training shall inform personnel at all levels of the general components and goals of the Pollution Prevention Plan. Training shall include but not be limited to the following topics:

(1) Proper operation and maintenance of waste retention structures, including proper water level maintenance.

(2) Land application of wastes, proper operation, and maintenance of the facility.

(3) Good housekeeping and material management practices.

(4) Necessary record keeping requirements.

(5) Spill response and clean up.

(b) The owner is responsible for determining the appropriate training frequency for different levels of personnel and the PPP shall identify periodic dates for training.

(c) Curricula and course content shall be developed under the supervision of Oklahoma State University Cooperative Extension Service and topics shall include:

(1) Proper operation and management of waste retention structures.

(2) Animal waste nutrient management, including land application of wate.

(3) Air quality and odor control.

(4) Regulation and record keeping requirements.

(5) Water quality.

35:17-4-15. Owner inspections

(a) The owner or the person named in the PPP as the individual responsible for drafting or implementing the plan shall be responsible for inspections and record keeping.

(b) Incidents including spills, discharges, and other information describing the pollution potential and quantity of the discharge shall be included in the records. Inspections and maintenance activities shall be documented and recorded. These records shall be kept on site for a minimum of three (3) years.

(c) The authorized person named in the PPP shall require inspection of designated equipment and facility areas. Material handling areas shall be inspected for evidence of or the potential for pollutants entering the drainage system. A follow-up procedure shall be used to insure that appropriate action has been taken in response to the inspection.

(d) In addition to the Department annual inspection, a complete inspection of the facility shall be performed at least annually by the owner. A report documenting the findings of the inspection shall be prepared, which includes the operative status of the check valves system on applicable wells. The inspection shall be conducted by the authorized person named in the PPP to verify that the description of potential pollutant sources is accurate, the drainage map has been updated or otherwise modified to reflect current conditions and the controls outlined in the PPP to reduce pollutants are being implemented and are adequate.

(e) The Department may sample wells on or near the site.

(f) Records documenting significant observation made during the site inspection shall be retained as part of the Pollution Prevention Plan. Records of all inspections shall be maintained for a period of three (3) years.

35:17-4-16. Best Management Practices (BMPs)

(a) The owner shall document all Best Management Practices (BMPs) used to comply with the required effluent limitations. Equivalent measures contained in a site-specific AWMP prepared by NRCS may be substituted for the BMPs.

(b) The criteria for BMPs shall be established in writing by the Department and shall include but not be limited to the following:

(1) There shall be no water quality impairment to public and neighboring private drinking water wells due to waste handling at the facility. Wastewater retention structures or land application of wastewater shall not be located within three hundred (300) feet of an existing public or private drinking water well.

(2) Animal waste handling, treatment, and management shall not knowingly or reasonably result in the destruction of endangered or threatened species or contribute to the taking of any federally endangered or threatened species of plant, fish or wildlife, nor shall disposal knowingly interfere with or cause harm to migratory birds. The owner shall notify the appropriate fish and wildlife agency in the event of any significant fish, wildlife, or migratory bird or endangered species kill or die-off on or near retention ponds or in fields where waste has been applied and which could reasonably have resulted from waste management at the facility.

(3) Solids, sludges, manure, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner designed to prevent pollutants from being discharged to surface or groundwaters of the State.

(4) The owner shall prevent the discharge of pesticide contaminated waters into surface or groundwaters of the State. All wastes from dipping vats, pest, and parasite control units and other facilities utilized for the application of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner which prevents pollutants from entering the surface or groundwaters of the State.

(5) Fresh water entering into contaminated areas shall be managed to prevent contamination. Preventing the drainage of fresh surface waters into or onto waste contaminated areas shall be accomplished by one of the following:

(A) Terracing and the construction of other diversion structures to redirect fresh water drainage from entering waste contaminated areas.

(B) Rainwaters falling directly on waste contaminated areas of the facility shall be collected and dispersed as a waste.

(6) Actions as deemed necessary shall be taken to retain all animal waste on the premises until proper waste utilization is accomplished.

(c) The owner shall describe how each BMP shall be implemented and complied with at the facility.

35:17-4-17. Other statutory authority

No condition of this Subchapter shall release the owner from any responsibility or requirements under other Federal, State, or Local statutes or rules. The burden shall be upon the owner to determine compliance.

35:17-4-18. Violation points system

The following violation points system shall be utilized by the Department to assess points prior to suspension, revocation, or nonrenewal of a CAFO license. This system shall operate in addition to penalties provided for in the Oklahoma Concentrated Animal Feeding Operations Act, and shall not alter the authority to the Board to revoke a license under other sections of the Act.

(1) When any animal feeding operation accrues a total of fifteen (15) or more points in any two (2) year time period, the license of the animal feeding operation shall be suspended, revoked, or not renewed by the Board.

(2) Points shall accrue based on violations of the Oklahoma Concentrated Animal Feeding Operations Act and rules.

(A) Failure of any CAFO to apply for a license when required by the provisions of the Oklahoma Concentrated Animal Feeding Operations Act shall accrue three (3) to five (5) points.

(B) Knowingly making any false statement, representation, or certification in, omitting material data

from, or tampering with any application for a license, or notice relating to the determination of affected property owners shall be a significant violation and accrue four (4) to five (5) points.

(C) Failure to follow the Pollution Prevention Plan and the failure results in actual harm to natural resources of the state, ground or surface water quantity or quality, public health, or the environment shall be a significant violation and accrue five (5) points.

(D) Failure to follow the Pollution Prevention Plan and the failure results in potential harm to natural resources of the state, ground or surface water quantity or quality, public health, or the environment shall accrue three (3) to four (4) points.

(E) Failure to provide full closure of a facility pursuant to a closure plan shall accrue three (3) to five (5) points.

(F) Failure by an animal feeding operation to utilize or comply with Best Management Practices and the failure results in actual harm to natural resources of the state, ground or surface water quantity or quality, public health, or the environment shall be a significant violation and accrue five (5) points.

(G) Failure by an animal feeding operation to utilize or comply with Best Management Practices and the failure results in potential harm to natural resources of the state, ground or surface water quantity or quality, public health, or the environment shall accrue three (3) to four (4) points.

(H) Failure by an animal feeding operation to report a discharge shall accrue two (2) to four (4) points.

(I) Failure by an animal feeding operation to utilize or comply with an Animal Waste Management Plan and the failure results in actual harm to natural resources of the state, ground or surface water quantity or quality, public health, or the environment shall be a significant violation and accrue five (5) points.

(J) Failure by an animal feeding operation to utilize or comply with an Animal Waste Management Plan and the failure results in potential harm to natural resources of the state, ground or surface water quantity or quality, public health, or the environment shall accrue three (3) to four (4) points.

(K) Failure by an animal feeding operation to follow a carcass disposal plan shall accrue one (1) to three (3) points.

(L) Failure by an animal feeding operation to follow a erosion control plan shall accrue one (1) to two (2) points.

(M) Failure to take such actions as are reasonable and necessary to avoid pollution of any stream, lake, river or creek or violate any rule to prevent water pollution shall be a significant violation and accrue five (5) points.

(N) Knowingly making false statements, representation, or certification in any water pollution form, notice, or report shall be a significant violation and accrue five (5) points.

(O) Knowingly rendering inaccurate any monitoring device or method required to be maintained by any water pollution rules shall be a significant violation and accrue five (5) points.

(3) All violations which are assessed four (4) or five (5) points shall only accrue points upon approval by the State Board of Agriculture. All other violations shall accrue points upon approval by the Agricultural Environmental Management Services Division of the Department. Assessment of points by the Agricultural Environmental Management Services Division may be appealed in writing to the Division Director. If the accumulated number of points reaches a total of fifteen (15) points, the owner may appeal to the State Board of Agriculture.

(4) Even if the violation points do not add up to a total of fifteen (15) points, the State Board of Agriculture may deem a violation that results in serious harm to be so significant as to warrant immediate revocation, nonrenewal, or suspension of the license.

(5) Any owner whose license is suspended, revoked, or not renewed shall remain without the license for a minimum of one (1) year. At the Department's discretion, the license may be renewed so long as the owner complies with all conditions which the Department imposes on the animal feeding operation.

(6) Conditions for renewal shall at a minimum include compliance during the entire period of revocation with all aspects of the Oklahoma Concentrated Animal Feeding Operations Act and its rules, and correction of all conditions which caused the license nonrenewal, suspension, or revocation.

35:17-4-19. Receipt and resolution of complaint against owner

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.

35:17-4-20. Biosecurity

If direct contact with animals or animal quarters becomes necessary, disease prevention measures outlined by the owner will be followed by the inspector.

35:17-4-21. Closure of animal waste retention structures

(a) If for any reason the facility ceases to function or by action of the Board is ordered to cease operations, the owner is responsible for proper closure of all waste retention structures.

(b) The owner shall submit a closure plan as part of the permit application including at a minimum:

(1) The sequence of closing process including but not limited to handling of waste retention structure wastewater, solids, and handling and safe disposal of bottom sludge.

(2) Demonstrate the availability of sufficient land area for land application of the liquid, solid, and sludge component of the waste retention structure.

(3) Provide a copy of a written estimate, in current dollars, of the cost of hiring an independent third party to decommission each waste retention structure.

(c) All future changes or modifications to the closure plan shall be approved by the Department.

(d) A post closure monitoring program shall be conducted for a period of at least three (3) years.

(e) A certificate of post closure performance shall be submitted to the Department at the end of the post closure period. The certificate shall be signed by the owner and by a Professional Engineer registered in the State of Oklahoma, indicating that all waste retention structures were maintained and monitored in accordance with the approved closure plan.

(f) Closure requirements shall be as follows:

(1) The Department shall be notified in writing whenever an animal waste retention structure becomes inactive, is abandoned, full of solids, or operation of the structure ceases for any reason. Any animal waste retention structure shall be considered by the Department to have ceased to function or to be inactive in the following circumstances:

(A) The facility is closed by the Department because of repeated violations which result in the filing of a Board order to cease operations.

(B) The owner is unable to furnish documentation to show that there has been receipt of animal waste into the retention structure during the previous twenty-four (24) months.

(2) The Department shall be notified in writing within ninety (90) calendar days of cessation of operation of an animal waste retention structure. Closure of all retention structures shall commence within six (6) months and be completed within one (1) year of cessation of operations. Closure shall be in accordance with a closure plan approved by the Department. Any extension of time for closure shall be requested in writing by the owner and approved by the Department. A legal change other than a transfer of the owner of any animal waste retention structure shall not extend the time limit for closure.

(A) Liquid contents of a waste retention structure may be pumped out and land applied according to Department rules.

(B) Solids from the waste retention structure shall be removed and disposed of in an environmentally safe manner.

(C) Sludge from the bottom of the waste retention structure shall be removed without compromising the integrity of the liner. Sludge may be land applied according to Department rules.

(3) Exemption from closure and transfer of responsibility for any animal waste retention structure to any other party shall be requested in writing for approval by the Department.

35:17-4-22. Variances

Variances from these rules shall only be granted on a case by case basis and the granting of a variance shall not act as a precedent for any other case, whether similar or not. In each case where a variance is granted, the decision shall be thoroughly documented.

35:17-4-23. Licensed facilities not yet constructed

All structures and facilities licensed but not yet constructed shall be subject to all construction requirements of the Oklahoma Concentrated Animal Feeding Operations Act in effect at the date of construction. Prior to commencement of construction, the Pollution Prevention Plan shall be updated, and the Department shall be notified of construction prior to commencement.

35:17-4-24. Repealer

All previous rules promulgated by the Board under the Oklahoma Feed Yards Act or the Oklahoma Concentrated Animal Feeding Operations Act are repealed.

[OAR Docket #08-947; filed 5-16-08]

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

[OAR Docket #08-948]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 17. Combined Pesticide
Part 22. Wood Infestation Reports
35:30-17-101 [AMENDED]
35:30-17-102 [AMENDED]
35:30-17-104 [AMENDED]
35:30-17-107 [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(A)(2), 16, and (29), and 3-81 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
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SUPERSEDED EMERGENCY ACTIONS:
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ANALYSIS:
The proposed rules update the criteria for wood infestation reports to be in compliance with the provisions of Senate Bill 710 from the 2007 Legislative session. The bill removes "organism" and "wood rot" from the Department's regulatory program for wood infestation reports.
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 JULY 1, 2008:

SUBCHAPTER 17. COMBINED PESTICIDE

PART 22. WOOD INFESTATION REPORTS

35:30-17-101. General requirements for WIRs

(a) "Wood destroying ~~organism~~insect" means any insects ~~or organisms~~, other than termites, which damage or destroy wood or other cellulose materials, including but not limited to carpenter ants, carpenter bees, and powder post beetles~~, and wood rot fungi~~. This term shall not include ~~other~~ fungi which inhabit ~~but do not damage~~ or destroy wood or other cellulose materials, health hazard molds, or stain fungi.

(b) WIRs shall be based on a thorough visual inspection and provide an accurate written disclosure of the presence or absence of termites and other wood destroying ~~organisms~~insects and the presence or absence of damage caused by termites or other wood destroying ~~organism~~insects.

(c) ~~Evidence of wood rot fungi reported in the WIR shall be visible evidence of wood rot damage.~~

~~(d)~~ Each WIR shall be made on a form prescribed by the Board.

(~~e~~d) Copies of the WIR shall be provided to each of the following:

(1) The person purchasing the WIR.

(2) The files of the business responsible for the WIR.

35:30-17-102. Uses of the WIR

(a) A WIR used as a basis for recommendations for remedial treatment for termites or other wood destroying ~~organisms~~insects shall disclose the following:

(1) Presence of live termites or other wood destroying ~~organisms~~insects.

(2) Evidence of a previous infestation and no visible evidence of a treatment to address it.

(b) A WIR used as a basis for recommendation of preventive treatment for termites or other wood destroying ~~organisms~~insects shall identify the presence of substantial conditions conducive to infestation by termites or other wood destroying ~~organisms~~insects.

(c) The WIR shall include a statement indicating if the report is used as the basis for remedial or preventive treatment.

35:30-17-104. Minimum information required for a WIR

(a) A WIR shall include, but not be limited to, the following:

(1) The address or location of the property inspected.

(2) The type of construction as determined by visual inspection, including, but not limited to, the following:

(A) Specify the type of stemwall, whether brick, concrete blocks, or any other type.

(B) Specify the type of floor, whether wood, concrete slab, or any other type.

(C) Specify any areas under the floor, whether a crawl space, basement, or any other area.

(D) Specify the type of exterior, whether wood, wood veneer, stucco, fiberboard, brick or stone, concrete block, aluminum or vinyl siding, or any other type, including combinations of types.

(E) Specify the type of piers, whether wood, concrete blocks, or any other type.

(3) A description of any inaccessible or visually obstructed areas.

(4) A description of any visible conditions conducive to termites or other wood destroying ~~organisms~~insects, including wood to ground contact, remaining form boards, excessive moisture, debris under or around the structure, visible wood flooring over slab, stucco siding, crawl space clearance resulting in insufficient separation between soil and wood, expansion joints or cracks in slabs, decks in contact with the structure, dense foliage in contact with the structure, wood piles in contact with the structure, or any other condition.

(5) A description of visible evidence of termite activity, including live termites, termite tubes or frass, evidence of previous infestation or treatment, or winged adults.

(6) A description of visible evidence of termite damage.

(7) A description of visible evidence of damage or activity by other wood destroying ~~organisms~~insects.

(8) If no visible evidence is present, the WIR shall so state.

(b) Each page of the WIR shall indicate the address or location of the property and the date of the inspection.

35:30-17-107. Forms

(a) Form ODAFF-1 [Oklahoma Official Termite and Wood Destroying ~~Organisms~~Insect Report] and Form ODAFF-2 (Official ~~WIR~~Termite and Wood Destroying Insect Report Follow-up) shall be the official and required forms for WIRs

and are available for inspection or copies at the offices of the Plant Industry and Consumer Services Division, Oklahoma Department of Agriculture, Food, and Forestry.

(b) The official forms may be preprinted by a business, however no alterations or additions to the form shall occur, other than the following:

(1) Name of the business.

(2) Business structural pest control license number.

(3) Business address and telephone number.

(c) Additional documents or addenda shall be listed and attached to the WIR.

(d) Each official form including more than one page, whether printed on the front and back or on separate pages, shall include the total number of pages in the WIR and the page number of each individual page, i.e. "Page One of Three."

[OAR Docket #08-948; filed 5-16-08]

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

[OAR Docket #08-949]

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PERMANENT final adoption

RULES:

Subchapter 1. Water Quality Standards Implementation Plan

35:45-1-2. Pertinent definitions, abbreviations, and acronyms [AMENDED]

35:45-1-3. General statement of policy; responsibility for WQSIP document [AMENDED]

35:45-1-4. Pertinent water quality standards [AMENDED]

35:45-1-7. Animal waste programs [AMENDED]

35:45-1-8. Pesticide program [AMENDED]

35:45-1-9. Forestry best management practice program [AMENDED]

35:45-1-10. Fertilizer program [AMENDED]

35:45-1-11. Section III - Interagency participation [AMENDED]

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N/A

ANALYSIS:

These rules incorporate the changes made during 2007 to the Oklahoma Water Quality Standards. Each agency with environmental jurisdiction is required to implement the appropriate changes in their individual environmental programs. The Oklahoma Water Quality Standards are developed by the Oklahoma Water Resources Board through their rulemaking authority and the standards are ultimately adopted by the United States Environmental Protection Agency.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 1. WATER QUALITY STANDARDS IMPLEMENTATION PLAN

35:45-1-2. Pertinent definitions, abbreviations, and acronyms

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

"303" means Section 303 of the CWA, which requires states to review and, as necessary, revise their water quality standards at least every three (3) years.

"402" means Section 402 of the CWA, which establishes the National Pollutant Discharge Elimination System (NPDES).

"Animal Feeding Operation" means a lot or facility where the following conditions are met:

(A) animals have been, are, or will be stabled or confined and fed or maintained for a total of ninety (90) consecutive days or more in any twelve-month period, and

(B) crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

"Animal Waste" means animal excrement, animal carcasses, feed wastes, process wastewaters, or any other waste associated with the confinement of animals from an animal or poultry feeding operation.

"Appendix F" means Appendix F of the OWQS, OAC 785:45, which has the statistical values of historic data for TDS, chloride, and sulfate for streams in most of the watersheds across the state.

"Background" means the ambient level of a pollutant relative to a potential source of pollution, and which is characterized by upstream (to the source being investigated) concentrations of a pollutant for surface waters or hydraulically upgradient concentrations for groundwater.

"BMP" means Best Management Practices, which are schedules of activities, prohibitions on practices, maintenance

procedures, and other management practices to prevent or reduce the pollution of waters of the state.

"CAFO" means Concentrated Animal Feeding Operation, as defined by the Oklahoma Concentrated Animal Feeding Operations Act, 2 O.S. § ~~9-202(B)(11)~~20-41(B)(11).

"CPP" means the Continuing Planning Process document, submitted by the state to EPA, which describes present and planned water quality management programs and the strategy used by the State in conducting these programs. Information on how the state utilizes the WQS and WQS Implementation Criteria are contained in this document.

"CWA" means the federal Clean Water Act and amendments.

"CWAC" as defined in OAC 785:45, means Cool Water Aquatic Community, a subcategory of the beneficial use category "Fish and Wildlife Propagation" where the water quality, water temperature and habitat are adequate to support warm water intolerant climax fish communities and includes an environment suitable for the full range of cool water benthos.

"DEQ" means the Oklahoma Department of Environmental Quality.

"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.

"EPA" means the federal Environmental Protection Agency.

"Fish and Wildlife Propagation" means the WQS beneficial use designation for promoting fish and wildlife propagation for the fishery classifications of HLAC, WWAC, CWAC, and Trout Fishery (Put and Take).

"Fish Consumption" means the WQS beneficial use designation for the protection of human health for the consumption of fish.

"HLAC" as defined in OAC 785:45, means Habitat-Limited Aquatic Community, a subcategory of the beneficial use category "Fish and Wildlife Propagation" where the water chemistry or habitat are not adequate to support a warm water aquatic community (WWAC).

"HQW" means High Quality Water, defined as those waters of the state which possess existing water quality which exceeds that necessary to support the propagation of fishes, shellfishes, wildlife, and recreation in and on the water. HQWs must receive special protection against degradation.

"Land Application" means the application of substances including animal waste and other substances to the land, at approved rates within the capacity of the land or crops.

"LMFO" means a Licensed Managed Feeding Operation, as defined by the Oklahoma ~~Concentrated Animal~~Swine Feeding Operations Act at 2 O.S. § ~~9-202(B)(18)~~20-3(B)(18).

"MDL" means the Method Detection Limit and is defined as the minimum concentration of an analyte that can be measured and reported with 99% confidence that the analyte concentration is greater than zero. MDL is dependent upon the analyte of concern.

"Nonpoint Source" means a source of pollution without a well defined point of origin or a single identifiable source such as an outfall pipe, often involving overland flow of pollutants with storm water or subsurface flow of pollutants with groundwater over a wide area.

"NPDES" means the National Pollutant Discharge Elimination System, as authorized by Section 402 of the CWA.

"Nutrient-Limited Watershed" means a watershed of a waterbody that is designated as nutrient limited in the most recent Oklahoma Water Quality Standards.

"Nutrient-Vulnerable Groundwater" means groundwater that is designated nutrient-vulnerable in the most recent Oklahoma Water Quality Standards.

"OAC" means Oklahoma Administrative Code.

"ODAFF" means the Oklahoma Department of Agriculture, Food, and Forestry.

"ORW" means Outstanding Resource Water, defined as a water of the state that constitutes an outstanding resource or is of exceptional recreational or ecological significance. ORWs must receive special protection against degradation.

"O.S." means Oklahoma Statutes.

"OWRB" means the Oklahoma Water Resources Board.

"PBCR" means Primary Body Contact Recreation, a WQS beneficial use designation.

"Plan" means the Water Quality Standards Implementation Plan, or portion thereof, promulgated by ODAFF in this chapter for the programs that affect water quality within ODAFF's jurisdictional areas of environmental responsibility.

"Point Source" means any discernible, confined and discrete conveyance from which pollutants are or may be discharged such as a discharge pipe (see also definition in OAC 785:45).

"Poultry Feeding Operation" means a property or facility where the following conditions are met:

(A) poultry have been, are or will be confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period,

(B) crops vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the property or facility, and

(C) producing over ten (10) tons of poultry waste per year.

"PPP" means Pollution Prevention Plan and is a written plan to control the discharge of pollutants that has been prepared in accordance with industry acceptable engineering and management practices.

"PQL" means Practical Quantitation Limit and is defined as 5 times the MDL. The PQL represents a practical and routinely achievable detection limit with high confidence.

"PPWS" means Public and Private Water Supply, a WQS beneficial use designation for the protection of human health for the consumption of water and consumption of fish and water.

"Remediation" means the removal of pollutants from soil or water by absorption, excavation, pumping, natural attenuation, biological, chemical, or other means or combination of methods.

"Scenic River" means a river or stream so designated pursuant to the Wild and Scenic Rivers Act. A scenic river is automatically considered an ORW.

"Silviculture" means the art and science of controlling the establishment, composition, and growth of forests.

"SWS" means Sensitive Public and Private Water Supply~~, a water body that constitutes a sensitive public and private water supply~~.

"TMDL" means Total Maximum Daily Load, a written, pollutant-specific and water body-specific plan establishing pollutant loads for point and nonpoint sources, incorporating safety reserves, to ensure that a specific water body will attain and maintain the water quality necessary to support existing and designated beneficial uses. The term also includes consideration of increases in pollutant loads.

"UAA" means Use Attainability Analysis, an investigation by OWRB of whether a WWAC or CWAC subcategorization (for the Fish and Wildlife Propagation beneficial use) is reasonably attainable.

"USAP" means Use Support Assessment Protocols, defining how sampling and other data shall be used to determine whether or not a water body is meeting its beneficial uses, as defined at OAC 785:46, Subchapter 15.

"USDA NRCS" means the United States Department of Agriculture Natural Resources Conservation Service.

"USGS" means the United States Geological Survey.

"Waters of the State" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through or border upon this state or any portion thereof, and shall include under all circumstances the waters of the United States which are contained within the boundaries of, flow through or border upon this state or any portion thereof. Provided, waste treatment systems, including treatment ponds and lagoons designed to meet federal and state requirements other than cooling ponds as defined in the federal Clean Water Act or promulgated rules, are not waters of the state.

"WQS (or OWQS)" means the Oklahoma Water Quality Standards, established pursuant to Section 303 of the CWA, and which serve as goals for water quality management planning and benchmark criteria for the NPDES/OPDES permitting process. Water Quality Standards consist of beneficial use classifications for navigable waters, water quality criteria to support those uses, and an antidegradation policy statement. Oklahoma's Water Quality Standards are found at OAC 785:45.

"WQSIP" means Water Quality Standards Implementation Plan.

"WWAC" as defined in OAC 785:45, means Warm Water Aquatic Community, a subcategory of the beneficial use category "Fish and Wildlife Propagation" where the water quality and habitat are adequate to support climax fish communities and includes an environment suitable for the full range of warm water benthos.

35:45-1-3. General statement of policy; responsibility for WQSIP document

(a) As a general statement of agency policy, programs and activities within ODAFF will be managed to protect the beneficial uses of the state's waters and to maintain water quality standards. In addition, when problems are identified, the agency will assist landowners, the industry, and other agencies with technical recommendations on remediation efforts using appropriate practices.

(b) The Assistant Director with water quality program supervisory responsibilities and the Water Quality Staff Forester prepared the WQSIP for the Forestry Services Division. The Agricultural Environmental Management Services Division section was prepared by the Division's Professional Engineer. The ~~Plant Industry and~~ Consumer Protection Services Division section was developed by the ~~Nursery~~Water Quality Program Administrator. These individuals will be responsible for distributing copies of the final plan, informing field offices and updating the plan as necessary.

35:45-1-4. Pertinent water quality standards

(a) Pursuant to Section 303 of the CWA, Oklahoma's surface water quality standards are promulgated by the OWRB at OAC 785:45, Subchapter 5. Surface water quality standards are comprised of three elements:

(1) Beneficial uses, designated to apply to specific water bodies or defined water body segments, as listed in Appendix A to OAC 785:45, generally address the goals of the CWA. Certain default beneficial uses are assumed for waters not listed in Appendix A until a UAA indicates otherwise. The subset of beneficial uses which address water quality are:

(A) Public and Private Water Supply (PPWS) (OAC 785:45-5-10);

(B) Fish and Wildlife Propagation (F&W) (OAC 785:45-5-12), according to one of four fishery subcategories:

(i) Habitat-Limited Aquatic Community (HLAC).

(ii) Warm Water Aquatic Community (WWAC).

(iii) Cool Water Aquatic Community (CWAC).

(iv) Trout Fishery (Put and Take) - Criteria used in the protection of F&W shall include DO, T^0, pH, Oil and Grease, Bio Criteria, toxic substances, turbidity, and sediments.

(C) Agriculture (Ag) (OAC 785:45-5-13);

(D) Primary Body Contact Recreation (PBCR) (OAC 785:45-5-16);

(E) Secondary Body Contact Recreation (OAC 785:45-5-17); and

(F) Aesthetics (OAC 785:45-5-19).

(G) Fish Consumption (OAC 785:45-5-20).

(2) Numerical and narrative criteria (OAC 785:45-5) apply statewide. Numerical criteria are pollutant-specific and apply to a water body according to its beneficial uses in accordance with OAC 785:45. Narrative criteria are generally referred to as "free from" prohibitions.

(3) Numerical salinity water quality standards are only for agricultural beneficial uses (irrigation and watering livestock). Stream segment averages of historic data for chlorides, sulfates, and TDS are available in Appendix F for most stream segments statewide. The WQS also allows for use of upstream/background data and data from surrounding streams instead of these averages if this data provides a more appropriate basis for setting standards for a specific stream (OAC 785:45-5-13(~~f&~~ge) and (f)). However, for the protection of Agriculture use, neither long nor short term average concentrations of minerals shall be required to be less than 700 mg/l for TDS, nor less than 250 mg/l for either chlorides or sulfates (OAC 785-45-5-13 (g)).

(4) General Narrative Criteria for Minerals at OAC ~~785:45-5-13 (e)~~OAC 785:45-5-9(a) states that "Increased mineralization from other elements such as, but not limited to, calcium, magnesium, sodium, and their associated anions shall ~~be maintained at or below a level that will not restrict~~not impair any beneficial use," which OWRB interprets as meaning that neither salinity nor other minerals shall be allowed to impair the PPWS, F&W, PBCR, and other beneficial uses listed for streams in the WQS.

(5) Excess sediment impacts may be addressed through the numeric turbidity standards established for F&W. Heavy metal numerical WQS have been set by OWRB for many beneficial uses.

(6) A water quality antidegradation policy, which applies statewide and is, consistent with the goals of the CWA, is found at OAC 785:45, Subchapter 3. Antidegradation policy implementation is found at OAC 785:45-5-25 and OAC 785:46, Subchapter 13. ~~There are three levels~~Levels of protection are as follows:

(A) Attainment or maintenance of existing or designated beneficial uses ~~(Tier 1)~~.

(B) Maintenance quality of improved waters.

(~~B~~C) Maintenance of beneficial uses and water quality in higher quality waters and sensitive public and private water supplies of the state, as well as in waters of ecological or recreational significance ~~(Tier 2)~~.

(~~C~~D) Prohibition of any water quality degradation from new point source discharges or increased loading from existing discharges into waters designated as outstanding resource waters ~~(Tier 3)~~and scenic rivers.

(7) Special provision at OAC 785:45-5-29 - Delineation of Nutrient Limited Watershed (NLW) areas specifies spatial limitations of these areas that require additional protection.

(b) Although not required by any provision of the CWA, the OWRB has promulgated groundwater quality standards for the state at OAC 785:45, Subchapter 7. Groundwater quality standards and protection are comprised of seven elements:

(1) Beneficial uses, designated to apply to the groundwater situated below the surface of the dedicated land identified in a groundwater use permit or right issued by the OWRB. Such beneficial uses are defined at OAC 785:45-7-3(b) and may include, but are not limited to:

(A) Public and Private Water Supply (including municipal use and domestic use).

(B) Agriculture for irrigation or livestock watering.

(C) Industrial and municipal process and cooling water.

(2) Classifications, found at OAC 785:45-7-3(a) are as follows:

(A) Class I (Special Source Groundwater): Groundwaters where exceptional water quality exists, where there is an irreplaceable source of water, where it is necessary to maintain an outstanding groundwater resource or where the groundwater is ecologically important. This class of groundwater is considered to be very vulnerable to contamination and includes:

(i) All groundwater located beneath the watersheds of surface waters designated as Scenic Rivers in Appendix A to OAC 785:45.

(ii) Groundwater located underneath lands located within the boundaries of areas with waters of ecological and/or recreational significance listed in Tables 1 and 2 of Appendix B to OAC 785:45.

(iii) Groundwater located underneath lands within the boundaries of a state-approved wellhead or source water protection area for public water supply.

(B) Class II (General Use Groundwater): Groundwaters capable of being used as a drinking water supply with conventional or no treatment methods, with the potential for multiple beneficial uses, and with mean TDS levels < 3000 mg/l.

(C) Class III (Limited Use Groundwater): Poor quality groundwaters due to natural conditions, which require extensive treatment for use as a drinking water source, with mean TDS levels of ≥ 3000 mg/l and < 5000 mg/l.

(D) Class IV (Highly Mineralized Treatable Groundwater): Very poor quality groundwaters due to natural conditions, which require extensive treatment for use as a drinking water source, having mean TDS levels ≥ 5000 mg/l but <10000 mg/l.

(3) Beneficial use designations: Class I and II, not identified in Appendix H of OAC 785:45, shall be public and private water supply, agriculture, and Industrial and municipal process ad cooling water. Class III and IV, not identified in Appendix H of OAC 785:45, shall be agriculture, and Industrial and municipal process and cooling water. Appendix H specifies beneficial uses for groundwater contained in the appendix.

(4) Vulnerability level: Certain hydrogeologic basins are classified according to its vulnerability to contamination and identified as Very Low, Low, Moderate, High and Very High per Table 1 of Appendix D of OAC 785:45.

(5) Nutrient-vulnerable groundwater: Certain groundwaters are subject to further designation as nutrient-vulnerable groundwater per Table 2 of Appendix D.

(6) Criteria for protection of groundwater quality:

(A) Groundwaters of the state shall be maintained to prevent alteration of their chemical properties by harmful substances not naturally found in groundwater.

(B) Protective measures shall be at all times maintained which are adequate to preserve and protect existing and designated groundwater basin classifications and which are sufficient to minimize the impact of pollutants on groundwater quality.

(C) The concentration of any synthetic substances or any substances not naturally occurring in that location shall not exceed the PQL in an unpolluted groundwater sample using laboratory technology.

(D) Prescriptive measures shall be developed by each state environmental agency and included in their WQSIP, and they shall be implemented to prevent groundwater pollution caused by any person or entity within their jurisdictional area of environmental responsibility.

(E) Each state environmental agency shall consider the hydrogeologic basin's vulnerability level and designated nutrient vulnerable groundwaters for surface activities with the potential to contaminate groundwater.

(7) Criteria for corrective action:

(A) Groundwater that has been polluted as a result of human activities shall be restored to a quality that will support uses designated in OAC 785:45-7-3(b) for that groundwater or meet the requirements of a site specific remediation plan approved by the appropriate state environmental agency.

(B) Measures to remedy, control or abate groundwater pollution caused by any person shall be the responsibility of each state environmental agency within its jurisdictional areas of environmental responsibility as prescribed in the agency's WQSIP.

35:45-1-7. Animal waste programs

(a) Compliance with antidegradation requirements and protection of beneficial uses.

(1) This area of jurisdiction includes the licensing or registering of CAFOs, LMFOs and poultry operations. These programs include land application of animal or poultry waste. Discharges of animal and poultry waste into waters of the State are statutorily prohibited. As a result, no discharge shall result from the operation of the facility. CAFOs and LMFOs may only discharge in the event of a 25 year/24 hour rainfall event and are required to construct the waste retention structures to contain the 25 year/24 hour rainfall event. In addition, OAC 35:17-3-14(b)(3)(C) allows a facility which has been properly designed, constructed, and operated and is in danger of an imminent overflow due to chronic or catastrophic rainfall to discharge wastewaters to land application sites for filtering prior to discharging to surface or groundwaters of the state.

(2) Beneficial uses that could potentially be impaired by improper land application, leakage from animal waste lagoons, or breach of a lagoon could impact both ground water and surface water. Beneficial uses that could be affected include, but are not limited to: (1) Fish and Wildlife Propagation may be impaired by lack of DO due to nutrient loading. (2) Public and Private Water Supplies may be impaired by fecal coliform, algae growth, and nutrient loading. (3) Recreation may be impaired by pathogens. (4) Aesthetics may be impacted by nutrient loading. All of these impairments could be caused by unauthorized discharges to waters of the state.

(3) Violations of the "no discharge" standard for CAFOs, LMFOs, and poultry feeding operations result in enforcement actions. These actions integrate corrective or remedial activities that can include clean up activities and restoration activities. Remediation requirements are determined on a case-by-case basis. The Department shall assess and review all approved remediation requirements to provide technical standards for future remediations.

(4) Education programs are also required for all poultry waste applicators, operators of poultry feeding operations, and employees of LMFOs.

(5) OAC 785:46-13-5 provides that no new or increased point source discharges are allowed in waterbodies and watersheds designated by the WQS as ORW or Scenic River. Waters that have been classified as HQW and SWS according to OAC 785:45-5-25 (c) (3) and (4) are prohibited from having any new point source discharge(s) of any pollutant or increased load or concentration of specified pollutants from existing point sources discharge(s), except as provided in the regulations. CAFOs are by definition point sources. In addition, all nonpoint sources shall implement best management practices in watersheds designated as ORW. However, if nonpoint sources are identified as significantly contributing to the degradation of a waterbody designated as an ORW, conservation plans shall be developed in subwatersheds. Finally, LMFOs established after August 1, 1998 applying for a new CAFO license or expansion after March 9, 1998 shall not be located within three (3) miles of any designated scenic river area or within one (1) mile of a waterbody designated as ORW.

(6) LMFO's that are located in nutrient-limited watersheds and or nutrient-vulnerable groundwaters as designated by the ~~Oklahoma Water Resources Board~~OWRB must meet current lagoon liner criteria according to Title 2, O.S. ~~Section 9-205.4 .H.3~~§ 20-12(H)(3), and meet land application nutrient loading rate requirements per OAC 35:17-3-14(b)(4).

(7) Poultry feeding operations that are located in nutrient limited watersheds or nutrient vulnerable groundwaters as designated by OWRB shall meet soil and litter testing and litter application rate requirements per 2 O.S. § 10-9.7(E).

(b) Application of USAP - In the event ODA engages in surface water monitoring, USAP as adopted by OWRB will be consulted to determine if beneficial uses have been impaired. All animal waste programs require no discharges from facilities, therefore USAP is not applicable. Any discharge will be a violation of the license and subject to enforcement action and possible fines.

(c) Description of programs affecting water quality.

(1) The Agricultural Environmental Management Services Division of ODAFF is responsible for the review of applications for animal feeding operations that meet size and type requirements. The division also investigates complaints received by the Department regarding animal waste issues that could affect water quality.

(2) The animal waste programs can affect groundwater and surface water beneficial uses if facilities are not designed and operated properly. The application process is targeted at removing the possible threat of pollution to the waters of the State by not allowing any discharge to surface water, except in limited circumstances, by promoting recycle and beneficial reuse of wastewater, by not permitting any hydrologic connection between waste storage facility and groundwater, ~~and~~by preparing or reviewing animal waste management plans, nutrient management plans, or equivalent documents, emphasizing best management practices and conservation measures, and by routine inspections of regulated CAFOs, LMFOs, and poultry feeding operations.

(d) Technical information and procedures for implementation.

(1) All programs are involved in regulating the animal and poultry feeding operations to assure that facilities meet the minimum requirements. The programs evaluate facility location, watershed, soils, groundwater data, stream data, flood information, water samples, manure and litter samples, and other pertinent information. The application process evaluates the potential effects of the proposed operation on the waters of the State to insure that both groundwater and surface water are not polluted. Potential impacts on beneficial uses designated in water quality standards will be further evaluated during the license application process to assist elimination of the threat to nutrient vulnerable groundwaters and ~~surface~~nutrient impaired waters. Data collected from monitoring wells or soil test reports submitted by regulated operations will be evaluated to assess the potential impact on waters of the state. If noncompliance with operating requirements is found, technical assistance or appropriate enforcement measures will be used to bring regulated facilities into compliance with state laws and rules.

(2) The CAFO and poultry programs utilize a number of databases, software programs and models for implementation. These include: stream gage data from the U.S. Geological Survey; Microsoft Access database and Microsoft Excel spreadsheet software for water quality data information; ArcInfo and ArcView GIS software data analysis and mapping; precipitation and evaporation data from the National Weather Service and Oklahoma Climatological Survey; maps and hydrologic information from the U.S Geological Survey, Oklahoma Geological Survey, and Oklahoma Water Resources Board; USDA NRCS Soil Surveys and Technical Standards; ~~and~~ OSU Oklahoma Cooperative Extension Service Fact Sheets; and other tools, software, and other guidance related to manure management planning developed by EPA, universities, and professional organizations. Models may be obtained or developed to analyze information and data to assist in meeting WQS as necessary.

(e) Integration of WQSIP into water quality management activities - ODAFF rules for these programs require compliance with WQS pursuant to 2 O.S. § ~~9-205.3~~20-10 (B) (4) (c) and 20-48(B)(4)(c) ensure that watersheds and groundwater are adequately protected pursuant to ~~9-205.3~~20-10 (B)(4)(h) and 20-48(B)(4)(f). Future changes in Water Quality Standards may require additional rules and policies. Amendments will be made as necessitated by those changes.

(f) Compliance with mandated statewide water quality requirements - ODAFF will comply with other statewide water quality requirements by participating in the update of WQS, and in updates of the state's Continuing Planning Process document, Integrated Report, water quality management plan and other planning efforts. ODAFF will continue to participate in the Nonpoint Source Working Group and will cooperate with the Oklahoma Conservation Commission and others involved in NPS pollution prevention programs. ODAFF will participate in the TMDL process as resources permit, and will make use of the Beneficial Use Monitoring Program data compiled in cooperation with other state environmental agencies to modify its water quality program as necessary.

(g) Public and interagency participation.

(1) ODAFF interacts with other environmental agencies through the Water Quality Standards Implementation Advisory Committee. The agencies review and comment on each agency's plan and consult with each other as needed.

(2) Public participation requirements of the Oklahoma Administrative Procedures Act are followed in promulgating rules that integrate water quality standards into these program areas.

(h) Evaluation of effectiveness of agency activities.

(1) The effectiveness of these programs in the protection of designated beneficial uses for designated stream segments will be evaluated utilizing the following processes: review and integration of CAFO monitoring well sampling, soil analysis, stream gage data from the U.S. Geological Survey, U.S. Army Corps of Engineers, Oklahoma Conservation Commission, and Oklahoma Water Resources Board, and all other available data.

(2) The swine LMFO monitoring well sampling and laboratory analysis project began in 2000. All LMFOs with more than 1,000 swine animal units were required by Senate Bill 1175 of 1998 [Title 2 O.S. § ~~9-205.4(F)(1)(2)~~20-12(F)] to install and maintain a leak detection system or sufficient monitoring wells both upgradient and downgradient around the perimeter of each waste retention structure. ODAFF is required by Title 2

O.S. ~~9-205-4(F)(3)~~§ 20-12(F) to sample and laboratory analyze the samples from the LMFO monitoring wells at least annually. The LMFO monitoring well samples are required in Title 35, Chapter 17, Subchapter 3 of the CAFO Permanent Rules [35:17-3-11.(6)(H)] to be sampled and laboratory analyzed for electrical conductivity, pH, ammonium-nitrogen, nitrate-nitrogen, total phosphorus and fecal coliform bacteria. The information and data collected under this program is published in a report annually by ODAFF.

(3) Groundwater samples from other wells are also taken from LMFO facilities during each annual inspection by ODAFF environmental specialists. These samples and some surface water samples are analyzed in accordance with procedures and protocol developed by ODAFF. Water well samples are also taken and analyzed on a voluntary basis from residents located in the vicinity of animal feeding operations. The latter sampling project has been in place since 1992.

(4) In the event groundwater problems are identified, ODAFF will take steps to identify the sources of the problems. If CAFOs or LMFOs are identified as the source, appropriate remediation activities will be implemented.

35:45-1-8. Pesticide program

(a) ODAFF regulates spills and misuse of pesticides associated with facilities and activities of licensed pesticide applicators, homeowners and farm applications. This includes improper storage and disposal of pesticides and pesticide containers.

(b) Compliance with antidegradation requirements and protection of beneficial uses.

(1) All pesticide programs and regulatory activities require no degradation of surface or groundwater by pesticide use. Pesticide labels contain warnings that the pesticide could contaminate surface and groundwater if misused or improperly disposed. ODAFF regulates spills and misuse of pesticides associated with facilities and activities of licensed pesticide applicators, homeowners and farm applications. This includes improper storage and disposal of pesticides and pesticide containers.

(2) Beneficial uses that could be impaired by improper handling and application of pesticides include Fish and Wildlife Propagation, Private and Public Water Supply, Recreation, and Agriculture. The potential for pesticides to enter ground water and surface water exist and is supported by the fact that several water bodies are classified as impaired by pesticides on the current 303(d) list. Pesticide residue in fish could render them unfit for human consumption. Antidegradation is automatically implemented because the presence of pesticide in any water is a violation of the standards no matter how the water body is classified.

(3) Recent spills and newly located polluted sites are remediated by the responsible party, or by the use of EPA superfund monies to the extent necessary to meet ODAFF goals. Pesticide remediation brings any impaired surface or groundwater back to the quality prior to the pesticide spill, including restoration of all beneficial uses pursuant to the WQS. Procedures for groundwater protection are covered in the ODAFF Generic Pesticide Management Plan in Groundwater ~~Management Plan~~.

(4) The certification of persons to become pesticide applicators involves training and testing of the individual in the safe use and handling of pesticides. Training includes information on how to read a pesticide label, pesticide storage, pesticide container disposal and proper procedures to follow in the event of a pesticide spill. The protection of surface water and groundwater is an integral part of the certification process.

(c) Application of USAP - The procedures for pesticide monitoring are outlined in the Quality Assurance Project Plan, the pesticide operating procedures and the Generic Pesticide Management Plan in Groundwater ~~Management Plan~~. USAP will be utilized in assessing beneficial uses of all monitored surface waters. USAP does not apply to groundwater at this time.

(d) Description of programs affecting water quality.

(1) The ~~Plant Industry and~~ Consumer Protection Services Division of ODAFF is responsible for the licensing and certifying of pesticide applicators. ODAFF registers all pesticides distributed in the state and has authority to restrict the use of pesticides to prevent unreasonable risk to the quality of Oklahoma's water.

(2) Under the Generic Pesticide Management Plan, ODAFF will develop and implement point and non-point source prevention measures, participate in relaying use information, carry out monitoring, develop and implement response to detection, keep records of action taken and provide progress reports to EPA.

(3) ODAFF will also develop and maintain a statewide agriculture chemical database and a pesticide concerns list in regard to water quality standards.

(4) ODAFF licenses all commercial applicators of pesticides and requires the certification of private applicators before they can use restricted pesticides. When spills or other environmental problems, resulting from current or historic practices, are found, ODAFF's goal is to prevent impairment of the surface water and groundwaters of the state. This includes preventing significant risk to humans, livestock, or ecological receptors from inhalation of fumes, direct contact, or ingestion.

(5) Pesticide labels contain warnings that the pesticide could contaminate surface and groundwater if misused or improperly disposed. All ODAFF activities related to pesticides are geared toward maintaining WQS. Specific programs include the following:

(A) Certification of individuals and the licensing of companies to apply pesticides;

(B) Investigation of pesticide spills and misuse;

(C) Inspection of pesticide producer establishments;

(D) Inspection of pesticide applicator facilities for proper pesticide storage;

(E) Audit records of restricted use pesticide dealers;

(F) Conduct private applicator record keeping inspections;

(G) Monitor pesticide application at new construction sites;

(H) Requiring backflow prevention devices on chemigation wells, as well as requiring every applicator of pesticides to employ an appropriate method to prevent the backflow of spray materials during filling, mixing, or application operations. The method shall include, but not be limited to, the employment of a check valve or similar in-line device, or positive mechanical method, such as an air gap, designed to insure that backflow shall not occur;

(I) Monitoring the irrigation tailwater return flow on several large container nurseries on the Illinois River in Cherokee County; and

(J) Groundwater monitoring.

(e) Technical information and procedures for implementation - The pesticide program utilizes a number of databases, software programs and models for implementation. These include: Microsoft Access database and Microsoft Excel spreadsheet software for water quality data information; ArcInfo and ArcView GIS software data analysis and mapping; and pesticide leaching models from EPA to map and analyze data. EPA standards are used to calibrate laboratory equipment when analyzing for specific pesticides. Many cases will require samples to be taken. The Pesticide Inspectors Manual covers the procedures for taking, sealing and shipping pesticide samples to the lab. Sampling results become a part of the complaint file. Notice of violations, stop work orders, informal or formal hearings, cleanup orders, fines and referral to US EPA for federal prosecution are some of the enforcement actions available to the ODAFF in the event a water quality or other violation is found. The Oklahoma Combined Pesticide Law and Rules set the standards used in the storage, use and disposal of pesticides, pesticide containers, and pesticide waste.

(f) Integration of WQSIP into water quality management activities - Future changes in WQS may require additional rules and policies. Amendments will be made as necessitated by those changes.

(g) Compliance with mandated statewide water quality requirements - Compliance with statewide water quality requirements is the primary goal of the pesticide certification program, pesticide facility inspections, pesticide spill and misuse investigations and pesticide monitoring programs.

(h) Public and interagency participation.

(1) ODAFF has been charged with the regulatory responsibilities of agricultural activities that could impact the WQS of the waters of Oklahoma. The "Agricultural Resources Protection and Management Operation" document outlines standard operating procedures to fulfill this charge for the present and provides guidance for future needs. This document contains no new or modified authorities not subject to legislative approval. Should subsequent events call for law, rule or regulation changes or additions, these shall be subject to approvals in accordance with the APA or the legislative process.

(2) Public participation requirements of the APA were followed in promulgating rules that integrate water quality standards into this program area. Section III of this document contains a summary of comments received and responses relating to the promulgation of ODAFF's WQSIP.

(i) Evaluation of effectiveness of agency activities - The effectiveness of the pesticide programs will be evaluated through the routine monitoring of surface water and groundwater. Special monitoring may be initiated if potential sources of contamination are identified. USAP will assist in dictating surface water monitoring.

35:45-1-9. Forestry best management practice program

(a) ~~ODA's~~ODAFF's Forestry Services' water quality program monitors the effects of forest practices on water quality, administers silvicultural best management practices and provides training and education of landowners, loggers and forest managers. Forestry's nonpoint source management program consists of a variety of activities designed to raise awareness of the need to use BMPs to prevent water quality problems in Oklahoma. Activities include maintenance of the State's forestry BMP guidelines, including evaluation of BMP effectiveness, and revision and development of BMPs; workshops for loggers, foresters and landowners on the use of BMPs; development of educational materials; a certification program for loggers who have completed training, in cooperation with the Oklahoma Forestry Association; exhibits, news releases, group presentations; BMP compliance monitoring; demonstrations of the proper use of forestry BMPs and low-cost erosion control techniques; complaint investigations; and support of water quality monitoring studies.

(b) Compliance with antidegradation requirements and protection of beneficial uses.

(1) Forestry's water quality programs are generally preventive in nature. Raising awareness, promoting BMPs and monitoring their use will help minimize water quality impacts from silviculture. As the forest industry continues to emphasize BMP compliance, through the Sustainable Forestry Initiative and other means, potential threats to water quality from forestry will further diminish. BMPs are continuously reviewed and evaluated to determine their adequacy for protection of beneficial uses.

(2) The primary potential impacts of forestry activities on water quality involve sedimentation and turbidity from practices such as road construction and maintenance, timber harvesting, site preparation and other activities; and pollution from the use of chemicals or fertilizers and equipment maintenance. Beneficial uses that could be affected include:

(A) fish and wildlife propagation, from turbidity or changes in water temperature;

(B) primary and secondary body contact recreation, due to turbidity and suspended solids; ~~and~~

(C) aesthetics, due to turbidity and suspended solids; and

(D) impacts on public water supplies from pollutants associated with pesticide application and fertilization activities.

(3) Forestry Services will use the State's list of water bodies that specifies whether beneficial uses are supported, threatened or not supported to guide follow up actions. In watersheds where beneficial uses are not supported, Forestry will intensify its program efforts in cooperation with industry and landowners to address ongoing problems related to forestry, and will also increase efforts to inform landowners about the benefits of using trees and forest vegetation to protect water quality, regardless of land use, and to manage for maintenance of healthy forested watersheds.

(c) Application of USAP - Forestry Services discontinued its intensive in-stream water quality monitoring program in the early 1990s. In the future, when ~~ODA~~ODAFF Forestry Services commences water quality sampling and monitoring, the agency will use USAP.

(d) Description of programs affecting water quality - The Forestry Services Division is responsible for administration of the state's silvicultural best management practice program. Forestry Services maintains, develops and revises the State's forestry BMP guidelines in cooperation with the industry, universities, private landowners and other agencies. Forestry Services provides copies of BMP materials to affected clients, and helps raise awareness about their importance, and provides technical assistance to landowners and users of the BMPs.

(e) Technical information and procedures for implementation.

(1) The elements of Forestry's water quality management program are directed toward raising awareness and modifying behavior in order to prevent water quality problems associated with forestry activities. Educational efforts, such as BMP training, landowner workshops, logger tailgate sessions, use of the media, development of publications and videos, exhibits and group presentations, are intended to raise the awareness of landowners, loggers, foresters, forest industry professionals, state personnel and others about best management practices to minimize the impact of forestry on water quality. Proper road practices and low-cost erosion control methods have been installed on demonstration sites and are used for training. Loggers completing BMP training may be certified by the Oklahoma Forestry Association as a Master Logger or Pro Logger. This information will be provided to private landowners seeking the services of a competent logger, thereby favoring the best contractors.

(2) If a complaint investigation shows that silvicultural activities may be impacting water quality, Forestry Services will first provide information and assistance to the landowners and other parties involved to implement corrective measures. In the event that these measures are not undertaken, Forestry Services will request follow-up assistance from the industry, the Oklahoma Water Resources Board and Department of Environmental Quality as necessary to resolve the problem. If the landowners or other parties cannot be identified as causing pollution, Forestry will request assistance from the Oklahoma Water Resources Board and use an appropriate USAP to determine whether beneficial uses are impaired.

(3) Forestry Services will follow the BMP Compliance Monitoring Protocol developed by the 13 southern states. State BMP guidelines are based upon research and practical experience, and use an iterative approach to evaluate their effectiveness, develop new BMPs and make refinements to existing BMPs. Forestry will use the Beneficial Use Monitoring Program information developed by other agencies in assessing impacts on beneficial uses caused by forestry activities. Where silvicultural impacts are shown, USAPs will be used to determine impacts on beneficial uses.

(f) Integration of WQSIP into water quality management activities - Forestry Services will establish policies and procedures to integrate this Plan into agency programs and services. All field offices will be provided a copy of the Plan and guidance for its use in carrying out various program activities. Forestry BMP guidelines will be continually evaluated, modified and developed as necessary to improve their effectiveness and increase implementation.

(g) Compliance with mandated statewide water quality requirements - Forestry Services will comply with other statewide water quality requirements by participating in the update of Oklahoma's Water Quality Standards, and in updates of the state's continuing planning process document, water quality management plan and other planning efforts. Forestry Services will continue to participate in the Nonpoint Source Working Group and will cooperate with the Conservation Commission and others involved in NPS pollution prevention programs. Forestry Services will participate in the TMDL process.

(h) Public and interagency participation.

(1) Forestry Services will interact with other environmental agencies through the Water Quality Standards Implementation Advisory Committee.

(2) Public participation requirements of the Oklahoma Administrative Procedures Act are followed in promulgating rules that integrate water quality standards into this program area.

(i) Evaluation of effectiveness of agency activities.

(1) Forestry Services initiated its BMP compliance monitoring program in 2000 to document BMP implementation. Forestry Services randomly selects sites that have been harvested or prepared for planting during the past two years for an evaluation to determine the extent to which BMPs were used. This program will be repeated about every two years to track trends and compare results with other states. BMP compliance monitoring over a several year period will establish trends in the use of BMPs by industry and private landowners, and will help refine program emphases.

(2) Forestry Services will make use of Beneficial Use Monitoring Program data compiled in cooperation with other state environmental agencies to modify its water quality program as necessary.

35:45-1-10. Fertilizer program

(a) This program covers the storage of ~~both~~ dry ~~and~~, liquid, and anhydrous ammonia fertilizer, ~~the application of fertilizer to agricultural crops, pastures, and lawns~~ and the investigation of fertilizer spills and misapplication of fertilizers.

(b) Compliance with antidegradation requirements and protection of beneficial uses.

(1) Beneficial uses that could be impaired by improper handling and application of fertilizers include Fish and Wildlife Propagation, Private and Public Water Supply, Recreation, Aesthetics, and Agriculture. The potential for fertilizers to enter ground water and surface water exist and is supported by the fact that several water bodies are classified as impaired by fertilizers on the current 303(d) list.

(2) ODAFF licenses all commercial fertilizer facilities and registers all fertilizer products. This permit requires the approval of the fertilizer storage facility prior to being licensed. When spills or other environmental problems are found resulting from current or historic practices, the goal of ODAFF is to prevent impairment of the surface water and groundwaters of the state. This includes preventing significant risk to humans, livestock, or ecological receptors from inhalation of fumes, direct contact, or ingestion.

(3) Recent spills and newly located polluted sites are remediated by the responsible party.

(c) Application of USAP - The Oklahoma Fertilizer Law describes requirements for fertilizer storage and the approval procedure for liquid fertilizer storage containment. USAP will be utilized to aid in determining beneficial use impairment caused by spills.

(d) Description of programs affecting water quality.

(1) None of the programs and regulatory activities of the fertilizer section allow for the degradation of surface or groundwater by fertilizer use. ~~Bagged fertilizer labels have warnings that the fertilizer could contaminate surface and groundwater if misused or improperly stored.~~ Many of the activities of the Fertilizer Section are geared toward maintaining water quality standards.

(2) Specific fertilizer programs include:

(A) The licensing of companies to sell or apply fertilizer;

(B) Registration of all fertilizer products;

(~~B~~C) Approval of dry and liquid fertilizer storage facilities;

(~~C~~D) Require the use of approved backflow prevention devices or methods on chemigation wells;

(E) Require labeling to recommended use rates of the products;

(~~D~~F) Investigation of fertilizer spills and misuse;

(~~E~~G) Inspection of fertilizer storage facilities to reduce the risk of surface water and ground water contamination;

(~~F~~H) Monitoring the irrigation tailwater return flow on several large container nurseries on the Illinois River in Cherokee County; ~~and~~

(~~G~~I) Water monitoring around fertilizer spills, and

(J) Specific warning statements on labels of certain fertilizers.

(3) Agricultural return flows have the potential to impair beneficial uses through the addition of excessive nutrient loads to receiving streams. Controlling nutrient loading to receiving streams due to irrigation is an activity within the agricultural crop production jurisdictional area of environmental responsibility. When Oklahoma has developed numerical nutrient criteria the WQSIP will be revised to consider this area. Due to the new criteria for Phosphorus of 0.037 mg/l for protection of the Aesthetic use of scenic rivers, control measures will be implemented on return flows from nurseries located in the Upper Illinois River with a goal of meeting the compliance deadline of June 30, 2012 for in-stream phosphorus.

(e) Technical information and procedures for implementation - The protection of surface water and groundwater is an integral part of the fertilizer licensing process. All complaints are given a case number, an inspector to investigate and a program manager to review the investigation. Many cases will require a sample to be taken. The Fertilizer section of the Inspectors Manual will covers the procedures for taking, sealing and shipping samples to the lab. All sample results are kept with each case. Notice of violations, stop work orders, informal or formal hearings, cleanup orders, and fines are some of the enforcement actions ODAFF can use.

(f) Integration of WQSIP into water quality management activities.

(1) Storage sites for liquid fertilizers are submitted to the Fertilizer Section of ~~Plant Industry~~Consumer Protection Services Division for approval. All sites must have a plan that meets the requirements as specified in the Oklahoma Fertilizer Law.

(2) The Oklahoma Fertilizer Law states that "no person owning or operating a fertilizer storage facility or a commercial fertilizer facility shall discharge or release or cause to be placed any fertilizer material in a location where it is likely to cause contamination of any surface or groundwater of this state."

(3) WQS will be used to determine if a fertilizer facility is causing the degradation of the quality of surface or groundwater.

(4) Future changes in WQS may require additional rules and policies. Amendments will be made as necessitated by those changes.

(g) Compliance with mandated statewide water quality requirements - Compliance with statewide water quality requirements is the primary goal of the fertilizer licensing program, fertilizer facility inspections, fertilizer spill and misuse investigations and fertilizer monitoring programs.

(h) Public and interagency participation - ODAFF has been charged with the regulatory responsibilities of agricultural activities that could impact the water quality standards of the waters of Oklahoma. The "Agricultural Resources Protection and Management Operation" document outlines standard operating procedures to fulfill this charge for the present and provides guidance for future needs. This document contains no new or modified authorities not subject to legislative approval.

Should subsequent events call for law, rule or regulation changes or additions, these shall be subject to approvals in accordance with the APA or the legislative process. Public participation requirements of the APA are followed in promulgating rules that integrate water quality standards into this program area.

(i) Evaluation of effectiveness of agency activities - The effectiveness the fertilizer programs will be evaluated through the routine monitoring of surface water and groundwater. Special monitoring may be initiated if potential sources of contamination are identified. Special monitoring may be initiated if potential sources of contamination are identified. USAP will assist in dictating surface water monitoring.

35:45-1-11. Section III - Interagency participation

(a) General.

(1) Initial promulgation of Plan - The initial promulgation of the Plan ~~will receive~~has received public and interagency review and comment. ~~This required element will be completed when the public participation period has been completed and a~~A response to all comments received as a result of the public participation process has been appended to the July 2005 Water Quality Standards Implementation Plan. The summary of these comments and responses is available from ODAFF.

(2) Revisions to Plan - As with initial promulgation, triennial reviews of and revisions to the Plan, as well as any intermediate revisions thereto, shall undergo public and interagency review, and the response to all comments received shall be appended to the Plan.

(3) All references to other sections of these rules are to the original plan document, which is available from ~~the Oklahoma Department of Agriculture~~ODAFF.

(b) ~~Summary of comments received and response to comments~~ODAFF participated in all activities in the updates and revisions of WQS, WQSIP, USAP, Integrated Report, Continuing Planning Process document, and the state wide water quality management plan by providing input and comments related to these plans and documents and abiding by the requirements of the plans and documents.

~~(1) Oklahoma Water Resources Board submitted written comments that stated:~~

~~(A) **Comment:** Section 1 of this WQSIP is adequate. It is acceptable as written. Section 2, WQSIP Elements By Jurisdictional Area, has little value. It needs to be largely rewritten to be acceptable. Jurisdictional area A is for point source discharges and nonpoint source runoff. CAFO's, LMFO's and poultry operations are not allowed to discharge to waters of the State. Therefore, they are activities which do not require WQSIP's. WQSIP's are only required for activities which implement OWQS. Regulation of CAFO's, LMFO's and poultry operations are technology based, rather than water quality based water quality management. Technology based management does not require an assessment of beneficial use impairment. CAFO's, LMFO's, and poultry operations may be managed by requiring that lagoon operations and land application be conducted in such a manner that no discharge to waters of the state is allowed. Whether discharges cause beneficial use impairments is immaterial in this case. It is acceptable that ODA include CAFO's, LMFO's, and poultry operations in the WQSIP, so long as it is made clear that only evidence of a discharge, not evidence of a beneficial use impairment, is necessary to document a violation.~~

~~(B) **ODA Response:** Although CAFOs, LMFOs, and poultry regulation is technology based, the Department has included them in the plan to indicate the potential for pollution to waters of the state and to address the procedures used to eliminate the possibility of pollution. In addition, the impact of discharges on Water Quality Standards is more specifically indicated in the document. In meeting with the OWRB, ODA explained that the OWQS are used for the review of LMFOs if the facility is located in a Nutrient-Limited Watershed or Nutrient-Vulnerable groundwaters. Facilities located in these area must meet more stringent regulations concerning lagoon liners.~~

~~(C) **Comment:** Irrigation is an activity in this jurisdictional area which requires water quality based management, and hence a WQSIP. ODA should delineate all activities in jurisdictional area A and develop a WQSIP for each of them. WQSIP's must be developed for each activity which requires water quality standards implementation, not each jurisdictional area. This is explained in "Minimum Requirements for 2001."~~

~~(D) **ODA Response:** Discussions with the Oklahoma Water Resources Board indicate that the comment is directed at the "agricultural crop production" jurisdictional area. This area is addressed in the Pesticide and Fertilizer sections (Subsections B and D) of the WQSIP.~~

~~(E) **Comment:** Compliance with antidegradation - Licensing of commercial fertilizer facilities is not an activity which requires a WQSIP. Only those activities which require implementation of OWQS should be listed. Remediation of sites polluted by pesticides is such an activity. What specific beneficial uses listed in OWQS does pesticide remediation address?~~

~~(F) **ODA Response:** Commercial fertilizer and pesticide facilities are included in the WQSIP due to their potential impact for pollution to waters of the state through mishandling. However, the plan was amended to reflect that WQS apply in the case of remediation of pesticide problems. Remediation is an area that will be further developed in future revisions of the WQSIP.~~

~~(G) **Comment:** Application of USAP - USAP is the accepted method of determining beneficial use impairment. Explain how it will be used in managing pesticide pollution.~~

~~(H) **ODA Response:** This comment was addressed in the final version of the plan.~~

~~(I) **Comment:** Development of programs affecting water quality - "no degradation of surface or groundwater by pesticide use..." should be part of B(1).~~

~~(J) **ODA Response:** Change has been made.~~

~~(K) **Comment:** Technical information - The 1st paragraph is irrelevant to WQSIP and should be removed. ODA should eventually develop cleanup rules which insure that beneficial use impairments due to pesticide spills are alleviated.~~

~~(L) **ODA Response:** The revised plan deleted this paragraph and future plan revisions will address this comment further.~~

~~(M) **Comment:** Evaluation of effectiveness - Monitoring alone will not determine if beneficial use impairment is alleviated. USAP must be used to analyze the data to determine beneficial use impairment. Therefore, USAP will dictate monitoring requirements.~~

~~(N) **ODA Response:** This item has been revised and may be subject to future revision as the plan evolves.~~

~~(O) **Comment:** Forestry Best Management Practice Guidelines - ODA is correct to break jurisdictional area C into specific activities. However, more division is required. Certification and training programs do not prevent beneficial use impairment directly. Therefore, they do not require a WQSIP. Only those activities which should use water quality standards implementation and which have a direct impact on beneficial uses or antidegradation require a WQSIP. It appears that development and implementation of BMP guidelines is an activity which falls within this jurisdictional area and requires a USAP. Nurseries which discharge to receiving waters are another activity requiring a separate USAP.~~

~~(P) **ODA Response:** Development and implementation of BMP's has been emphasized as a means of preventing impairment of beneficial uses. Nursery discharge does not fall under this program and is addressed under subsections B and D.~~

~~(Q) **Comment:** Description of programs affecting water quality - Minimum requirements for (3) involve describing the programs which impact the activity. Follow the example in 3) on p 7 of "Minimum Requirements for 2001."~~

~~(R) **ODA Response:** Potential beneficial uses that may be impaired have been addressed in the revised plan.~~

~~(S) **Comment:** Technical Forestry Assistance - Since landowner assistance programs involving information transfer do not directly affect beneficial uses there is no need for a WQSIP. This activity should be deleted from ODA's plan.~~

~~(T) **ODA Response:** This was deleted from the revised plan.~~

~~(U) **Comment:** Jurisdictional Area D Compliance with antidegradation - List specific beneficial uses described in OWQS which will be protected by this activity.~~

~~(V) **ODA Response:** Subsection D has been revised in the final plan.~~

~~(W) **Comment:** Application of USAP - USAP should be used to aid in determining beneficial use impairment caused by spills.~~

~~(X) **ODA Response:** Subsection D has been revised in the final plan.~~

~~(Y) **Comment:** Evaluation of effectiveness - Routine monitoring alone cannot determine the effectiveness of fertilizer control programs. Application of USAP is necessary to assess beneficial use impairment.~~

~~(Z) **ODA Response:** Subsection D has been revised in the final plan.~~

~~(AA) **Comment:** Jurisdictional Areas E and F - E and F are listed separately as jurisdictional areas of environmental responsibility in S.B. 549. However, activities listed in these jurisdictional areas are similar to activities found in jurisdictional areas A, B and D. Similar activities should be combined, since they can be covered by the same WQSIP.~~

~~(BB) **ODA Response:** This has been done to the extent possible.~~

~~(CC) **Comment:** Jurisdictional Area G Compliance with antidegradation - This section should explain how groundwater standards in OWQS are not well enough developed to support implementation. Description of programs - Start over and follow the example in 3) on p 7 of "Minimum Requirements for 2001."~~

~~(DD) **ODA Response:** Subsection G has been deleted from Section II since a separate plan is not necessary according to OWRB and the issue has been incorporated under other subsections.~~

~~(EE) **Comment:** Jurisdictional Area H - There is no need for a separate WQSIP here. Integrate this activity with each of the activities listed above.~~

~~(FF) **ODA Response:** Subsection H has been deleted from Section II since a separate plan is not necessary and the issue has been incorporated under other subsections.~~

~~(GG) **Comment:** Jurisdictional Area I - Since this jurisdictional area does not require a USAP there is no need to list it here.~~

~~(HH) **ODA Response:** Deleted.~~

~~(2) Kelly Hunter Burch, Assistant Attorney General in the Oklahoma Attorney General's Office submitted written comments which stated:~~

~~(A) **Comment:** The primary purpose of the Implementation Plan is to demonstrate how the Oklahoma Water Quality Standards (the "OWQS" will be utilized by environmental agencies in protecting surface and ground water quality. It is not sufficient to say that the goal of the ODA is to protect water quality and~~

~~that the ODA takes enforcement action if a violation of the OWQS is established. Rather, the Implementation Plan is required to demonstrate that the licensing or other regulatory activities of the agency are adequate to ensure compliance before any violations occur. In other words, the Implementation Plan should integrate the OWQS into the regulations and policies of the agency. For example, Forestry Services recommends that Best Management Practices be utilized to prevent water quality impacts. Implementation of the OWQS for this management program should include some description of how the specific recommended BMPs achieve compliance with the relevant OWQS, such as the aesthetics criteria and anti-degradation requirements. If the BMPs are not adequate to achieve compliance with the OWQS, then the BMPs should be revised. This type of analysis should be performed for every agency activity that could affect water quality.~~

~~(B) **ODA Response:** We have attempted to address this in our revised version of the plan through discussion with the OWRB.~~

~~(C) **Comment:** ODA's proposed Implementation Plan sets forth the goal of compliance with the OWQS, but it does not demonstrate nor ensure that the existing programmatic requirements are adequate to meet that goal. Such a demonstration is the central requirement of Title 27A, Section 1-1-202 of the Oklahoma Statutes. This general comment is applicable to every section of the proposed Implementation Plan and the plan should be revised to comply with Section 1-1-202. Specific areas requiring revision are as follows:~~

~~(D) **ODA Response:** This comment was general and therefore addressed in each specific area.~~

~~(E) **Comment:** Subsection A. (1) All of the licensing requirements for animal feeding operations and poultry feeding operations should be evaluated to determine whether they are adequate to ensure compliance with the OWQS. The requirements should be amended if they are not adequate to ensure compliance. The plan should demonstrate how the specific requirements meet the relevant standards. (3) It should be demonstrated how the process for evaluating siting information uses the OWQS to protect water quality. (5) While the statute requires license holder to comply with the OWQS, the mere existence of the statute does not integrate the agency's Implementation Plan into the ODA's water quality management activities.~~

~~(F) **ODA Response:** Subsection A comments were in conflict with the OWRB's comments and we have tried to work out a solution to address the comments. The OWRB has agreed that a WQSIP is necessary for CAFO's in part and this has been addressed.~~

~~(G) **Comment:** Subsection B.~~

~~(i) The Implementation Plan needs to describe how the licensing and spill response activities utilize the OWQS. It should further demonstrate that the activities are adequate to ensure compliance.~~

~~(ii) This section does not address how the ODA will use the USAP.~~

~~(iii) It is not clear how these programs utilize and maintain the OWQS.~~

~~(iv) The plan should demonstrate how following the training and label information will protect the OWQS.~~

~~(v) This section does not address integration of the Implementation Plan.~~

~~(vi) The monitoring program needs to be described in detail. Will the ODA use USAP?~~

~~(H) **ODA Response:** Subsection B comments have been addressed in the revised plan to the extent possible and through working with the OWRB.~~

~~(I) **Comment:** Subsection C. These programs need to be evaluated to determine whether the recommendations are adequate to achieve compliance with the OWQS. The relevant standards should be outlined in the Implementation Plan and should be correlated to the activity that could cause the impairment.~~

~~(J) **ODA Response:** Subsection C has been revised to the extent possible to combine these comments with those of the OWRB.~~

~~(K) **Comment:** Subsection D.~~

~~(i) This section should describe how storage sites are selected to protect water quality and how land application is regulated to ensure compliance with OWQS. It should further describe how the remediation levels are tied to the OWQS.~~

~~(ii) This section does not describe how the USAP will be used.~~

~~(iii) This section describes how the ODA responds to complaints, but it does not describe how the OWQS will be implemented.~~

~~(iv) This section does not address how the Implementation Plan will be integrated into the ODA's water quality management activities.~~

~~(L) **ODA Response:** Subsection D is being revised to incorporate comments made by the review committee.~~

~~(M) **Comment:** Subsection G. The Implementation Plan does not address how the activities of the ODA will protect groundwater quality standards.~~

~~(N) **ODA Response:** Subsection G has been deleted from Section II since a separate plan is not necessary and the issue has been incorporated under other subsections.~~

~~(3) The Oklahoma Department of Wildlife Conservation submitted written comments as stated below:~~

~~(A) **Comment:** ODA's draft Implementation Plan Cites compliance with the Oklahoma Water Quality Standards (OQWS) as the ultimate goal for the administration of its environmental responsibilities as~~

~~specified in O.S. Title 27. For the plan to be complete however, it will be necessary for the ODA to include a detailed evaluation that explains how its programs provide for or will be improved to ensure compliance with these standards including protection of groundwater quality standards. Where program activities or regulated actions may cause impairment of water quality, the plan should cite the applicable provisions of the OWQS and address how the ODA will ensure compliance.~~

~~(B) **ODA Response:** The plan has been revised to include program activities used to ensure compliance with OWQS in areas the ODA has the statutory authority to act.~~

~~(C) **Comment:** Specific examples of ODA program activities that require detailed evaluation and explanation sufficient to demonstrate programmatic compliance with the OWQS include: licensing requirements for animal feeding operations; storage site selection; land application regulations; use of BMP's in all areas of environmental responsibility; facility and operational siting requirements; how ODA will incorporate this implementation plan into its water quality management program; spill response and training programs; monitoring programs; how ODA intends to utilize USAP in its programs; and in the complaint response program.~~

~~(D) **ODA Response:** These comments have been incorporated to the extent possible in the revised plan working with the comments from other agencies.~~

~~(4) Kendra Foyil, Department of Environmental Quality, submitted written comments summarized as follows:~~

~~(A) **Comment:** Under Section II.A(1): need to specifically address point and nonpoint source discharges in ORW watersheds (785:46-13-5)and specifically the LFMO prohibition at 785:46-13-5(d).~~

~~(B) **ODA Response:** Changes made.~~

~~(C) **Comment:** Under Section II.A(1), first paragraph, last sentence: does this sentence say what you really want it to say? To us, it says (literally) that any all point and nonpoint source discharges are prohibited, no exceptions!~~

~~(D) **ODA Response:** Yes and we tried to clarify the fact.~~

~~(E) **Comment:** Under section II.A(2): The material in this subsection, as drafted, appears to apply only to groundwater. Application to USAP is for surface waters only. The material in this subsection appears very valuable, but should be relocated in a different subsection, perhaps (3) or (4). Wherever it is relocated, it would be appropriate to discuss what actions Ag would take if groundwater problems are identified. As for USAP, this subsection is pertinent only to input to USAP assessments or use of results from USAP assessments in Ag's point and nonpoint source permitting activities.~~

~~(F) **ODA Response:** This section was completely revised in the revised draft with the suggestions incorporated if applicable.~~

~~(G) **Comment:** Under section II.A(4): This subsection, although it certainly details technical resources used, really needs implementation procedures to be fleshed out to a certain extent.~~

~~(H) **ODA Response:** This comment was incorporated pursuant to the comment received by the OWRB.~~

~~(I) **Comment:** Under section II.B: references are made in (3) and (6) to groundwater monitoring and pesticide monitoring. Further discussion and fleshing out of these monitoring concepts, the procedures established (other than the complaint process) and actions required should problems be discovered should be described.~~

~~(J) **ODA Response:** Section B has been revised for the final plan.~~

~~(K) **Comment:** Under section II.C.1: In (1) [antidegradation], there are references to USAP that might be better served if relocated to (2). The antideg section should focus more how the BMP program relates to antideg. We also feel that the better part of the content in (2) is not USAP related and might be better served if relocated to (3) or (4). Under section II.C.2: In (1) [antidegradation], there should be more focus on how Forestry technical assistance relates to antideg.~~

~~(L) **ODA Response:** The changes in location mentioned in the comment for section II.C.1 (1) was made in the first revision and then changed back to the original location in the last revision according to the meeting with the OWRB. Section II.C.2 was deleted from the revised plan since it did not require a WQSIP according to the OWRB.~~

~~(M) **Comment:** For jurisdictional areas A through E in general: In 27A O.S. Section 1-3-101, Subsection D, which outlines Ag's jurisdictional areas, item 2 specifies the exceptions which come under DEQ's jurisdiction... basically the manufacture and storage of agriculture related fertilizers, grain products, chemicals (including pesticides), food products, etc., slaughterhouses (not including feedlots attached thereto), and fish hatcheries. It would help in subsection (5) or (6) in these jurisdictional areas to give a brief reference to the interface between Ag and DEQ... nothing elaborate, just something very basic.~~

~~(N) **ODA Response:** This topic was addressed in Section I of the plan under Subsection E in the revised plan.~~

~~(O) **Comment:** Table of Contents: Would help to include a brief (not to exceed one line) title for each of the 9 jurisdictional areas listed. The letters by themselves don't really help.~~

~~(P) **ODA Response:** The revised plan's table of contents has the programs spelled out.~~

~~(Q) **Comment:** Section I.D.1(a): Would help to subordinate the bullets for HLAC through trout fishery.~~

~~(R) **ODA Response:** The revised draft has the bullets tabbed over for these items.~~

~~(S) **Comment:** Section I.D.2(c)(4): suggest using "illustrated" instead of "developed" in the second line.~~

~~(T) **ODA Response:** The revised plan has incorporated this change.~~

~~(U) **Comment:** Section II.B(1), first paragraph, second and third sentences: references are to fertilizer storage instead of pesticide storage. Do these two sentences belong here?~~

~~(V) **ODA Response:** These two sentences were deleted from the plan.~~

~~(W) **Comment:** Section II.C: It would help (visually) if the subdivisions for Forestry BMP Guidelines and Forestry Technical Assistance were better identified as separate subdivisions, perhaps by subordinate indentation of the 8 elements under each one.~~

~~(X) **ODA Response:** The Forestry Technical Assistance part has been deleted from the plan.~~

~~(5) The Oklahoma Department of Mines reviewed the proposed ODA WQSIP and approved the plan with no comments.~~

~~(6) The Oklahoma Corporation Commission reviewed the proposed ODA WQSIP and approved the plan with no comments.~~

~~(7) The Oklahoma Conservation Commission provided no comments.~~

~~(c) Upon consideration of these comments, the ODA staff concurred that the appropriate implementation of water quality standards into all programs is in its infancy. The staff expects to be working over the next several years to evolve all agency programs to assure that the Oklahoma Water Quality Standards are protected.~~

[OAR Docket #08-949; filed 5-16-08]

TITLE 75. ATTORNEY GENERAL CHAPTER 1. ADMINISTRATION

[OAR Docket #08-1047]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Information
75:1-1-1.1. Definitions [AMENDED]
75:1-1-5. Objectives [AMENDED]
Subchapter 3. Contracts for Domestic Violence and Sexual Assault Services
Part 1. Eligibility to Contract
75:1-3-3. Criteria for eligibility to contract [AMENDED]
Part 3. Contracts and Contracting Processes [AMENDED]
75:1-3-19. Contract renewal [AMENDED]
Subchapter 7. Certification and Designation of Domestic Violence, Sexual Assault, and Batterers Intervention ~~Services~~ Programs
75:1-7-4. Qualifications for certifications of facilities and programs and individuals [AMENDED]
75:1-7-5. Procedures for application for certification [AMENDED]
75:1-7-6. Procedures for completion of certification process [AMENDED]
75:1-7-7. Duration of certification status [AMENDED]
AUTHORITY:
Office of Attorney General; 74 O.S., Sections 18p-1 et seq.
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ANALYSIS:
Title 74 O.S. § 18p-3 provides that any domestic violence or sexual assault programs providing services pursuant to a contract or subcontract with the Attorney General and receiving funds from the Attorney General or any contractor with the Attorney General shall be subject to the provisions of the administrative rules of the Attorney General. Further, pursuant to Title 74 O.S. § 18p-6, the Attorney General is required to adopt and promulgate rules and standards for certification of domestic violence programs and for private facilities and organizations which offer domestic and sexual assault services in this state. The following proposed rules set forth the administrative procedures and requirements which are necessary for such certification as well as the administration of the Victims Services Unit pursuant to 74 O.S. § 18p-1 et seq.
CONTACT PERSON:
Susan Damron Krug (405) 522-0042

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING PERMANENT RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 1. GENERAL INFORMATION

75:1-1-1.1. Definitions

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

"Certification" means a status which is granted to a person or an entity by the Oklahoma Attorney General, and indicates approval to provide a particular service. In accordance with the Administrative Procedures Act, 75 O.S. § 250.3(8), certification is defined as a "license."

"Certification report" means a written notice of the deficiencies developed by the Office of the Attorney General.

"Certified facility" means any facility which has received a certification status by the Oklahoma Attorney General.

"Conditional Certification" means a status which is granted to a person or entity by the Oklahoma Attorney General, and indicates approval to provide a particular service or services for a specified period of time, typically four (4) months) in order to give an renewal applicant an opportunity to achieve 100% compliance with applicable rules.

"Contractor" or **"contractors"** means any person or entity under contract with Office of the Attorney General for the provision of goods, products or services.

"Domestic Violence and Sexual Assault Advisory Council" means a nine-member committee appointed by the Attorney General as described in 74 O.S. § 18p-2.

"Entities" or **"entity"** means sole proprietorships, partnerships, corporations, limited partnerships, limited liability partnerships, and limited liability companies.

"Facilities" or **"facility"** means entities as described in 74 O.S. § 18p-6, domestic violence shelters and programs, sexual assault programs, and ~~treatment programs of~~ batterers intervention programs.

"Individual proceeding" means the formal process employed by an agency having jurisdiction by law to resolve issues of law or fact between parties and which results in the exercise of discretion of a judicial nature.

"Levels of performance" or **"level of performance"** means units of service by types of service.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1)(a) and maintained in the Office of Administrative Rules.

"Probationary certification" means a certification status granted for a period less than three (3) years.

"Reimbursement rates" means the rates at which all contractors are reimbursed (paid) for services they provide under their contract with the Office of the Attorney General, and which are reported to the Office of the Attorney General ~~on the Oklahoma Victim Information System (OVIS)~~ as required.

"Respondent" means the person(s) or entity(ies) named in a petition for an individual proceeding against whom relief is sought**.**

"Site Review Protocol" means an Office of the Attorney General internal document used by the Office of the Attorney General Victims Services Unit staff as a work document in the certification site visit(s) that is based primarily upon the rules (standards/criteria) being reviewed. The Site Review Protocol is used in preparing the Certification Report, which is provided to the facility, and in preparing recommendations regarding certification to the Attorney General for his consideration and action.

"Temporary Certification" means a status which is granted to a person or entity by the Oklahoma Attorney General, and indicates approval to provide a particular service or services for ~~six months~~ one (1) year in order to give an initial applicant an opportunity to achieve 100% compliance with applicable rules.

"Units" or **"unit"** means an hour, or part of an hour, or group of hours, or a 24-hour day during which a specific service is rendered.

"Victims Services Unit" means the Unit created within the Office of the Attorney General to provide services for persons who require domestic violence or sexual assault services through a domestic violence or sexual assault program.

75:1-1-5. Objectives

The objectives of the Oklahoma Attorney General are as follows:

(1) The provision of quality domestic violence and sexual assault services, within the resources available, to those persons, and their families, receiving services from the facilities, certified by and/or under contract with the Office of the Attorney General.

(2) The services by domestic violence and sexual assault providers shall be rendered in an environment of safety, dignity and with respect to the rights of those persons and their families.

(3) Adherence to and compliance with applicable state and federal statutes, including but not limited to Title 74 §§ 18p-1 *et seq*. of the Oklahoma Statutes and the Public Health Services Act (42 U.S.C.) by all facilities operated by, under contract with, and certified by the Oklahoma Attorney General.

SUBCHAPTER 3. CONTRACTS FOR DOMESTIC VIOLENCE AND SEXUAL ASSAULT SERVICES

PART 1. ELIGIBILITY TO CONTRACT

75:1-3-3. Criteria for eligibility to contract

The criteria for eligibility to contract with the Office of the Attorney General are as follows:

(1) The entity shall exist in conformity with Oklahoma Statutes regulating said entity, and provide such proof. In addition, if said entity purports to be a not-for-profit corporation, the proof of exemption from federal taxes under the U.S. Internal Revenue Service Code shall be made.

(2) Revocation, denial or non-renewal of an entity's certification by the Attorney General shall result in contract termination for any service requiring such certification as of the date of the Attorney General's action.

(3) ~~For any facility requiring certification, the~~ The facility shall have deficiencies of no more than ~~20%~~ 30% of the standards on which the facility is reviewed.

PART 3. CONTRACTS AND CONTRACTING PROCESSES

75:1-3-19. Contract renewal

(a) Contracts for domestic violence and sexual assault services are considered during the third (3rd) and fourth (4th)

quarter of the state fiscal year, for contracting in the following fiscal year.

(b) Consideration for renewal shall include a review of performance of the current contract including, but not limited to, measurable outcome indicators, target populations served, levels of performance of specific services, having deficiencies ~~or~~ of no more than ~~20%~~ 30% of the standards reviewed, the existence of any client rights violations, and cost effectiveness of the delivery of services.

(c) If the Attorney General determines the contractual relationship shall be renewed, it shall be in a new contract for the upcoming fiscal year and may or may not contain the same terms, conditions, form and format as the previous contract.

SUBCHAPTER 7. CERTIFICATION AND DESIGNATION OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, AND BATTERERS INTERVENTION ~~SERVICES~~ PROGRAMS

75:1-7-4. Qualifications for certifications of facilities and programs and individuals

Qualifications for certification are compliance with applicable Standards and Criteria as set forth in Chapter 15 of OAC Title 75 regulating Standards and Criteria for Domestic Violence, Sexual Assault, and Batterers Intervention ~~Services~~ Programs.

75:1-7-5. Procedures for application for certification

(a) Applications for certification as a domestic violence shelter or program, sexual assault program or batterers' intervention program must be made to the Office of the Attorney General in writing on a form and in a manner prescribed by the Attorney General and include the following:

(1) A fully completed application for certification form signed by authorized officials;

(2) The necessary written documentation or supporting evidence required on the application for certification form; and

(3) The required certification fee in the form of a check or money order, payable to the Office of the Attorney General.

(b) The following fees are required: Applicants for domestic violence shelters or programs, sexual assault programs and batterers intervention programs shall submit $150.00 with an initial application and $150.00 with each renewal application. Fees paid by applicants are not refundable.

(c) The application for certification form, required written documentation and fee must be submitted to the Office of Attorney General, Victims Services Unit.

(d) The application may require a listing of all services provided by the applicant, as well as specifics about the applicant including but not limited to governing authority, administrative, fiscal, all locations or sites where applicant will provide services and types of services to be provided.

(e) If, after being certified, a program ~~facility~~ desires to provide services at a new office location maintained and operated by the certified program ~~add a new service location~~ or change its current ~~service~~ office location, the facility must submit an application on a form and in a manner prescribed by the Victims Services Unit of the Office of the Attorney General, the required documentation and fee, if any. Approval may be granted by the Attorney General upon submission ~~and approval~~ of the required application and documentation to the Victims Services Unit. Approval from the Attorney General must be obtained prior to providing services at the new location. The Victims Services Unit may conduct a visit of the facility in accordance with 75:1-7-8. ~~The required written documentation or supporting evidence includes, but is not limited to:~~

~~(1) a completed application;~~

~~(2) fire & safety inspection;~~

~~(3) facility policies and procedures; and~~

~~(4) zoning compliance.~~

(f) If, after being certified, a program desires to provide services at a public facility maintained for or used by the people or community, the certified program must notify the Victim Services Unit in writing of the name and location of the public facility and the type of service(s) offered. Additionally, the certified program must assure that the facility provides the necessary safety, confidentiality, and privacy of victims being served. Approval may be granted by the Attorney General upon submission of the required documentation to the Victims Services Unit. Approval from the Attorney General must be obtained prior to providing services at the new location.

(~~f~~g) If after being certified, a program ~~facility~~ desires to offer a new type of service ~~or new level of care~~, the facility must submit an application for certification, the required documentation and fee to the Victims Services Unit of the Office of Attorney General prior to providing a new service. Failure to become certified prior to providing services shall be grounds for injunctive relief pursuant to 74 O.S. § 18p-7.

75:1-7-6. Procedures for completion of certification process

(a) **Certification process.** Completion of the certification process will be done in cooperation between the applicant and certification team established and assigned by the Victims Services Unit of the Office of Attorney General, and consists of:

(1) a review of all application materials;

(2) a site review of the facility and completion of the applicable site visit protocol;

(3) a review of all applicable records;

(4) preparing certification reports for applicants;

(5) reviewing and approving any needed plans of correction;

(6) follow-up site reviews; and

(7) presentation by Victims Services Unit staff of the review results and associated recommendations to the Attorney General.

(b) **Initial applications.** All initial applications for certification shall be reviewed for completeness by Victims Services

Unit staff. If the application is deemed complete, site review of the facility or program will be scheduled. If the applicant is cited for deficiencies of ~~fifty percent (50%)~~ thirty percent (30%) or more of the applicable standards and rules, based on the initial site review findings, a plan of correction will not be requested and a notice of denial of the certification application shall be sent to the applicant by the Attorney General. In such case, re-application will be accepted after three (3) months have passed since issuance of the notification of denial.

(c) **Length of certification process.** If an applicant for initial certification fails to achieve full certification within ~~six (6) months~~ one (1) year of being granted temporary certification, the applicant shall not receive certification and a recommendation of revocation of the existing certification will be made to the Attorney General. In such case, re-application for certification shall be made in accordance with the requirements of 75:1-7-6 and 75:1-7-11. If the applicant requests withdrawal of the certification status because of the circumstances cited above, the applicant may reapply three (3) months after receipt of the written request by the Victims Services Unit.

(d) **Renewal applications.**

(1) The Victims Services Unit will, prior to the renewal date, notify facilities the application for renewal of certification is due.

(2) The facility shall submit its application for renewal within ~~forty-five (45)~~ sixty (60) days before the expiration of its certification.

(3) Renewal applications for certification shall be reviewed for completeness by Victims Services Unit staff. If the facility is cited for deficiencies on ~~50%~~ 30% or more of the applicable standards and rules based on the site review findings, a plan of correction will not be requested and revocation of the certification status will be recommended to the Attorney General.

(4) If, after being granted conditional certification, an applicant for renewal fails to achieve full certification within four (4) months, the applicant shall not receive full certification and a recommendation of revocation of the certification status will be made to the Attorney General.

(e) **Site reviews.**

(1) Initial, renewal or follow-up site reviews, based on the current certification status of the applicant, will be scheduled by designated representatives of the Victims Services Unit at each location or site of the applicant. The review will be conducted by the assigned certification team or a certification team member.

(2) The follow-up site review(s) to Conditional Certification will be conducted to review implementation of the plan of correction to ensure cited deficiencies have been corrected or to demonstrate continued correction and compliance with the previously cited deficiencies. Failure to comply with applicable rules and implement the plan of corrections shall result in a recommendation that Certification be denied and Conditional Certification status be revoked.

(3) The follow-up site visit(s) to Temporary Certification will be conducted on standards not applicable during the initial certification visit, implementation of the plan of correction to ensure cited deficiencies have been corrected or to demonstrate continued correction and compliance with the previously cited deficiencies, and a review of a minimum of five (5) records. Failure to comply with applicable rules and implement the plan of correction shall result in a recommendation that Certification be denied and Temporary Certification status be revoked.

(4) A Site Review Protocol shall be completed during each site visit. Protocols shall contain the current Standards and Criteria applicable to the facility.

(A) A facility must be prepared to provide evidence of compliance with each applicable standard.

(B) In the event the reviewer(s) identifies some aspect of facility operation that adversely affects client safety or health, the reviewer(s) shall notify the facility director and appropriate Victims Services Unit staff. An immediate suspension of certification may be made by the Attorney General.

(f) **Deficiencies.** A deficiency shall be cited for a failure to comply with the weighted value of each rule.

(g) **Report to applicant and plan of correction.**

(1) During the course of the certification process, and prior to determination of certification status, Victims Services Unit staff shall report the results of the site review to the facility. The facility shall receive written notice of the deficiencies in a Certification Report.

(2) The facility must submit a written plan of correction for each deficiency for approval within two (2)weeks of the receipt of the Certification Report. Approval of the plan of correction shall be required before the completed application for certification will be presented to the Attorney General. Failure to submit the required plan of correction within two (2) weeks of the receipt of the Certification Report may result in denial of the certification application. In such case, re-application will be accepted after three (3) months from the date of issuance of the notification of denial from the Attorney General. However, if the facility is cited for deficiencies on ~~fifty percent (50%)~~ thirty percent (30%) or more of the applicable standards and rules based on the initial site review findings, a plan of correction will not be requested, and the application will be denied.

(h) **Notification of Victims Services Unit recommendation for certification.**

(1) After completion of the site review and report on the Application for Certification, Victims Services Unit staff shall prepare a recommendation on the certification status or application for the Attorney General.

(2) Prior to the Victims Services Unit staff's presentation of its recommendation of an applicant's certification to the Attorney General, the Victims Services Unit staff shall notify the applicant of the recommendation.

(3) Achievement of certain scores is a prerequisite for consideration of a specific certification status but may not be the sole determinant. Individual deficiencies that meet the criteria in 75:1-7-9 may be grounds for suspending or revoking certification or denying applications for certification.

(4) Consideration of certification may be deferred while additional information regarding a facility's compliance status is reviewed.

(5) The minimum compliance scores for recommendation of a certification status to the Attorney General are:

(A) **Certification with Commendation.** Facility is in compliance with 100% of the applicable rules.

(B) **Certification.** Facility achieves compliance with 100% of the applicable rules after on-site correction(s).

(C) **Conditional Certification.** Facility is in compliance with at least ~~51%~~ 70% but less than 100% of the applicable rules and will be given an opportunity to correct deficiencies.

(D) **Temporary Certification.** Facility is in compliance with at least ~~51%~~ 70% but less than 100% of the applicable rules and will be given an opportunity to correct deficiencies.

(i) **Actions on Non-Certified Providers.** If at the initial site review it is found the facility is providing services:

(1) The review will be continued including the review of applicable records.

(2) The facility must comply with the requirements cited in 75:1-7-6 to continue the certification process.

(3) If the applicant achieves less than 100% compliance, full certification must be achieved within four (4) months.

(4) Upon successful completion of the process, Probationary Certification status will be recommended for no more than one (1) year.

(5) The desire for continued certification after the Probationary Certification period will require the submission of a new application for each of the next two (2) years. The requirements in 75:1-7-6 shall apply. A recommendation for Certification for one (1) year will be made to the Attorney General.

(j) **Actions on certification applications.** Victims Services Unit staff shall make one of the following recommendations to the Attorney General:

(1) Certification with Commendation;

(2) Certification;

(3) Conditional Certification;

(4) Temporary Certification

(5) Probationary Certification; or

(6) Revocation or Denial.

(k) If the Attorney General approves a recommendation to revoke certification, an individual proceeding shall be initiated pursuant to the Administrative Procedures Act.

75:1-7-7. Duration of certification status

(a) Certification status of either "Certification with Commendation" or "Certification" shall be for the period of three (3) years.

(b) Conditional Certification granted to applicants for renewal shall be for a period not to exceed four (4) months. During that period, a follow-up site review will be conducted.

(c) Temporary Certification granted to applicants for initial certification shall be for a period not to exceed ~~six (6) months~~ one year. During that period, a follow-up site review will be conducted.

(d) Certification, Conditional, or Temporary Certification granted to an applicant shall become effective upon approval of the Attorney General.

(e) Certification is not transferable. A change of the ownership of a facility automatically terminates any certification status, requiring application for certification by the new ownership. If the certified facility is owned by a corporation the following applies:

(1) If the corporation is not-for-profit, a change in membership of the Board of Directors of more than fifty percent (50%) of the Directors in three (3) or fewer calendar months, unless such change was caused by the normal expiration of terms in accordance with the By-Laws of the Board of Directors, shall require the facility to be re-certified.

(2) If the corporation is other than not-for-profit, a change in the ownership of more than forty per cent (40%) of the stock in the corporation from the owners at the beginning of the period of certification shall require the facility to be recertified.

(3) It is the responsibility of the facility to notify the Office of the Attorney General of the occurrence of either of the conditions requiring recertification as set forth in (1) and (2) of this subsection; and to request the application materials for recertification.

(f) Certification may be suspended, revoked or not renewed with the basis for such action being delineated in Section 75:1-7-9 of this Subchapter.

[OAR Docket #08-1047; filed 05-23-08]

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

[OAR Docket #08-1048]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
75:15-1-1.1 [NEW]
75:15-1-2 [AMENDED]
Subchapter 2. Domestic Violence and Sexual Assault programs
75:15-2-1 [AMENDED]
75:15-2-3 [AMENDED]
Subchapter 4. Batterers Intervention Programs
75:15-4-2 [AMENDED]
75:15-4-4 [AMENDED]
75:15-4-5 [AMENDED]
75:15-4-17 [AMENDED]
75:15-4-19 [AMENDED]
Subchapter 5. Client Records and Confidentiality
75:15-5-2 [AMENDED]
75:15-5-3 [AMENDED]
Subchapter 13. Personnel and Volunteers
Part 3. Training
75:15-13-20.1 [AMENDED]

75:15-13-20.2 [AMENDED]
75:15-13-26 [AMENDED]
75:15-13-30 [AMENDED]
Subchapter 15. Governing Authority
75:15-15-1 [AMENDED]
75:15-15-3 [AMENDED]
75:15-15-5 [NEW]

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ANALYSIS:
Pursuant to Title 74 O.S. § 18p-6, the Attorney General is required to adopt and promulgate rules and standards for certification of domestic violence, sexual assault and batterers intervention programs and for private facilities and organizations which offer domestic and sexual assault services in this state. These rules set forth the requirements which are necessary to provide services pursuant to 74 O.S. § 18p-1 et seq. and to meet the responsibilities related to oversight, management, evaluation, performance improvement, and auditing of domestic violence and sexual assault services in this state.

CONTACT PERSON:
Susan Damron Krug(405) 522-0042

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING PERMANENT RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

75:15-1-1.1. Mission and underlying philosophy

(a) The mission of the standards and criteria for domestic violence, sexual assault and batterers intervention programs is to eliminate domestic violence, sexual assault and stalking in the State of Oklahoma.

(b) The philosophy underlying the standards and criteria for domestic violence, sexual assault and batterers intervention programs is that:

(1) All persons have the right to live without fear, abuse, oppression and violence;

(2) There should be equality in relationships and survivors of domestic violence, sexual assault and stalking should be helped to assume power over their own lives;

(3) No one deserves to be victimized by assaultive or abusive behavior;

(4) Survivors should be treated with dignity and respect;

(5) All people involved in violent crimes are affected-victims, children, families, partners, friends, the community, and perpetrators;

(6) Offending is a choice, and perpetrators of domestic violence, sexual assault and stalking are solely responsible for their behavior;

(7) These perpetrators must be held accountable for their behavior, and

(8) A coordinated community response is the best approach to eliminating domestic violence, sexual assault and stalking in Oklahoma.

75:15-1-2. Definitions

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

"Admission" means to accept a client for services or treatment.

"Advocacy" means the assistance provided which supports, supplements, intervenes and/or links the client with the appropriate service components. This can include medical, dental, financial, employment, legal and housing assistance.

"Advocate" means a person, providing support to ensure clients receive appropriate services.

"Batterer" means a person, male or female, who perpetrates domestic violence, stalking or other harassment against present or past intimate partners, another adult, emancipated minor or minor child, who are family or household members or who are or were in a dating relationship.

"Batterers intervention" means services provided to batterers, or perpetrators of domestic violence ~~which holds~~ that hold a batterer accountable for his or her abusive behavior, ~~provides~~provide consequences for engaging in violent or abusive behavior, ~~provides~~provide monitoring of batterer's behavior, and require~~s~~ him or her to change his or her behavior and attitudes and ~~is~~ are also protective of the victim(s). Anger control or management, substance abuse treatment or mental health treatment alone ~~is~~ or in combination with each other shall not constitute ~~not synonymous with~~ batterers intervention; neither may these interventions alone nor in combination with each other be utilized as the primary means of facilitating the required changes in behavior and attitudes.

"Business day" shall mean a calendar day other than a Saturday, Sunday, or state holiday. In computing any period of time where the last day would fall on a Saturday, Sunday, or state holiday, the period shall run until 5:00 o'clock p.m. of the next business day.

"Case consultation" means review of a client's case by the primary service provider and other program personnel, consultants or both.

"Case management" means planned linkage, advocacy and referral assistance provided in partnership with an individual to support that individual in implementing an empowerment plan developed with and approved by the individual and staff. The plan must demonstrate the recipient's need for specific services provided. The service provider must be a Certified Domestic and Sexual Violence Response Professional (CDSVRP) certified by the Oklahoma Coalition Against Domestic Violence and Sexual Assault.

"Certified batterer intervention program" or **"Certified treatment program for batterers"** means a status which is granted to an entity by the Oklahoma Attorney General, and indicates approval to provide batterers intervention services and treatment programs pursuant to 74 O.S. § 18p-6. In accordance with the Administrative Procedures Act, 75 O.S. § 250.3(8), certification is defined as a "license."

"Certified Domestic and Sexual Violence Response Professional" means a professional certified by the Oklahoma Coalition Against Domestic Violence and Sexual Assault.

"Certified domestic violence and sexual assault program" or **"Certified DV/SA program"** means a status which is granted to an entity by the Oklahoma Attorney General, and indicates approval to provide domestic violence, sexual assault and stalking services pursuant to 74 O.S. § 18p-6. In accordance with the Administrative Procedures Act, 75 O.S. § 250.3(8), certification is defined as a "license."

"Child" or **"Children"** means any individual from birth to eighteen years of age.

"Children's Activities" means direct child contact that is temporary in nature and is not intended to address the effects of domestic violence, sexual assault/abuse and trauma on children i.e., special events such as Christmas parties, Easter egg hunts, that is supervised by program personnel or volunteers.

"Children's Services" means direct child contact that is intended to address the effects of domestic violence, sexual assault/abuse and trauma on children including but not limited to intake, needs assessment, groups, advocacy, childcare/ babysitting and any other service related to domestic violence, sexual assault/abuse and trauma.

"Client" means an individual, adult or child, who has applied for, is receiving or has received assistance or services of a DV/SA or batterer's program.

"Client record" means written information including assessment information, description of services provided services plan, and other information on an individual client.

"Community" means the people, groups, agencies or other facilities within the locality served by the program.

"Contract" means a formal document adopted by the governing authority of the program and any other organization, agency, or individual that specifies services, personnel or space to be provided to the program and the monies to be expended in exchange.

"Counseling" means a method of using various commonly acceptable treatment approaches provided face-to-face by qualified ~~professional~~ staff either licensed or under supervision for licensure as a Licensed Professional Counselor, Licensed Marriage and Family Therapist, Licensed Behavioral Practitioner, Licensed Clinical Social Worker, psychiatrist or psychologist with clients in individual, group or family settings to promote positive emotional or behavioral change. A practicum student or intern in an accredited graduate program in preparation for one of the above licenses may provide counseling to victims of domestic violence, sexual assault or stalking and their dependents. Counseling is goal directed and utilizes techniques such as cognitive behavioral treatment, narrative therapy, solution-focused brief therapy, psycho-educational interventions or another widely accepted theoretical framework for treatment.

"Court advocate" means a volunteer or personnel whose duties are to provide support, information, and advocacy in the court system for victims of domestic violence or sexual assault.

"Crisis intervention" means an immediately available service to meet the psychological, physiological or safety aspects of domestic violence or sexual assault related crises in response to emergencies, to provide crisis resolution to stabilize conditions and may include triage, assessment, screening, planning, intervention, referral and documentation.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of the facility, or the routine care of a client. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to clients, personnel, volunteers and visitors; incidents involving medication; neglect or abuse of a client; fire; unauthorized disclosure of information; damage to or theft of property belonging to a client or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Direct services" means services delivered by a staff member or volunteer, in direct contact with a client or client's child, including child care and telephone contact.

"Director" means the person hired by the governing authority to direct all the activities of the organization.

"DV/SA" means domestic violence and sexual assault.

"Documentation" means the provision of written, dated and authenticated evidence to substantiate compliance with standards, e.g., minutes of meetings, memoranda, schedules, notices, logs, records, policies, procedures, announcements, correspondence, and photographs.

"Domestic violence" means assaultive or coercive behaviors, including physical, sexual and psychological attacks and economic coercion, against another adult, emancipated minor or minor child, who are family or household members or who are or were in a dating relationship.

"Education" means the dissemination of relevant information specifically focused on increasing the awareness of the community and the receptivity and sensitivity of the community concerning domestic violence, sexual assault or batterer's intervention and other related problems and services and may include a systematic presentation of selected information to impart knowledge or instructions, to increase understanding of specific issues or programs, to examine attitude or behaviors and stimulate social action or community support of the program and its clients.

"Emergency services" or **"crisis services"** means a twenty-four (24) hour capability for assessment, intervention

and resolution of a client crisis or emergency that is provided in response to unanticipated, unscheduled emergencies requiring prompt intervention to resolve immediate, overwhelming problems that severely impair the individual's ability to survive or maintain in the community.

"Emergency transportation" means transportation for a victim of DV/SA to a secured identified location at which emergency services or crisis services can be provided.

"Executive director" means the person in charge of a facility as defined in this section.

"Facility" means the physical location(s) of a certified program governed by this chapter of Title 75.

"Family" means the children, spouse, parents, brothers, sisters, other relatives, foster parents, guardians and others who perform the roles and functions of family members in the lives of clients.

"Governing authority" means a group of persons having the legal authority, and final responsibility for the operations and functions of the entire DV/SA program, shelter, or batterers intervention program in and of all geographical locations and administrative divisions.

"Group counseling" means a method of using various commonly acceptable treatment approaches provided face-to-face by qualified staff with not more than twelve (12) clients to promote positive emotional or behavioral change. Counseling is goal directed and utilizes techniques such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy psycho-educational interventions or another widely accepted theoretical framework for treatment.

"Guardian" means an individual who has been given the legal authority for managing the affairs of another individual.

"Indirect services" means services delivered by a staff member or volunteer, that does not involve direct services with a client or client's child.

"Initial contact" means a person's first contact with the program or facility requesting information or service by telephone or in person.

"Intake" means the written information about a client as a basis for assessment or services, obtained by the program at time of admission.

"Licensure" means the official or legal permission to persons or health facilities meeting qualifications to engage in a given occupation or use a particular title.

"Medical care" means those diagnostic and treatment services which, under the laws of the jurisdiction in which the program is located, can only be provided or supervised by a licensed physician.

"Medication" means any prescription or over-the-counter drug, that is taken as prescribed or directed.

"Mental health services" means a range of diagnostic, therapeutic, and rehabilitative services used in treating mental illness or emotional disorders, including substance abuse.

"Neglect" means failing to provide adequate personal care or maintenance, or access to medical care which results or may result in physical or mental injury or harm to a client.

"OAG" means the Office of the Attorney General.

"Objectives" means a specific statement of planned accomplishments or results which are quantitative, qualitative, time-limited and realistic.

"Oklahoma Administrative Code" or **"OAC"** means the publication authorized by 75 O.S. § 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. § 256(A)(1)(a) and maintained in the Office of Administrative Rules.

~~**"Oklahoma Victim Information System"** or **"OVIS"** is a data management information system used as a repository of diverse data elements that provide information to monitor the course of services and allow each user service provider to generate an invoice pursuant to their fee schedule for reimbursement of contracted services. OVIS collects data from domestic violence service providers and sexual assault service providers which are certified by the Office of the Attorney General.~~

"Operation" means that clients are receiving services provided by the program.

"Personnel record" means a file containing the employment history and actions relevant to individual personnel and volunteer activities within an organization such as application, evaluation, salary data, job description, citations, credentials, etc.

"Persons with special needs" means persons with a condition which is considered a disability or impairment under the "American with Disabilities Act of 1990" including, but not limited to the deaf/hearing impaired, visually impaired, physically disabled, developmentally disabled, persons with disabling illness, persons with mental illness. See "Americans with Disabilities Handbook," published by U.S. Equal Employment Opportunity Commission and U.S. Department of Justice.

"Policies" means statements of program intent, strategy, principle, or rules for providing effective and ethical services.

"Procedures" means the standard methods by which policies are implemented.

~~**"Professional Staff"** means an individual who:~~

~~(A) Meets the requirements under Oklahoma statutes to be licensed as:~~

~~(i) a licensed physician;~~

~~(ii) a licensed registered nurse;~~

~~(iii) a licensed professional counselor;~~

~~(iv) a licensed clinical social worker;~~

~~(v) a licensed marriage and family therapist;~~

~~(vi) a licensed behavioral practitioner; or~~

~~(vii)a licensed psychologist, or~~

~~(B) Meets the academic requirements for one of the above, has an approved application for licensure in Oklahoma or is actively engaged in the applicable licensure process including active and documented supervision by an approved supervisor or is a practicum student or intern in an accredited program.~~

"Program" means a set of activities designed and structured to achieve specific objectives relative to the needs of the clients.

"Program evaluation" means the documented assessment activities, performed internally or externally, of

a program or a service and its staff, activities and planning process to determine whether program goals are met, staff and activities are effective, and what effect, if any a program or service has on the problem which it was created to address or on the population which it was created to serve.

"Program goals" means broad general statements of purpose or intent.

"Rape crisis response services" means "sexual assault services" as defined in this section.

"Safe Home" means private dwellings available for the temporary housing of victims of domestic violence, sexual assault and stalking to ensure safety of victims and their dependents until other housing arrangements can be made.

"Safe Home Provider" means an individual or family providing safe home services through a formal agreement with a Certified DV/SA Program.

"Screening" means the process of determining, preliminarily the nature and extent of a person's problem in order to link the person with appropriate and available services to be provided.

"Service agreement" means a written agreement between two or more service agencies or service agencies and individual service providers defining the roles and responsibilities of each party. The purpose of service agreements is to promote coordination and integration of service programs for the purpose of curbing fragmentation and unnecessary service duplication in order to assure a continuation of services.

"Service note" means the documentation of the time, date, location and description of services provided, and signature of staff providing the services.

"Service plan" means a plan of action developed and agreed upon by the client and service provider that contains service appropriate goals and objectives for the client.

"Sexual assault services" means personal advocacy and support services provided to victims of rape and sexual assault in settings such as law enforcement, medical settings or program offices.

"Shelter services" means a cooperative living arrangement in a secure residential setting with counseling provided by qualified staff, or support and client advocacy for victims of domestic violence, sexual assault and stalking and their dependents.

"Staff" means personnel that function with a defined role within the program whether full-time, part-time or contracted.

"Support" or **"Supportive Services"** means services provided to victims of domestic violence/sexual assault and/or their families which augment or complement a defined service plan.

"Transitional living services" means housing maintained and operated by a Certified domestic violence and sexual assault program.

"Universal precautions for transmission of infectious diseases" means those guidelines promulgated by the U.S. Occupational Health and Safety Administration which are designed to prevent the transmission of Human Immunodeficiency Virus, hepatitis and other infectious diseases.

"Update" means a dated and signed review of a report, plan or program with or without revision.

"Victim recovery services" mean a face-to-face service, provided one on one by qualified staff to groups or individuals to maintain or develop skills necessary to perform activities of daily living and successful integration into community life. This service includes educational and supportive services regarding independent living, self care, social skills regarding development and lifestyle changes.

"Volunteer" means any person who is not on the program's payroll, but provides either indirect or direct services and fulfills a defined role within the program and includes interns and practicum students.

SUBCHAPTER 2. DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROGRAMS

75:15-2-1. Service programs

(a) All certified programs shall serve victims of domestic violence, sexual assault and stalking and their dependents or family members.

(b)The program shall have policy and procedures to maintain facilities, staffing, and operational methods.

(c) All certified programs shall provide sexual assault services and be part of a sexual assault response team in their service area, providing that there is a sexual assault response team in place. The program shall collaborate with other certified DV/SA providers in their service area. <u>When appropriate staff is available, the program shall assist the Council on Law Enforcement Education and Training (CLEET) by providing appropriate staff to assist in sexual assault and sexual violence training to law enforcement.</u> The program shall provide at a minimum the following services:

(1) Counseling or advocacy and support services shall be provided in the social service, legal, law enforcement or medical setting, in program offices or at any safe and appropriate site, as needed by the client.

(2) Twenty four (24) hours, seven (7) days per week access to these services through the program's crisis hotline.

(3) A twenty-four (24) hour hotline, crisis intervention, in-person advocacy as needed, active listening, or support by trained staff or volunteers with a knowledge of the issues and processes of sexual assault, rape trauma recovery, assessment, referral when indicated and family involvement where chosen by the victim.

(4) Needed clothing for the sexual assault victim.

(d) All certified programs shall provide crisis intervention including, but not limited to:

(1) Twenty-four (24) hour crisis telephone services staffed by trained staff or volunteers, 24-hour immediate, direct access to crisis advocates. Pagers, answering machines or answering services that do not provide immediate access to a crisis advocate shall not be sufficient to meet this requirement.

(2) Emergency housing such as hotel or motel available for victims and their dependent(s).

(3) Arrangement for safe shelter, food, clothing, and incidentals needed by victim/dependents.

(4) The crisis intervention program shall provide transportation or access to transportation for necessary or emergency services. This shall not require service providers to be placed in a situation that could result in injury.

(5) Cooperation with law enforcement to provide assistance to the victim and accompanying dependent(s).

(6) Provision of advocacy and referral to assist the victims in obtaining needed services or resources.

(7) Follow-up services shall be offered to all victims if victim safety is not compromised.

(e) All Certified programs shall provide counseling or support, support groups, advocacy, and victim recovery. Group and/or individual counseling or support services shall be made available before or after normal business hours (8 am to 5 pm), if needed by clients. These services shall minimally provide the following:

(1) A facility with offices, individual and group counseling space to provide services.

(2) Advocacy services, both in person and by telephone, either in the locations of other community services and systems, or in the program's offices. Other locations include but are not limited to those necessary to provide court advocacy services to clients.

(3) Current service agreement to be renewed every three (3) years with available community services to provide access to a continuum of needed services for the client. If unable to establish a current service agreement with all appropriate resources in the community, efforts to do so or reasons/opinions why this is not or cannot be done shall be documented.

(4) A resource document of local, area, or state resources to facilitate referrals for clients.

(5) Service approaches that focus on the empowerment of victims to access needed resources and make healthy and safe decisions for themselves and dependents.

(f) All certified programs shall assess the needs of the children accompanying primary victims and provide children's services to address the effect of violence in their lives including but not limited to:

(1) age appropriate safety planning;

(2) a specific safe, protected play area for children;

(3) advocacy with community systems;

(4) referral to community resources;

(5) parenting education for clients, if applicable; and

(6) age appropriate curricula, children's groups, and referrals for needed services.

(g) All Certified programs shall maintain an atmosphere and provide services that are free from all forms of unlawful discrimination based on race, sex, religion, color, age, national origin, and/or disability (including physical, mental illness, and substance abuse).

(h) All certified programs shall provide public education to increase the community's awareness and understanding of domestic violence, sexual assault and stalking, available and needed resources, and identify the role community can play in eliminating domestic violence, sexual assault, and stalking.

(i) Compliance with 75:15-2-1 shall be determined by a review of the program's policy and procedures, service agreements, on site observation, client and staff interviews and/or other supporting documentation.

75:15-2-3. Transitional living program

(a) All transitional living programs shall comply with 75:15-2-1 and the following:

(1) The program shall maintain homes, apartments, or other residential living environments suitable for survivors of domestic and sexual violence, stalking and their dependents, if applicable, and which provide the reasonable safety and privacy needed by this population. The program shall provide access to necessary furniture and equipment.

(2) The program shall include heating and refrigerated cooling systems to maintain a reasonable comfort level.

(3) Supportive services for residents are available through the twenty-four (24) hour program hotline by trained staff or volunteers.

(4) The program shall assign staff as the advocate or liaison for the clients residing in the transitional living program(s). This person, or a crisis line staff person, shall be available for emergencies at all times.

(5) The program shall have a written agreement with each resident that outlines specific responsibilities of both the program and the resident to include expectations, responsibilities, and limitations. The agreement shall be signed by both parties.

(6) The program shall offer weekly support groups for transitional living residents and children.

(7) The program shall offer at least one 30 minute face to face service contact per week with each transitional living residents and children.

(b) Compliance with 75:15-2-2 shall be determined by a review of program policy and procedures, client records, on-site observation, written agreements and/or other supporting documentation.

SUBCHAPTER 4. BATTERERS INTERVENTION PROGRAMS

75:15-4-2. Batterers intervention program

(a) Each certified batterer intervention program shall have the policy, procedures, staffing, training, operational methods and facilities to meet the following requirements:

(1) Services shall be provided in a facility with offices available for private individual and group sessions.

(2) Services shall be provided to self or court-referred batterers. Group services shall be the primary modality. Referral to domestic violence services is provided for the batterer's partner or victim, when possible.

(3) The focus shall be on victim safety and ~~to eliminate~~ the elimination of violence within the home and assist the batterer in developing personal responsibility and accountability for his or her behaviors, understanding the

fundamentals of anger and emotions, learning effective coping strategies and recognizing cyclic behavior. The service shall be based on non-victim blaming strategies.

(4) Anger control or management, and/or substance abuse treatment and/or mental health treatment alone shall not ~~be considered~~ constitute batterers intervention~~.~~; neither may these interventions be utilized as the primary means of facilitating the required changes in behavior and attitudes. However, these secondary interventions may be used to supplement the batterers intervention curriculum outlined in 75:15-4-2.

(5) Services shall include client assessments as described in 75:15-4-5.

(b) Education shall be provided to the batterer utilizing written curriculum specifically developed for batterers intervention ~~and shall minimally~~ that comprehensively ~~address~~ addresses, at a minimum:

(1) the dynamics of domestic violence and power and control issues;

(2) the sociocultural basis for violence, including domestic violence;

(3) issues of sexism and gender role stereotyping;

~~(4) anger management;~~

~~(5) substance abuse and violence;~~

(~~6~~4) non-abusive communication techniques;

(~~7~~5) effective coping strategies;

(~~8~~6) parenting; ~~and~~

(~~9~~7) effects of domestic violence on children~~.~~;

(8) developing healthy relationships;

(9) safety planning for the prevention of violence;

(10) effects of domestic violence on victims from a victim perspective;

(11) the potential consequences of domestic violence, and

(12) establish personal goals and objectives to eliminate violent, controlling and abusive behavior.

(c) Services shall be provided during hours which make them available for clients whose work hours are between 8:00 A.M. and 5:00 P.M. Monday through Friday.

(d) The program shall maintain admission criteria for batterer intervention services.

(e) The program shall provide individual assessment sessions, crisis intervention and group sessions.

(f) Service policy shall not permit the substitution of individual counseling appointments for group participation except in a situation where only one batterer of a gender has been court-ordered to the program.

(g) Group sizes shall be limited to not less than two (2) and not more than twelve (12) clients.

(h) Discharge criteria shall be contingent on the satisfactory meeting of specific criteria by the participant, and NOT only upon the end of a specified period of time or a specified number of sessions.

~~(i) The assessment of risk of battering must be on-going and documented in the client record.~~

(~~j~~i) Joint participation shall not be allowed of the victim as part of batterers intervention.

(~~k~~j) Male and female batterers shall not be served, or counseled, in the same group or session, i.e., together.

(~~l~~k) The program shall maintain annually renewed service agreements with appropriate referral sources such as, but not limited to:

(1) substance abuse; and

(2) mental health services.

(~~m~~l) In the case of court referred clients, ~~the program shall liaison and coordinate with the judicial system, judge, or district attorney. The~~ the program shall develop a written process for coordinating with and reporting to the ~~courts~~ court, judge, probation officer, and/or district attorney, that shall include a current description of the program and the requirements for participation and successful completion of the program.

(~~n~~m) Referral for services. If other services for the batterer are necessary, appropriate referrals shall be made for such issues, including but not limited to, mental health or substance abuse issues.

(~~o~~n) Compliance with 75:15-4-2 shall be determined by a review of program policy and procedures; client records; service referral agreements, and other program documentation. Compliance may also include client interviews and/or observation of direct client services.

75:15-4-4. Client records

(a) A certified batterers intervention program shall have and maintain a master client index system containing the client's name, and the program's discreet numerical or letter identifier. ~~If the program is under contract with the Office of the Attorney General, the discreet identifier shall be the OVIS client identification.~~

(b) A certified program shall have written policy and procedures for correcting errors on record material by lining through, initialing the error, and inserting the correct material either above the error or at the end of the entry. Further, the policy and procedures shall forbid the use of "white-out" or any action which obliterates the error.

(c) Compliance with 75:15-4-4 shall be determined by on-site observation, client records, policy and procedures and any other supporting program documentation.

75:15-4-5. Record content

(a) Client records shall contain, at a minimum, the following information:

(1) Intake and screening information:

(A) Client's name;

(B) Date of initial contact/intake;

(C) Pertinent medical information, including substance abuse;

(D) Emergency contact information; ~~and~~

(E) History/nature of abuse, and

(F) Court Order if applicable.

(2) Service notes, which shall minimally include:

(A) The time, date, location and description of services provided;

(B) The signature of staff providing the services; and

(C) A service note for each contact for services that shall include:

(i) personal responsibility and accountability;

(ii) level of participation in services;

(iii) change(s) in family, social, personal, legal or work environment(s);

(iv) inference of use or increased use of drugs/alcohol;

(v) whether or not facilitator observed sufficient indications of risk requiring notification of victim or others, and

(vi) referrals for supplemental services.

~~(3) Service plan focusing on victim safety and, well-being which shall minimally include:~~

~~(A) Goals and objectives of the client, which shall be developed and agreed upon between the client and staff; and~~

~~(B) Service plans and their updates signed and dated by the client and staff.~~

(~~4~~3) Exit information, which shall minimally include:

(A) Documentation that the client participated in planning for his or her exit from the program;

(B) The reasons for the client's exit or departure; and

(C) Client and staff dated signatures or an explanation if staff were unable to obtain the client's signature.

(b) Each client record entry shall be legible, dated, and signed by the staff member making the entry.

(c) Client records for batterers intervention services shall conform to the following:

(1) An assessment of the ~~client's needs~~ client shall be ~~completed~~ made prior to ~~initiating the intervention processes~~ acceptance into the program ~~In the case of court-ordered batterers, the results of the assessments to the court~~. The assessment shall at a minimum include:

(A) current and past history of violence;

(B) lethality risk ~~assessment~~ indicators;

(C) drug and alcohol use/abuse history and screening; ~~and~~

(D) mental health ~~evaluation.~~ history and screening;

(E) criminal history and a report of the incident that generated the referral, and

(F) current or past history with child protective or adult protective services.

(2) An individualized written client-contract shall be completed by the third (3rd) session; signed by the batterer; and shall include, but not be limited to:

(A) Attendance policy, including the length of intervention, minimum number of sessions required and the maximum length of time for completion of the required sessions.

(B) The criteria for suspension and termination.

(C) The program's rules.

(D) A written notice in bold type which specifies "Please be advised any reasonable knowledge or suspicion of illegal activities or bodily harm, or a threat of such, to the victim, her or his property, or to third persons, or any attempt, threat or gesture to commit suicide, or any belief that child abuse or neglect is present or has occurred, will be reported to the appropriate person(s) or authorities."

(E) A list of provider program expectations, such as participation, homework and that the batterer will be held accountable for all abusive and violent behavior.

(F) The batterer's responsibilities for safety planning, including, but not limited to, an awareness of abusive and violent behavior and patterns, e.g., time out procedures, procedures which inform the partner or victim appropriately and are not used to control her or him, logging or writing a journal of efforts to control behavior and nonviolence maintenance such as buddy telephone calls, additional support groups, relaxation and exercise, etc.

(G) Providing releases of information for collateral treatment, i.e., substance abuse or mental health treatment.

~~(3) A service plan shall be completed by the client and counselor or advocate by the third (3rd)session.~~

~~(4) A service plan review and update shall be completed every ninety (90)days.~~

(~~5~~3) Service notes shall document the ongoing provision of educational components addressing the risk of battering and other violence.

(~~6~~4) Service termination reports shall be completed for all types of conditions under which services are ended and shall include, at a minimum, the reason for termination, summary of lethality risk indicators, and any concerns for the safety of victims, children, and/or others. Types and reasons for terminating services include:

(A) **Rejection.** Reasons for rejection shall be documented and include, but are not limited to: psychiatric history, including active or recent mental health related problems; criminal record of violent crimes; chemical dependency requiring completion of an inpatient or residential treatment program; or inability to function in a group due to limited mental cognitive abilities;

(B) **Involuntary termination.** Reasons for involuntary termination shall be documented and include, but are not limited to: recurrence of violence; arrest; absences from program sessions and activities; failure to actively participate in sessions attended; attending a session when under the influence of alcohol or drugs; violation of any rules of the treating program or violation of the client-contract; and

(C) **Completion.** Upon completion of the program, an exit interview and ~~current risk assessment~~ service termination report shall be ~~conducted~~ completed and documented in the client record. ~~In the case of court-ordered batterers, a copy of the exit interview and the results of the assessment shall be forwarded to the court along with the written report~~

~~required in (c)(5) of this section.~~ The service termination report shall include a disclosure stating that completion of batterers intervention does not indicate that the client will not re-offend; it is a report that the person has satisfactorily completed the necessary requirements of the certified program without any other known or reported re-offending during the time of enrollment in the program.

(~~7~~5) In the case of court-ordered or otherwise referred batterers, ~~Without~~ without jeopardizing the safety of the victim ~~and with the written consent of the batterer, unless otherwise ordered by the court~~, a written report to the court or referring agent, ~~the victim or the victim's advocate~~ shall be submitted within seven (7) business days of the ~~batterer's exit and shall include, but not be limited to~~ following events:

(A) ~~Summarize the services provided and the batterer's participation~~ Acceptance into or rejection from the program including but not limited to a summary of the results of the initial assessment or the reason for rejection;

(B) ~~The reason(s) for exit or rejection~~ Reasonable knowledge or suspicion of illegal activities or bodily harm, or a threat of such, to the victim or to third persons, and;

(C) ~~Recommendations~~ Exit from the program including but not limited to the service termination report.

~~(D) Involuntary termination~~ All reports shall include any additional or further recommendations, which may include, but are not limited to, substance abuse or mental health evaluation and/or treatment, weekend incarceration, community service hours, probation violation determination, or return to the intervention program.~~; and~~

(D) The batterers intervention program shall report any client absence of four (4) consecutive sessions to the court. [1]

~~(E) Efforts to notify the referring agent, the victim or the victim's advocate.~~

(~~8~~6) Efforts to notify the referring agent, the victim or the victim's advocate shall be documented in the batterer's record without including any confidential victim identification information; and

(~~9~~7) Copies of all service documentation including assessments, exit interviews and reports shall be kept in the batterer's file.

(d) Where required information is not obtained, efforts to comply with the requirements of this subsection shall be documented in the client record.

(e) Compliance with this 75:15-4-5 shall be determined by a review of client records for content, review of program policy and procedures; or other supporting program documentation.

AGENCY NOTE: *[1] Effective November 1, 2008, SB 2003 amended 21 O.S. § 644E.2(a), making three unexcused absences in succession or seven unexcused absences in a period of fifty-two weeks from any court-ordered domestic abuse counseling or treatment program prima facie evidence of the violation of the conditions of probation for the district attorney to seek acceleration or revocation of any probation entered by the court.*

75:15-4-17. Program mission and goals

(a) The agency or program shall have a written mission statement, and annually state in writing the program's goals.

(b) The annual program goals shall be approved by the agency's governing body each year, and shall be disseminated to personnel and volunteers.

(c) Compliance with 75:15-4-17 shall be determined by a review of the mission statement, program's annual goals, governing body minutes, staff meeting minutes, or any other relevant documentation provided by the program.

75:15-4-19. Critical incidents

(a) The program shall have policy and procedures requiring documentation and reporting of critical incidents.

(b) Each critical incident shall be recorded and monitored as follows:

(1) agency name and name and signature of the person(s) reporting the critical incident;

(2) name(s) of the client(s) or staff member(s), or property, involved in the critical incident;

(3) the date, time and physical location of the critical incident, if known, and the name of the staff person the incident was reported to;

(4) a description of the incident;

(5) severity of each injury, if applicable. Severity shall be indicated as follows:

(A) no off-site medical care required or first aid care administered on-site;

(B) medical care by a physician or nurse or follow-up attention required; or

(C) hospitalization or immediate off-site medical attention was required;

(6) resolution or action taken, date action taken and signature of the agency director or authorized designee;

(c) Critical incidents that shall be reported to the Office of the Attorney General are reported as follows:

(1) Critical incidents requiring medical care by a physician or nurse or follow-up attention and incidents requiring hospitalization or immediate off-site medical attention shall be delivered via fax or mail to the Office of the Attorney General Victims Services Unit within forty-eight (48) hours ~~of the incident being documented~~, or if the incident occurs on a weekend or holiday, the next business day of the incident being documented.

(2) Critical incidents involving disaster at a facility, death or client abuse shall be reported to the Safeline at 1-800-522-7233 immediately via telephone. The notification shall be followed with a written report from the reporting agency within twenty-four (24) hours of the incident and delivered via fax or mail to the Office of the Attorney General Victims Services Unit.

(d) Compliance with 75:15-4-19 shall be determined by a review of policy and procedures, critical incident reports at the program and those submitted to the Office of the Attorney General Victims Services Unit.

SUBCHAPTER 5. CLIENT RECORDS AND CONFIDENTIALITY

75:15-5-2. Client records

(a) A certified program shall have and maintain a master client index system containing the client's name, and the program's discreet numerical or letter identifier. ~~If the program is under contract with the Office of the Attorney General, the discreet identifier shall be the OVIS client identification.~~

(b) A certified program shall have written policy and procedures for correcting errors on record material by lining through, initialing the error, and inserting the correct material either above the error or at the end of the entry. Further, the policy and procedures shall forbid the use of "white-out" or any action which obliterates the error.

(c) Compliance with 75:15-5-2 shall be determined by on-site observation, client records and any other supporting program documentation.

75:15-5-3. Record content - general

(a) Client records shall contain, at a minimum, the following information:

(1) Intake and screening information:

(A) Client's name;

(B) Date of initial contact/intake;

(C) Pertinent medical information, including substance abuse;

(D) Emergency contact information;

(E) History/nature of abuse; and

(F) ~~Batterer~~ Perpetrator information if known.

(2) Service notes, which shall minimally include:

(A) The time, date, location and description of services provided;

(B) The signature of staff providing the services; and

(C) A service note for each contact for other services.

(3) Service plan focusing on victim safety and, well-being which shall minimally include:

(A) Goals and objectives of the client, which shall be developed and agreed upon between the client and staff; and

(B) Service plans and their updates shall be signed and dated by the client and staff.

(4) Exit information, which shall minimally include:

(A) Documentation that the client participated in planning for his or her exit from the program;

(B) The reasons for the client's exit or departure; and

(C) Client and staff dated signatures or an explanation if staff were unable to obtain the client's signature.

(b) Each client record entry shall be legible, dated, and signed by the staff member making the entry.

(c) Compliance with 75:15-5-3 shall be determined by a review of program policy and procedures; review of the client records for content; and/or other supporting program documentation.

SUBCHAPTER 13. PERSONNEL AND VOLUNTEERS

PART 3. TRAINING

75:15-13-20.1. Orientation - general, personnel and volunteers

(a) A certified program shall provide a minimum of 10 hours orientation training to familiarize new personnel and volunteers providing direct services with the program which includes, but is not limited to:

(1) Program goals and services of each service component;

(2) Program policy and procedures;

(3) Confidentiality, to include verbal confidentiality whether inside or outside the facility and client records;

(4) Facility safety and disaster plans;

(5) First aid kits and fire extinguishers, their location, contents and use;

(6) Universal precautions;

(7) Client rights;

(8) Domestic violence and its effects on victims and children;

(9) The cycle of domestic violence;

(10) Power and control tactics of abuse;

(11) Crisis intervention techniques;

(12) Sexual assault;

(13) Stalking;

(14) Victim advocacy;

(15) Parenting and disciplinary techniques;

(16) Active listening techniques;

(17) Accessing resources needed by victims and their families;

(18) Safety planning for adults and age appropriate safety planning for children;

(19) Basic child development;

(20) Legal and ethical issues; ~~and~~

(21) Cultural Sensitivity, and

(22) Effects of trauma including post traumatic stress disorder.

(b) Volunteers providing indirect services and children's activities are required to complete orientation as prescribed by the Executive Director which shall include training on confidentiality and facility safety and disaster plans.

(c) Orientation for personnel must take place within 30 days of employment or prior to unsupervised direct client contact and services. Volunteer orientation must occur within 6 months or prior to unsupervised, direct client contact and services. The Executive Director of a facility may waive orientation training if documented that the staff or volunteer has completed the requisite program training within the past year.

(d) Compliance with 75:15-13-20.1 shall be determined by a review of the written policies and procedures, and personnel and volunteer training manuals and records.

75:15-13-20.2. Inservice and ongoing training for personnel and volunteers

(a) A certified program shall have policy and procedures mandating, at the minimum, sixteen (16) hours of annual training of all staff which shall include:

(1) Confidentiality, to include verbal confidentiality whether inside or outside the facility and client records;

(2) Facility safety and disaster plans;

(3) First aid kits and fire extinguishers, their location, contents and use;

(4) Universal precautions, and

(5) Client rights.

The remaining hours of annual training shall be related to domestic violence, sexual assault, stalking, batterers intervention and administration as prescribed and approved by the Executive Director.

(b) A certified program shall have policy and procedures mandating a minimum of four hours annual training of all volunteers providing direct services, related to domestic violence, sexual assault, and stalking as prescribed and approved by the Executive Director.

(c) Individuals that volunteer indirect services and do not meet the requirements for a volunteer providing direct services as defined in OAC 75:15-1-2 shall receive annual training as prescribed by the Executive Director, but do not have a minimum number of training hours required.

(d) Documentation of training must include the topic of the training, the name of the trainer(s), the date of the training, the length of the training session, the sponsor of the training, and approval of the training by the Executive Director of the agency.

(e) A Certified Domestic and Sexual Violence Response Professional in good standing with the Oklahoma Coalition Against Domestic Violence and Sexual Assault (OCADVSA) shall be deemed to be current with annual training requirements upon completion of required annual training set forth in subsection (a) above. A copy of the current certification card issued by the OCADVSA shall be evidence of good standing.

(f) Compliance with 75:15-13-20.2 shall be determined by a review of policy and procedures; review of training records and other provided documentation of personnel training; and a review of personnel or volunteer records.

75:15-13-26. Personnel training, transitional living services

(a) Prior to providing any direct services or CLEET training, all transitional living services personnel shall receive the prescribed orientation training and minimally have at least six (6) months experience working or volunteer experience in a certified domestic violence/sexual assault program, or related service. When there is staffing shortage situations, a staff person-in-training may be utilized if under the direct supervision of a trained, experienced staff person.

(b) Compliance with 75:15-13-26 shall be determined by:

(1) Review of program's policy and procedures.

(2) Review of program's training records and other provided documentation of staff training.

(3) Review of personnel records.

75:15-13-30. Personnel training, batterers intervention services

(a) Personnel ~~providing~~ facilitating batterers intervention ~~services~~ groups shall minimally have a graduate degree in a behavioral health or criminal justice related field and one-year related work experience, have a Bachelors degree in a behavioral health or criminal justice related field and two years related work experience, or have been employed as a facilitator in a certified batterers intervention program prior to July 1, 2008.

(b) ~~At least one staff in each certified program meeting the requirements defined in 75:15-1-2 for "professional staff" or the program shall contract with an individual that meets the requirements for "professional staff" intervention for consultation~~. A certified batterers intervention program shall contract with or employ a qualified licensed professional as defined in 75:15-1-2 under "Counseling" for purposes of providing case and programmatic consultation to personnel facilitating batterers intervention groups and for conducting individual client evaluations before and after attendance of the program.

(c) Prior to providing any direct services, personnel ~~providing~~ facilitating batterers intervention services shall observe a minimum of 12 batterers intervention sessions, receive the prescribed orientation and at least ~~ten (10)~~ sixteen (16) hours training in all of the curriculum topics listed in 75:15-4-2(b). Additionally, the Executive Director shall certify the proficiency of any personnel facilitating batterers intervention in each of the curriculum topics and in group facilitation.

~~(1) the dynamics and scope of domestic violence and sexual assault; and~~

~~(2) the dynamics of batterers~~.

~~(d) Personnel providing batterers intervention services shall obtain at least sixteen (16) hours annually of continuing education in domestic violence, sexual assault, stalking, batterers intervention or other professional development as prescribed and approved by the Executive Director.~~

(d) Personnel who provide batterers intervention service may not provide services for the victim that may result in a conflict of interest.

(e) Compliance with 75:15-13-30 shall be determined by:

(1) Review of program's policy and procedures.

(2) Review of program's training records and other provided documentation of staff training.

(3) Review of personnel records.

SUBCHAPTER 15. GOVERNING AUTHORITY

75:15-15-1. Governing authority

(a) The agency shall have a governing authority. In the instance of Native American programs, the tribal council may be the governing body.

(b) The governing authority shall establish, and function under, written by-laws. These bylaws shall minimally include: ~~the designation of regular quarterly meetings to be held in accordance with the Open Meeting Act; and at all meetings of the governing authority, written minutes shall be recorded and retained.~~

(1) Designation of regular quarterly meetings to be held in accordance with the Open Meeting Act;

(2) Recording and retention of written minutes;

(3) Eligibility criteria, selection, terms, responsibilities, power and duties of members;

(4) Term limitations, removal and filling of vacancies;

(5) Attendance policy;

(6) Prohibition on staff serving as voting members of the governing authority, and

(7) Establishment of a quorum.

(c) Compliance with 75:15-15-1 shall be determined by:

(1) Documents of incorporation or registration as a business entity or documentation from the appropriate Tribal Council.

(2) Review of the written by-laws.

(3) Review of the governing authority's minutes.

75:15-15-3. Duties of the governing authority

(a) The duties of the governing authority shall include, but are not limited to:

(1) Approving all policy for the operation of the agency~~;~~, and ~~insuring~~ ensuring procedures for the implementation of policy are in place and enforced.

(2) Ensuring the agency operates in compliance with established agency policy, applicable state and federal law and administrative rules.

(3) Compliance with the by-laws of the governing authority.

(4) Ensuring all financial transactions and events requiring the approval of the governing authority are reviewed and authorized by the governing authority prior to any commitment by agency personnel.

(5) The selection, annual evaluation and continuance of retention of the executive director.

(6) Review and approve all contractual agreements.

(7) Review the program audit and certification reports from the VSU and approve all plans of correction.

(8) Oversee the financial administration of the program.

(b) Compliance with 75:15-15-3 shall be determined by a review of

(1) by-laws and minutes of the meetings of the governing authority;

(2) posted, or otherwise distributed, written materials regarding decisions, and other notifications, of the governing authority;

(3) personnel meeting minutes of the program and its various divisions or geographical locations where applicable; and

(4) written evaluation, and any other documentation regarding the retention or selection or hiring, of the executive director.

75:15-15-5. Governing authority, orientation

(a) A certified program shall provide a minimum of 2 hours orientation training to members of the governing authority which includes, but is not limited to:

(1) Program goals and services of each service component;

(2) Program policy and procedures;

(3) Underlying philosophy [OAC 75:15-1-1.1];

(4) Confidentiality, to include verbal confidentiality whether inside or outside of the facility and client records;

(5) Client rights and grievance procedure;

(6) Legal and ethical issues;

(7) Overview of domestic violence, sexual assault & stalking;

(8) Open Meeting Act and recording of meeting minutes;

(9) Open Records Act;

(10) Rules, including standards and criteria, used in certifying programs;

(11) Role and responsibility of the executive director; and

(12) Role and responsibility of the governing authority.

(b) Orientation training shall take place within 90 days of election to the governing authority.

(c) Members of the governing authority providing volunteer direct or indirect services to clients shall receive the prescribed orientation and training required for program personnel in addition to the orientation set forth in this Section.

(d) Compliance with 75:15-15-5 shall be determined by a review of written policy and procedures, training materials, training records, and minutes of meetings.

[OAR Docket #08-1048; filed 05-23-08]

TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS
CHAPTER 1. ADMINISTRATIVE ORGANIZATION AND OPERATIONS

[OAR Docket #08-1049]

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The Oklahoma Board of Chiropractic Examiners needed to amend language to keep language in line throughout OAC 140 so that each section provides the same meaning.
CONTACT PERSON:
Beth Carter (405) 524-6223

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING PERMANENT RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

140:1-1-1. Purpose

The purpose of this Chapter is to:

(1) provide a description of organization of the Board, the general course of conduct and method of the operations of the Board, and the methods whereby the public may obtain information or make submissions or requests;

(2) set forth the nature and requirements of certain formal and informal procedures available;

(3) prescribe the form for petitions by interested persons who request the promulgation, amendments or repeal of a rule by the Board, and the procedure for their submission, consideration and disposition; and

(4) provide for the filing and prompt disposition of petitions for declaratory ruling by the Board as to the applicability of any rule or order of the Board; as required by the ~~APA~~ Administrative Procedures Act

140:1-1-2. Definitions

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

"Accredited Chiropractic College" means a chiropractic educational institution, which is accredited by the Commission on Accreditation of the Council on Chiropractic Education or its successor.

"Act" means the Oklahoma Chiropractic Practice Act, 59 O.S. 1991, §§161.1 et seq.

"APA" means the Oklahoma Administrative Procedures Act, 75 O.S.1991, §§ 250 et seq.

"Advisory Committee" means the committee appointed by the Board to advise and assist the Board in the investigation of the qualifications for licensure, complaints as to the conduct of chiropractic physicians, and for such other matters as the Board delegates to them.

"Applicant" means any person submitting an application for licensure to the Board.

"Board" means the Board of Chiropractic Examiners.

"Chiropractic" means the science and art that teaches health in anatomic relation and disease or abnormality in anatomic disrelation, and includes hygienic, sanitary and therapeutic measures incident thereto in humans.

"Chiropractic physician" or **"licensee"** means a person who holds an original license to practice chiropractic in this state.

"Continuing education requirements" means attendance by a licensee at a minimum of (16) sixteen hours of Chiropractic education seminars as required for a renewal license.

"Emergency meeting" means a meeting of the board, which is called pursuant to the Open Meeting Act based upon exigent circumstances, which require expedited attention, by the board to the matters concerned.

"Examination" means the process used by the Board, prior to the issuance of an original license, to test the qualifications and knowledge of an applicant on any or all of the following: current statutes, rules, or any of those subjects listed in Section 161.8 of the Act.

"Executive Director" means the Executive Director of the Board.

"Final order" means an order made by the Board pursuant to the APA and which is subject to judicial review.

"Individual proceeding" means the formal process employed by the Board to provide a hearing for a licensee of the Board to provide a hearing for the licensee of the Board accused of a violation of the Act and in which the Board may take action against such person's original license to practice chiropractic in this state

"Licensure" means the Board's process with respect to the grant, denial, renewal, revocation, or suspension of an original or renewal license.

"OAC" means the Oklahoma Administrative Code.

"Order" means a formal or official decision of the Board including, but not limited to, final orders.

"Original license" means a license which grants initial authorization to practice chiropractic in this state issued by the Board to an applicant found by the Board to meet the requirements for licensure of the Act,

(A) by examination pursuant to § 161.7 and 161.8 of the Act and 140:10-3-1 through 140:10-3-4; or

(B) by relocation of practice pursuant to § 161.9 of the Act and 140:10-3-5.

"Party" means a person or agency named and participating or properly seeking and entitled by law to participate in an individual proceeding.

"Person" means any individual, association, corporation, company, governmental subdivision, or public or private organization of any character other than an agency.

"Regular meetings" means regular meetings of the Board held at such times and places as scheduled by the Board and includes continued and reconvened meetings as may be allowed pursuant to the Open Meetings Act. Provided, however, that continued and reconvened meetings shall be as limited by the Open Meeting Act.

"Relocation of Practice" means the ability for an applicant to obtain a chiropractic license on the following conditions:

(A) The applicant is of good moral character;

(B) The applicant shall submit documentary evidence that they have been in active practice for five (5) years immediately preceding the date of application;

(C) The applicant has had no disciplinary action pending against their license in any other state, country or province:

(D) The licensee requesting relocation of practice shall comply with the jurisprudence assessment examination administered by the Board of Chiropractic Examiners of this state.

(E) The applicant may be requested to appear before the Board for a personal interview, and:

(F) The applicant shall meet all other requirements set forth in the Oklahoma Chiropractic Practice Act.

"Renewal license" means a license issued by the Board on or before the first day of January of each year to a licensee, which authorizes the licensee to practice chiropractic in this state for the succeeding calendar year.

"Revocation" means the recalling, annulling or rendering inoperative of an original license or renewal license, or both, by the Board, after notice and an opportunity for a hearing in an individual proceeding.

"Rule or **rules"** means the rules of the Board promulgated pursuant to the APA or its successor statutes.

"Rule-making" means the process employed by the Board for the promulgation of a rule.

"Scope of practice" means chiropractic is the science and art that teaches health in anatomic relation and disease or abnormality in anatomic disrelation, and includes hygienic, sanitary and therapeutic measures incident thereto in humans. The scope of practice of chiropractic shall include those diagnostic and treatment services and procedures, which have been taught by an accredited chiropractic college and have been approved by the Board of Chiropractic Examiners. Such diagnostic and treatment services and procedures shall include the following: Chiropractic physicians may examine, analyze and diagnose the human body to correct, relieve or prevent diseases and abnormalities by the use of any physical, chemical, electrical, or thermal method; use or order diagnostic radiological imaging; use or order laboratory testing; and use any other method of examination for diagnosis and analysis taught by an accredited chiropractic college and approved by the Board of Chiropractic Examiners. In addition, Chiropractic physicians may adjust, manipulate and treat the human body by manual, mechanical, chemical, electrical, or natural methods; by the use of physiotherapy; meridian therapy; by utilizing hygienic, sanitary and therapeutic measures; by the administration of naturopathic and homeopathic remedies, by the application of first aid or by performing any other treatment taught by an accredited chiropractic college and approved by the Board of Chiropractic Examiners. Nothing in this rule shall permit a Chiropractic Physician to prescribe legend drugs, beyond injectable nutrients, as is currently the law in Title 59 Section 161.12 of the Oklahoma Statutes.

"Secretary-Treasurer" means the Secretary-Treasurer of the Board.

"Special meeting" means all meetings of the Board other than regular or emergency meetings.

"Suspension" means temporary discontinuance or cessation, with an expectation of reinstatement, of an original license or renewal license, or both, by the Board after notice and an opportunity for a hearing as required in an individual proceeding.

[OAR Docket #08-1049; filed 05-23-08]

TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS
CHAPTER 3. DISCIPLINARY PROCEDURES

[OAR Docket #08-1050]

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The Oklahoma Board of Chiropractic Examiners needed to amend language to keep language in line with language presently in the statutes and throughout OAC 140 so that each section provides the same meaning.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING PERMANENT RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

140:3-1-2. Definitions

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

"Act" means the Oklahoma Chiropractic Practice Act, 59 O.S. 1991, §§161.1 et seq.

"Advisory Committee" means the committee appointed by the Board to advise and assist the Board in the investigation of the qualifications for licensure, complaints as to the conduct of chiropractic physicians, and for such other matters as the Board delegates to them.

"Board" means the Board of Chiropractic Examiners.

"Chiropractic" means the science and art that teaches health in anatomic relation and disease or abnormality in anatomic disrelation, and includes hygienic, sanitary and therapeutic measures incident thereto.

"Chiropractic physician" or **"licensee"** means a person who holds an original license to practice chiropractic in this state.

"Code of Ethics" means the Oklahoma Chiropractic Code of Ethics OAC 140:15-7-5.

"Complaints" means a written statement by the person alleging that a chiropractic physician has committed a violation of the Act or the rules of the Board.

"Examination" means the process used by the Board prior to the issuance of an original license to test the qualifications and knowledge of an applicant on any or all the following: current statutes, rules or any of those subjects listed in Section 161.8 of the Act.

"Final order" means an order made by the Board pursuant to the APA and which is subject to judicial review.

"Individual proceeding" means the formal process employed by the Board to provide a hearing for a licensee of the Board to provide a hearing for the licensee of the Board accused of a violation of the Act and in which the Board may take action against such person's original license to practice chiropractic in this state.

"Letter of Concern" means a letter issued by the Board to a chiropractic physician to advise ~~a~~ said chiropractic physician of a probable violation of the Act or the rules of the Board.

"Order" means a formal or official decision of the Board including, but not limited to, final orders.

"Original license" means a license which grants initial authorization to practice chiropractic in this state issued by the Board to an applicant found by the Board to meet the requirements for licensure of the Act,

(A) by examination pursuant to § 161.7 and 161.8 of the Act and 140:10-3-1 through 140:10-3-4; or

(B) by relocation of practice pursuant to § 161.9 of the Act and 140:10-3-5.

"Party" means a person or agency named and participating or properly seeking and entitled by law to participate in an individual proceeding.

"Penalty" means one or more of the penalties specified in subsection A of §161.12 of the Act.

"Person" means any individual, association, corporation, company, governmental subdivision, or public or private organization of any character other than an agency.

"Relocation of Practice" means the ability of an applicant to obtain Oklahoma Licensure on the following conditions:

(A) The applicant is of good moral character;

(B) The requirements for licensure in the state, country, territory or province in which the applicant is licensed are deemed by the Board to be equivalent to the requirements for obtaining an original license by examination in this state at the date of such license;

(C) The applicant has no disciplinary matters pending against him or her in any state, country, territory or province;

(D) The license being relocated was obtained by examination in the state, country, territory or province wherein it was issued, or was obtained by examination of the National Board of Chiropractic Examiners;

(E) The applicant passes any examination given by the Board; and

(F) The applicant meets all other requirements of the Oklahoma Chiropractic Practice Act.

"Renewal license" means a license issued by the Board on or before the first day of January of each year to a licensee which authorizes the licensee to practice chiropractic in this state for the succeeding calendar year.

"Revocation" means the recalling, annulling or rendering inoperative of an original license or renewal license, or both, by the Board, after notice and an opportunity for a hearing in an individual proceeding.

"Summary suspension" means the temporary suspension of a license to practice chiropractic medicine by the Board without notice or an opportunity for a hearing.

"Violation" means a violation of the Act or rules of the Board for which the Board is empowered to take disciplinary action against a licensee.

SUBCHAPTER 3. FILING AND DISPOSITION OF COMPLAINTS

140:3-3-2. Procedures for complaints against chiropractic physicians

(a) Any person may submit to the Board a complaint against a chiropractic physician. In the event a complaint is initiated by a member of the Board or the Advisory Committee and such complaint involves the member of the Board or the Advisory Committee to the extent that such member of the Board or Advisory Committee cannot render an impartial decision in the matter, the member of the Board or Advisory Committee shall recuse himself from further action, investigation or other matter related to said complaint.

(b) The Board shall make available a form which may be used for the filing of complaints.

(c) Each complaint reviewed by the Board shall be investigated and a written report made to the Board as set forth in subsections (e), (f),(g) and (h) of this section within twenty-four (24) ~~twelve (12)~~ months of receipt of the complaint by the Advisory Committee. No member of the Board shall review any complaint or discuss any complaint with any member of the Advisory Committee or any other person, including the complainant and the chiropractic physician named in the complaint, except that the Board may review the written report of the Advisory Committee as provided in (e), (f), and (g) of this section.

(1) No member of the Advisory Committee or the investigator may, in any way, discuss any complaint or the details therein with any person without order from the Board or a Court of competent jurisdiction. Discussion or disclosure of any complaint or information therein by an Advisory Committee member or investigator may result in that Advisory Committee member's removal from the investigation committee and other such sanctions as the Board deems appropriate.

(2) The amount of time for investigation of a complaint received by the Board by the Advisory Committee may be extended beyond the twenty-four (24) months ~~twelve (12)~~ period of time upon a showing of good cause by either the complainant and /or the chiropractic physician named in the complaint.

(d) Upon receipt of the complaint, the Advisory Committee or investigator shall provide the chiropractic physician named in the complaint with a notice of the complaint and shall require said chiropractic physician to provide a written response to the complaint within twenty (20) days of mailing of a copy of the notice to said chiropractic physician. The failure of a chiropractic physician to respond to such a request of the Advisory Committee or investigator shall be grounds for disciplinary action by the Board.

(e) It shall be the duty of the Advisory Committee or investigator to investigate the complaint fully and in a manner consistent with due process requirements and the APA. At the conclusion of the investigation, the Advisory Committee or investigator shall submit a written report to the Board detailing the findings and determination if the Advisory Committee or investigator shall make a recommendation in its written report as to further action by the Board. The Advisory Committee may assign a complaint to an individual investigator employed by the Board on a part-time or full- time basis.

(f) The written report of the Advisory Committee or investigator shall be drafted so as to keep anonymous the name of the Complainant and the chiropractic physician named in the complaint. The report shall include a brief recitation of the facts of the complaint and a statement whether the Advisory Committee or investigator found competent evidence to support the allegations contained in the complaint.

(g) The Board shall review the report of the Advisory Committee or investigator at a meeting of the Board~~, for which the Executive Director shall give proper notice to the Complainant, the chiropractic physician named in the complaint, and any other interested party~~. Provided, however that the Board's review of the report shall not be conducted as a hearing and the Board shall not hear testimony or receive evidence. Upon review of the report, the Board may:

(1) dismiss the complaint if the Board finds there is not reasonable cause to believe that there was a violation of the Chiropractic Practice Act;

(2) issue a letter of concern, pursuant to 140:3-3-3, to the chiropractic physician named in the compliant if the Board finds that there is reasonable cause to believe that said chiropractic physician has committed a violation, but such violation, if proven, is not of such a nature as to warrant the imposition of a penalty by the Board; or

(3) initiate an individual proceeding, pursuant to 140:3-3-4, against the chiropractic physician named in the complaint if the Board finds that there is reasonable cause to believe that said chiropractic physician has committed a violation and that such violation, if proven, is of such a nature as to warrant the imposition of a penalty by the Board.

(h) In the event the Board votes to issue a letter of concern in regard to a complaint, it shall thereupon be the duty of the Advisory Committee or investigator to provide the board sufficient details as to the nature of the complaint so as to assist the Board to render a meaningful letter of concern.

140:3-3-3. Letter of concern issued by the Board

(a) A letter of concern issued by the Board shall:

(1) Contain a clear and concise description of the violation alleged to have been committed by the chiropractic physician named therein;

(2) Contain a statement that the Board has found that there is reasonable cause to believe that the chiropractic physician named in the complaint has committed a violation;

(3) Contain an explanation of the factors considered by the Board and the Advisory Committee or investigator in the Board's decision to issue the letter of concern;

(4) Be signed by the President of the Board; and

(5) Be mailed certified mail, return receipt, to the chiropractic physician named in the complaint and to the complainant.

(b) A copy of each letter of concern issued by the Board shall be placed ~~in permanent file of the chiropractic physician named~~ in the complaint file.~~and in a separate file for disciplinary matters maintained by the Board.~~ Letters of concern shall be considered confidential records but may be used as evidence in

hearings conducted pursuant to the Act and Rules provided the letter is not made public during the course of the hearing and is sealed at the conclusion of the hearing.

[OAR Docket #08-1050; filed 05-23-08]

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

[OAR Docket #08-1051]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
140:10-1-2 [AMENDED]
AUTHORITY:
Oklahoma Board of Chiropractic Examiners; 59 O.S. § 161.8
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SUPERSEDED EMERGENCY ACTIONS:
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INCORPORATION BY REFERENCE:
N/A
ANALYSIS:
The Oklahoma Board of Chiropractic Examiners needed to amend language to keep language in line throughout OAC 140 so that each section provides the same meaning.
CONTACT PERSON:
Beth Carter (405) 524-6223

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING PERMANENT RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

140:10-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise. In addition, the use of the masculine gender shall be deemed inclusive in this chapter to include the feminine gender.

"Accredited chiropractic college" means a chiropractic educational institution which is accredited by the Commission on Accreditation of the Council on Chiropractic Education, a national, independent accreditation body recognized and approved by the U.S. Department of Education.

"Act" means the Oklahoma Chiropractic Practice Act, 59 O.S. 1991, §§161.1 et seq.

"Advisory Committee" means the committee appointed by the Board to advise and assist the Board in the investigation of the qualifications for licensure, complaints as to the conduct of chiropractic physicians, and for such other matters as the Board delegates to them.

"Board" means the Board of Chiropractic Examiners.

"Chiropractic" means the science and art that teaches health in anatomic relation and disease or abnormality in anatomic disrelation, and includes hygienic, sanitary and therapeutic measures incident thereto.

"Chiropractic physician" or "licensee" means a person who holds an original license to practice chiropractic in this state.

"Continuing education requirements" means attendance by a licensee at a minimum of sixteen (16) hours of Chiropractic education seminars as required for a renewal license.

(A) Twelve (12) hours of the sixteen required by law must be clinical in nature, and the other remaining four (4) may consist of practice management, philosophy, and or other non-clinical topics.

(B) Eight (8) hours of continuing education may be acquired out of state with first having obtained a pre-approval from the Board of Chiropractic Examiners. Eight (8) hours of continuing education can be obtained by attending a national chiropractic association meeting and/or the Federation of Chiropractic Licensing Boards Annual or Federation of Chiropractic Licensing Boards' District meetings attended by any licensee.

(C) Eight (8) hours of mandatory in state continuing education shall be acquired by attending continuing education offered by a registered, domestic Oklahoma association whose seminar has been approved by the Board of Chiropractic Examiners.

"Examination" means the process used by the Board, prior to the issuance of any original license, to test the qualifications and knowledge of an applicant on any or all of the following: current statutes, rules, or any of those subjects listed in Section 161.8 of the Act.

"Individual proceeding" means the formal process employed by the Board to provide a hearing for a licensee of the Board accused of a violation of the Act and in which the Board may take action against such person's original license to practice chiropractic in this state.

"License renewal program" means a continuing education program which:

(A) is sponsored or administered by an association for the purpose of providing licensees an opportunity to satisfy continuing education requirements; and

(B) has been approved by the Board.

"Licensure" means the Board's process with respect to the grant, denial, renewal, revocation, or suspension of an original or renewal license.

"Original license" means a license which grants initial authorization to practice chiropractic in this state issued by the Board to an applicant found by the Board to meet the requirements for licensure of the Act:

(A) by examination pursuant to § 161.7 and 161.8 of the Act and 140:10-3-1 through140:10-3-4; or

(B) by relocation of practice pursuant to § 161.9 of the Act and140:10-3-5.

"Relocation of practice" means the ability of an applicant to obtain Oklahoma who meets the following conditions:

(A) The applicant is of good moral character;

(B) The requirements for licensure in the state, country, territory or province in which the applicant is licensed are deemed by the Board to be equivalent to the requirements for obtaining an original license by examination in this state at the date of such license;

(C) The applicant has no disciplinary matters pending against him or her in any state, country, territory or province;

(D) The license held prior to relocation of practice was obtained by examination in the state, country, territory or province wherein it was issued, or was obtained by examination of the National Board of Chiropractic Examiners;

(E) The applicant passes any examination offered by the Board according to 140:10-3-1; and

(F) The applicant meets all other requirements of the Oklahoma Chiropractic Practice Act.

"Renewal license" means a license issued by the Board on or before the first day of January of each year to a licensee which authorizes the licensee to practice chiropractic in this state for the succeeding calendar year.

"Revocation" means the recalling, annulling or rendering inoperative of an original license or renewal license, or both, by the Board, after notice and an opportunity for a hearing in an individual proceeding.

[OAR Docket #08-1051; filed 05-23-08]

TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS
CHAPTER 20. ADVISORY COMMITTEE

[OAR Docket #08-1052]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
140:20-1-1 [AMENDED]

AUTHORITY:
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ANALYSIS:
The Oklahoma Board of Chiropractic Examiners needed to amend language to keep language in line with language presently in the statutes and throughout OAC 140 so that each section provides the same meaning.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING PERMANENT RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2008:

140:20-1-1. Scope and application; re-creation of Advisory Committee

~~(a)~~ This Subchapter describes the procedures for nomination, qualifications for nomination, appointment, term of office, removal and other matters related to the membership of the Advisory Committee, as authorized by Section 161.6 of the Act.

~~(b) Upon the promulgation of this Chapter, the Advisory Committee which existed prior to promulgation shall be automatically dismissed from its duties, and the Board shall immediately thereafter undertake the appointment of an Advisory Committee pursuant to this Chapter.~~

[OAR Docket #08-1052; filed 5-23-08]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD
CHAPTER 30. PLUMBING INDUSTRY REGULATIONS

[OAR Docket #08-1040]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. License Types, Bond Requirements, and Display of License Number and Firm Name
158:30-5-2. Insurance and bond requirements [AMENDED]
Subchapter 9. Examination Procedures, License and Registration Fees and Duration of Licenses
158:30-9-4. Continuing Education [AMENDED]
AUTHORITY:
Construction Industries Board; 59 O.S. §§ 1000 through 1023.1 et seq. and 1689.
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FINAL ADOPTION:
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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
The purpose of the rule in 158:30-5-2 is to eliminate the 30-day cancellation notice to the board. The Insurance companies have an automatic 10-day cancellation notice and this was interfering with the processing of licensure for the contractors. The purpose of the rules in 158:30-9-4 is to clarify the process for submitting and approving continuing education classes and the verification of completion and credit issued for the classes.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 26, 2008:

SUBCHAPTER 5. LICENSE TYPES, BOND REQUIREMENTS, AND DISPLAY OF LICENSE NUMBER AND FIRM NAME

158:30-5-2. Insurance and bond requirements

(a) Unless as otherwise provided in 158:30-5-2(b) below: Each active plumbing contractor must maintain a five thousand dollar ($5,000.00) corporate surety bond, payable to the Board, and must cause the surety to deposit a copy of such bond with the Plumbing Licensing Unit and with each municipality in which the bonded plumbing contractor proposes to commence plumbing work.

(b) An active plumbing contractor may satisfy the requirements of 158:30-5-2(a) above by depositing with the Plumbing Licensing Unit, either the sum of $5,000 cash, or a certificate of deposit in the sum of $5000 payable to the order of the Plumbing Licensing Revolving Fund.

(c) Failure to maintain a corporate surety bond in effect shall constitute grounds for summary suspension of a bonded plumbing contractor license immediately upon the expiration of such bond.

(d) A corporate surety bond may be accepted from any surety authorized to do business in the State of Oklahoma. It shall continue in effect until thirty (30) days have elapsed after the Bond and Insurance Unit is notified by the surety of the cancellation of such bond, unless the bond expired on a date certain on its face. Sureties must notify each municipality furnished with a copy of the bond regarding the pending cancellation if known to them.

(e) The Board shall notify the surety of the summary suspension or revocation of the license of any of its bonded licensed plumbing contractors.

(f) A bond or other surety filed in accordance with 158:30-5-3(a) shall be in lieu of filing a bond with each municipality where the plumbing contractor works, and shall be conditioned upon all the following terms:

(1) Plumbing contractors shall faithfully and properly conduct business in compliance with applicable statutes, rules of the Oklahoma Construction Industries Board, and with all the applicable ordinances of the municipality in which plumbing work is performed.

(2) Plumbing contractors shall pay all fines and penalties imposed by penalty orders of the Board and fines and penalties imposed by courts of competent jurisdiction for the violation of municipal ordinances. The Board may seek payment through the surety bond of any fines or penalties, which the licensee fails to pay.

(3) In lieu of a corporate surety, an active plumbing contractor may deposit with the Bonds and insurance Unit the required amount in lawful money or negotiable bonds of the United States, accompanied by a written instrument, to be approved by the Construction Industries Board, executed and acknowledged by the active plumbing contractor, and setting forth the conditions upon which the deposit is made. When the true owner is other than the active plumbing contractor making the deposit, the instrument shall so state and shall also be executed and acknowledged by the true owner. Upon exoneration, the instrument and deposit may be returned by the Bonds and Insurance Unit to the depositor or the true owner, if the depositor is other than the named true owner, after application of the deposit to claims made pursuant to these Rules.

(4) Notwithstanding any provision of a security instrument to the contrary, every surety or depositor of security subjects himself to the jurisdiction of the Construction Industries Board and irrevocably appoints the Administrator as his agent upon whom any papers affecting his liability may be served. Every surety or depositor of security consents to his liability being joint and several. Consequently, judgment may be entered against the surety, or depositor of security, in accordance with his obligation simultaneously with judgment against the principal, and execution may thereupon issue.

(5) Plumbing contractors shall protect, save harmless and indemnify the State and municipalities against any liability imposed by law against the State and municipalities for the negligence of said contractor arising from any act or omission while engaged in work pursuant to the Plumbing License Law.

(6) Any aggrieved person may bring an action upon the bond for the recovery of penalty thereof to the same extent and with equal rights as though such aggrieved person had been named as the obligee in the bond.

(7) For purposes of this Section, the term plumbing contractor also includes the agents, servants, and employees of a plumbing contractor.

(g) Exceptions. The bond and insurance requirement will be waived if:

(1) The plumbing contractor wishes to be inactive. A contractor may choose to place his license on inactive status and may practice as a journeyman but shall not practice as an active contractor. The inactive contractor can obtain an active license at any time if his inactive license is valid and the bond and insurance requirements are met; or

(2) The plumbing contractor is employed by a corporation, partnership, public entity, or political subdivision and said corporation, partnership, public entity or political subdivision submits an affidavit on behalf of the contractor that the employee will only perform plumbing work on property owned by said corporation, partnership, public entity, or political subdivision and the employer assumes all financial responsibility in lieu of the contractor providing bond and insurance. The affidavit must include a statement by the employer that the Board will be notified if the contractor is no longer employed by said employer, or if the employer no longer wishes to assume financial responsibility for the contractor.

(h) Insurance. A plumbing contractor shall provide proof of financial responsibility by providing a certificate of insurance, which indicates a minimum general liability policy of $50,000. ~~The certificate shall include a 30-day cancellation notice to the Board.~~

SUBCHAPTER 9. EXAMINATION PROCEDURES, LICENSE AND REGISTRATION FEES AND DURATION OF LICENSES

158:30-9-4. Continuing education

~~(a) Continuing education hours. For the license year beginning July 1, 2005, no plumbing contractor or journeyman license shall be renewed unless the licensee has completed at least six (6) hours of continuing education within one (1) year of adoption of the current, published revisions of the International Plumbing Code, International Fuel Gas Code, and International Residential Code. At least four (4) hours must consist of training on the revisions of the International Plumbing Code, International Fuel Gas Code, and International Residential Code. Not more than two (2) hours of continuing education may consist of manufacturer provided training in the installation of equipment or parts.~~

~~(b) Continuing education course approval. Entities seeking to offer continuing education courses to licensees must submit an application for approval to the Plumbing Licensing Unit prior to beginning instruction. The application shall include an outline or other synopsis of the subject matter for each unit of instruction, and a list of the course instructors with their qualifications. Upon recommendation of the Committee and approval by the Board, notice of the course approval will be sent to the applying entity. Licensees shall not receive credit for attending courses that have not been approved by the Board prior to the beginning of the course. All courses shall be presented as approved unless changes are submitted to the Plumbing Licensing Unit for consideration prior to the beginning of the course. Failure to obtain approval of changes may result in the loss of continuing education approval. After completion of the course, the entity shall submit sign-in sheets for all sessions. The sign-in sheets shall contain the signature and state plumbing license number of each person in attendance. The entity shall verify the total number of continuing education hours completed by each attendee. Continuing education providers shall require attendees to present a photo I.D. prior to the attendee signing the sign-in sheet. The Board may approve continuing education earned outside of Oklahoma if the course is approved by another state for continuing education in that state.~~

~~(c) Approval requirements for continuing education. All continuing education providers shall abide by the following requirements:~~

~~(1) Materials and information presented shall pertain to the use of the current adopted International Plumbing Code, International Fuel Gas Code, and International Residential Code or shall be manufacturer provided training in the installation of equipment or parts.~~

~~(2) All courses shall be at least two (2) hours in length.~~

~~(3) The training location shall be outside the regular work place or after regular working hours.~~

~~(4) All attendees shall complete a course evaluation on a form provided by the Board. The entity shall return the completed evaluation forms to the Board with the sign-in sheets.~~

~~(d) Correspondence course approval. Entities seeking to offer correspondence courses for continuing education shall submit a course curriculum and study material for review by the~~

~~Committee and approval by the Board prior to the courses being accepted as continuing education. Approved correspondence courses shall be required to comply with all requirements for other continuing education courses except for sign-in sheets. Providing a student with a document of completion shall certify completion of approved correspondence courses.~~

(a) **Continuing education requirements**

(1) No plumbing contractor or journeyman license shall be renewed unless the licensee has completed at least six (6) instructional hours of continuing education on the revisions to the current, published edition of the International Plumbing Code, International Fuel Gas Code and/or International Residential Code within one (1) year of adoption. Continuing Education requirements may also be fulfilled by not less than four (4) hours on the revisions to the current, published edition of the International Plumbing Code, International Fuel Gas Code and/or International Residential Code and not less than two (2) hours of continuing education of manufacturers' installation of equipment or parts.

(2) Credit will be given for CE programs approved by the Plumbing Examining Committee or its designee.

(3) Except as provided herein these rules shall apply to every journeyman or contractor licensed by the Construction Industries Board.

(4) A licensee is exempt from the educational requirements of these rules for the code year during which he or she first passed an exam testing over that code.

(b) The following standards will govern the approval of continuing education programs by the Plumbing Examining Committee (Committee).

(1) The program must be offered by a provider having substantial, recent, experience in offering continuing education or demonstrated ability to organize and present effectively continuing education. Demonstrated ability arises partly from the extent to which individuals with trade training or educational experience are involved in the planning, instruction and supervision of the program.

(2) If written materials are provided, the materials must be thorough, high quality, readable, and must be made available to all participants at or before the time the course is presented.

(3) The program must be conducted in a comfortable physical setting which is conducive to learning.

(4) The program itself must be conducted by an individual or group qualified by practical or academic experience. The program including the named advertised participants must be conducted substantially as planned, subject to emergency withdrawals and alterations.

(5) Changes including but not limited to location, date, instructors, or cancellations must be requested from the Committee or its designee in writing prior to the start of class. All requests for change must include the Course ID number.

(6) The training location shall be outside the regular work place or after regular working hours.

(7) Sixty (60) minutes constitutes one (1) instructional hour.

(8) CE courses shall be presented in one of the following formats:

(A) Six instructional hours presented on one day

(B) Two sessions of three instructional hours each presented within a seven day period

(C) One session of two instructional hours for the purposes of presenting a manufacturers' installation course,

(D) An approved correspondence or online course, or

(E) Another format approved by the committee.

(9) Verification of Credit

(A) The Course Provider shall verify the total number of continuing education hours completed by each attendee.

(B) Continuing education providers shall require attendees to present a photo I.D. prior to the attendee signing the sign-in sheet provided by the Construction Industries Board. Sign-in sheets shall include the name and license number of each licensee in attendance.

(C) Each attendee shall complete a course evaluation on a form provided by the Construction Industries Board.

(D) As soon as practicable but in any event on or before seven (7) days following an approved education program, the provider shall furnish to the Examining Unit the original sign-in sheets and evaluations from the course.

(E) Providers must maintain copies of all sign-in sheets and evaluations for a period of two (2) years following the conclusion of the course.

(10) Course providers or instructors may not advertise or promote the sale of any goods, products or services between the opening and closing of any Continuing Education Course.

(c) Any organization desiring approval of a course shall apply to the Plumbing Examining Committee by submitting an application on a form to be obtained from the Construction Industries Board and supporting documentation at least thirty (30) days prior to the date for which the course is scheduled. An application is to be submitted for each date or set of dates that constitute a single class. Each class must be included on a separate application. The Committee or its designee will review each application for completeness of form and supporting documentation as well as course content. The applicant will be notified in writing by mail whether the program is approved or disapproved. Applicants denied approval of a course may appeal such a decision by submitting a letter of appeal to the Committee within fifteen (15) days of the receipt of the notice of disapproval. All appeals will be heard by the Committee at its next regularly scheduled meeting.

(1) Supporting documentation includes

(A) resumes or a brief summary of qualifications for all instructors providing instruction for the class,

(B) a class agenda designating beginning and ending of actual instructional times, sign-in times, breaks, lunches and evaluation time, and

(C) A class curriculum indicating the subject or code areas to be taught with sufficient detail to determine which code revisions are to be addressed or the product for which the installation is being provided.

(2) The Committee or its designee may refuse to accept any application for approval if the supporting documentation is insufficient or incomplete. The Committee may deny or revoke approval of an application for any of the following reasons:

(A) Failure to comply with the continuing education provisions;

(B) Inadequate application or supporting documentation;

(C) Failure to instruct on the topic approved, or

(D) Unsatisfactory evaluations of the course, instructor, or materials from previous classes.

(3) If an application is refused or disapproved, written notice detailing the basis of the decision shall be provided to the applicant.

(4) The Committee may at any time re-evaluate and grant or revoke approval of an application or course.

(A) The Committee may at any time review courses for quality in instruction. The Committee shall also investigate and take appropriate action, up to and including revocation of authority to provide CE, regarding complaints involving approved courses.

(B) A provider's failure to comply with any continuing education rule constitutes grounds for disciplinary action, up to and including revocation of authority to provide CE, against the provider or for denial of future applications for coursework.

(d) Course advertisement

(1) All advertising must include the course identification.

(2) Approved program courses may be advertised.

(3) The provider of an approved continuing education program may announce or indicate as follows: Course #_____ has been approved by the Construction Industries Board Plumbing Examining Committee for _____ hours of CE credit.

(e) Correspondence or online course approval.

(1) Entities seeking to offer correspondence courses for continuing education shall submit a course curriculum and study material for review and approval by the Committee prior to the courses being offered as continuing education. Approved correspondence courses shall be required to comply with all requirements for other continuing education courses except for sign-in sheets. Providers shall provide a student with a document of completion which certifies completion of approved correspondence courses.

(2) Only licensees meeting one or more of the following requirements may receive CE credit for taking an correspondence or online course:

(A) Any licensee residing outside of Oklahoma

(B) Who has an expired license that requires a CE course that is no longer available in the classroom,

(C) Any licensee who is currently incarcerated, or

(D) Any licensee who submits written proof to the Board from a physician stating the medical reason that the licensee is unable to attend a CE class.

(3) Providers are to offer reasonable accommodations for disabled licensees attending a course when such accommodations are requested.

(f) Alternate Credit accrual

(1) Credit may be earned through teaching in an approved continuing education class. The Committee may award up to six (6) hours of CE credit not to exceed the number of approved hours for that CE class.

(2) Credit may also be earned through teaching a course in an accredited trade school or a trade-specific program approved by the committee. The Committee may award up to six (6) hours of CE credit for each semester of academic credit awarded by the academic institution for the course.

[OAR Docket #08-1040; filed 05-23-08]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD
CHAPTER 40. ELECTRICAL INDUSTRY REGULATIONS

[OAR Docket #08-1041]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
158:40-1-3. License requirement.
158:40-1-4. Standard of installation.
Subchapter 5. Licensing Requirements, Display of License and Firm Name, and Bond Requirements
158:40-5-5. Bond and insurance requirements.
Subchapter 9. Examination Applications, Examinations and License and Registration Fees and Renewals
158:40-9-2. Examinations.
158:40-9-4. Continuing education.
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INCORPORATIONS BY REFERENCE:
"2008 National Electrical Code"

ANALYSIS:

158:40-1-4 This rule change establishes the 2008 National Electrical Code as the minimum standard for electrical installations in Oklahoma. The purpose of the rule in 158:40-5-2 is to eliminate the 30-day cancellation notice to the board. The Insurance companies have an automatic 10-day cancellation notice and this was interfering with the processing of licensure for the contractors. The purpose of the rules in 158:40-9-4 is to clarify the process for submitting and approving continuing education classes and the verification of completion and credit issued for the classes.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 26, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

158:40-1-3. License requirement

(a) No person, on behalf of himself or on behalf of an electrical firm, shall engage or offer to engage in, by advertisement or otherwise, any electrical work who does not possess a valid and appropriate license or registration from the Construction Industries Board pursuant to these rules.

(b) No person shall act as a foreman, supervisor or superintendent over any electrical work on behalf of an electrical contractor unless such person possesses a valid license as an electrical contractor or journeyman from the Construction Industries Board.

158:40-1-4. Standard of installation

The Construction Industries Board hereby incorporates the ~~2005~~2008 National Electrical Code [National Fire Protection Association Standard 70-05(NFPA 70-05)] as the minimum standard for electrical installations in Oklahoma.

SUBCHAPTER 5. LICENSING REQUIREMENTS, DISPLAY OF LICENSE, AND FIRM NAME, AND BOND REQUIREMENTS

158:40-5-5. Bond and insurance requirements

(a) Each active electrical contractor must furnish a license bond in the amount of $5,000.00 to the Bonds and Insurance Unit. This bond is to be a continuous bond with a thirty (30)-day cancellation notice. Such bond shall be conditioned upon faithful and lawful performance of all work entered upon by him within the State of Oklahoma and shall be for the benefit of persons injured or suffering financial loss by reason of failure of such performance. The bond will be filed with the Bonds and Insurance Unit of the Oklahoma Construction Industries Board and be in lieu of all other license bonds to any political subdivision.

(b) Each active electrical contractor must maintain insurance coverage and furnish and maintain in effect in the Bonds and Insurance Unit of the Oklahoma Construction Industries Board, Electrical Licensing Division, a certificate of insurance therefore which indicates that the electrical contractor has a comprehensive general liability policy including manufacturers and contractors, completed operations, and independent contractors liability coverage. Limits of liability are to be no less than $50,000.00 combined single limit for bodily injury and property damage. ~~The certificate of insurance shall provide for thirty (30) days notice to the Oklahoma Construction Industries Board, prior to cancellation or material alteration of the required insurance.~~

(c) Each active electrical contractor shall be aware of the requirements of Title 85 of the Oklahoma Statutes (Workers' Compensation Act and the Rules and Regulations of the Workers' Compensation Court of the State of Oklahoma, and indicate in the space provided on the application compliance therewith.)

(d) Failure to provide the complete information with current bond and insurance certificate will result in an inactive electrical contractor's license being issued until such time as the requirements are met. Failure to maintain the bond and insurance in force, as required, will result in the summary suspension of the electrical contractor's active license and the issuance of an inactive license to said electrical contractor.

(e) Electrical contractors shall pay all fines and penalties imposed by penalty orders of the Board and fines and penalties imposed by courts of competent jurisdiction for the violation of municipal ordinances. The Board may seek payment through the surety bond of any fines or penalties, which the licensee fails to pay.

(f) Exceptions. The bond and insurance requirement will be waived if the electrical contractor is employed by a corporation, partnership, public entity, or political subdivision and said corporation, partnership, public entity or political subdivision submits an affidavit on behalf of the contractor that the employee will only perform electrical work on property owned by said corporation, partnership, public entity, or political subdivision and the employer assumes all financial responsibility in lieu of the contractor providing bond and insurance. The affidavit must include a statement by the employer that the Board will be notified if the contractor is no longer employed by said employer, or if the employer no longer wishes to assume financial responsibility for the contractor.

SUBCHAPTER 9. EXAMINATION APPLICATIONS, EXAMINATIONS AND LICENSE AND REGISTRATION FEES AND RENEWALS

158:40-9-2. Examinations

(a) Electrical license examinations may include, without limitation, the following parts:

(1) Written questions, consisting of open book, closed book and problems, based on current National Electrical Code and other related questions; and

(2) Practical shop, which for contractors shall also include written questions on job estimating and the laws and regulations relating to electricians.

(3) The maximum grade value of each part of the examination shall be 100 points. A passing score is ~~70%~~ 75% or more on each part.

(4) Each applicant shall pay all examination and license fees before undertaking any examination. If the applicant fails to meet the minimum qualifications to take the examination, the application fee will be forfeited. Reexamination fees shall be the same as the initial examination fees.

(5) Applicants for a contractor license must be capable of reading without assistance.

(6) Unless authorized by the Administrator, only examinees shall be permitted in the examination area.

(7) Any applicant who fails a first examination must wait thirty (30) days before taking any other electrical examination. All subsequent failures will result in a waiting period of at least ninety (90) days.

(8) Applicants shall present positive identification before undertaking an examination.

(9) An examinee cheating or fraudulently representing an applicant shall immediately be expelled from the examination. A written record of the proceedings shall be made and become a part of the applicant's file. The Administrator shall determine when the applicant may retake the exam, which time shall be no fewer than 30 days and no longer than 365 days.

(b) Any previously certified examination may be used to meet an examination requirement.

158:40-9-4. Continuing education

~~(a) Continuing education hours. No electrical contractor or journeyman license shall be renewed unless the licensee has completed at least six (6) hours of continuing education on the revisions to the current, published edition of the National Electrical Code within one (1) year of adoption of the current, published National Electrical Code. For the license year beginning July 1, 2000, no electrical contractor or journeyman license may be renewed unless the licensee has completed at least six (6) hours of continuing education on the revisions incorporated in the 1999 edition of the National Electrical Code.~~

~~(b) Continuing education course approval. Organizations seeking to offer continuing education to licensees in compliance with the continuing education requirements of subsection (a) of this section shall, for each continuing education class or unit of instruction where continuing education credit is conferred upon attendees, submit to the Electrical License Unit an application for CEU approval with a $50.00 processing fee and be accompanied by an agenda or outline of the subject matter for each unit of instruction together with a list of the course instructors and their qualifications, prior to beginning instruction. Upon recommendation of the Committee and approval by the Board notice of course approval will be sent to the applying organization. Licensees shall not receive continuing education credit for attending code revision classes that have not been approved by the Board before beginning the class. After completion of the course, the entity shall submit sign-in sheets for all sessions. The sign-in sheets shall contain the signature and social security number or state electrical license number of each person in attendance. The entity shall verify the total number of continuing education hours completed by each attendee. All programs shall be presented as submitted unless the Board has approved changes. Changes to the program shall be submitted to the Board within 10 days of the training session for review by the committee. Failure to obtain approval of changes may result in loss of continuing education approval. Except the Board may approve continuing education earned outside of Oklahoma by licensees that has been approved by organizations in other states to fulfill the continuing education requirements of this section.~~

~~(c) Approval requirements for continuing education. All continuing education providers shall abide by the following requirements:~~

~~(1) All material and information presented shall pertain to the changes and use of the current adopted National Electrical Code.~~

~~(2) All courses shall be at least (2) two hours in length.~~

~~(3) The training location shall be outside the regular work place or after regular working hours.~~

~~(4) Each attendee shall complete a course evaluation on a form provided by Construction Industries Board. The entity shall return the completed evaluation forms to the Construction Industries Board with the sign-in sheets.~~

~~(d) Correspondence course approval. Organizations that propose to offer correspondence courses for continuing education in compliance with subsection (d) of this Section shall submit a class curriculum and study materials for approval by the Board prior to the class being accepted as meeting the requirements. Approved correspondence courses shall be required to comply with all requirements for continuing education courses except sign-in sheets. Providing the student with a document of completion shall certify completion of approved correspondence courses.~~

(a) **Continuing Education Requirements.**

(1) No Electrical contractor or journeyman license shall be renewed unless the licensee has completed at least six (6) instructional hours of continuing education on the revisions to the current, published edition of the National Electrical Code within one (1) year of adoption.

(2) Credit will be given for CE programs approved by the Electrical Examining Committee (Committee) or its designee.

(3) Except as provided herein these rules shall apply to every journeyman or contractor licensed by the Construction Industries Board.

(4) A licensee is exempt from the educational requirements of these rules for the code year during which he or she first passed an exam testing over that code.

(b) The following standards will govern the approval of continuing education programs by the Committee.

(1) The program must be offered by a provider having substantial, recent, experience in offering continuing education or demonstrated ability to organize and present effectively continuing education. Demonstrated ability

arises partly from the extent to which individuals with trade training or educational experience are involved in the planning, instruction and supervision of the program.

(2) If written materials are provided, the materials must be thorough, high quality, readable, and must be made available to all participants at or before the time the course is presented.

(3) The program must be conducted in a comfortable physical setting which is conducive to learning.

(4) The program itself must be conducted by an individual or group qualified by practical or academic experience. The program including the named advertised participants must be conducted substantially as planned, subject to emergency withdrawals and alterations.

(5) Changes including but not limited to location, date, instructors, or cancellations must be requested from the Committee or its designee in writing prior to the start of class. All requests for changes must include the Course ID number.

(6) The training location shall be outside the regular work place or after regular working hours.

(7) Each attendee of a continuing education course shall have, or otherwise be provided with, a copy of the most recently adopted edition of the National Electrical Code for use during the duration of the course.

(8) Sixty (60) minutes constitutes one (1) instructional hour.

(9) CE courses shall be presented in one of the following formats:

(A) Six instructional hours presented on one day

(B) Two sessions of three instructional hours each presented within a seven day period

(C) An approved correspondence or online course, or

(D) Another format approved by the committee.

(10) Verification of Credit.

(A) The Course Provider shall verify the total number of continuing education hours completed by each attendee.

(B) Continuing education providers shall require attendees to present a photo I.D. prior to the attendee signing the sign-in sheet provided by the Construction Industries Board. Sign-in sheets shall include the name and license number of each licensee in attendance.

(C) Each attendee shall complete a course evaluation on a form provided by the Construction Industries Board.

(D) As soon as practicable but in any event on or before seven (7) days following an approved education program, the provider shall furnish to the Examining Unit the original sign-in sheets and evaluations from the course.

(E) Providers must maintain copies of all sign-in sheets and evaluations for a period of two (2) years following the conclusion of the course.

(11) Course providers or instructors may not advertise or promote the sale of any goods, products or services between the opening and closing of any Continuing Education Course.

(c) Any organization desiring approval of a course shall apply to the Electrical Examining Committee by submitting an application on a form to be obtained from the Construction Industries Board and supporting documentation at least thirty (30) days prior to the date for which the course is scheduled. An application is to be submitted for each date or set of dates that constitute a single class. Each class must be included on a separate application. The Committee or its designee and the Construction Industries Board Administrator will review each application for completeness of form and supporting documentation as well as course content. The applicant will be notified in writing by mail whether the program is approved or disapproved. Applicants denied approval of a course may appeal such a decision by submitting a letter of appeal to the Committee within fifteen (15) days of the receipt of the notice of disapproval. All appeals will be heard by the Committee at its next regularly scheduled meeting.

(1) Supporting documentation includes:

(A) resumes or a brief summary of qualifications for all instructors providing instruction for the class,

(B) a class agenda designating beginning and ending of actual instructional times, sign-in times, breaks, lunches and evaluation time, and

(C) A class curriculum indicating the subject or code areas to be taught with sufficient detail to determine which code revisions are to be addressed.

(2) The Committee or its designee may refuse to accept any application for approval if the supporting documentation is insufficient or incomplete. The Committee may deny or revoke approval of an application for any of the following reasons:

(A) Failure to comply with the continuing education provisions;

(B) Inadequate application or supporting documentation;

(C) Failure to instruct on the topic approved, or

(D) Unsatisfactory evaluations of the course, instructor, or materials from previous classes.

(3) If an application is refused or disapproved, written notice detailing the basis of the decision shall be provided to the applicant.

(4) The Committee may at any time re-evaluate and grant or revoke approval of an application or course.

(A) The Committee or its designee shall be granted access to attend, observe and audit any continuing education course approved by the committee.

(B) The Committee may at any time review courses for quality in instruction. The Committee shall also investigate and take appropriate action, up to and including revocation of authority to provide CE, regarding complaints involving approved courses.

(C) A provider's failure to comply with any continuing education rule constitutes grounds for disciplinary action, up to and including revocation of authority to provide CE, against the provider or for denial of future applications for coursework.

(d) Course Advertisement.

(1) All advertising must include the course identification.

(2) Approved program courses may be advertised.

(3) The provider of an approved continuing education program may announce or indicate as follows: Course # _____ has been approved by the Construction Industries Board Electrical Examining Committee for _____ hours of CE credit.

(e) Correspondence or Online course approval.

(1) Providers seeking to offer correspondence or online courses for continuing education shall submit a course curriculum and study material for review and approval by the Committee or its designee and the Construction Industries Board Administrator prior to the courses being offered as continuing education. Approved correspondence courses shall be required to comply with all requirements for other continuing education courses except for sign-in sheets. Providers shall provide a student with a document of completion that shall certify completion of an approved correspondence or online course.

(2) Providers are to offer reasonable accommodations for disabled licensees attending a course when such accommodations are requested.

(f) Alternate Credit accrual.

(1) Credit may be earned through teaching in an approved continuing education class. The Committee may award up to six (6) hours of CE credit not to exceed the number of approved hours for that CE class.

(2) Credit may also be earned through teaching a course in an accredited trade school or a trade-specific program approved by the committee. The Committee may award up to six (6) hours of CE credit for each semester of academic credit awarded by the academic institution for the course.

[OAR Docket #08-1041; filed 05-23-08]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD
CHAPTER 50. MECHANICAL INDUSTRY REGULATIONS

[OAR Docket #08-1042]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. License Types, Limitations of Licenses, Contractor Special Requirements and Display of License Number and Firm Name
158:50-5-3. Bond and insurance requirements [AMENDED]
Subchapter 9. Qualifications for Mechanical Licensure, License and Registration Fees, Duration of License, Mechanical License Application, and Apprentice Registration
158:50-9-7. Continuing Education [AMENDED]

AUTHORITY:
Construction Industries Board; 59 O.S. §§ 1000 through 1023.1 et seq. and 1850.1-1860 et seq.

COMMENT PERIOD:
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Failure of the legislature to disapprove these rules results in the approval on May 16, 2008

FINAL ADOPTION:
May 16, 2008

EFFECTIVE:
June 26, 2008

INCORPORATIONS BY REFERENCE:
"n/a"

ANALYSIS:
The purpose of the rule in 158:50-5-3 is to eliminate the 30-day cancellation notice to the board. The Insurance companies have an automatic 10-day cancellation notice and this was interfering with the processing of licensure for the contractors. The purpose of the rules in 158:30-9-7 is to clarify the process for submitting and approving continuing education classes and the verification of completion and credit issued for the classes.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 26, 2008:

SUBCHAPTER 5. LICENSE TYPES, LIMITATIONS OF LICENSES, CONTRACTOR SPECIAL REQUIREMENTS AND DISPLAY OF LICENSE NUMBER AND FIRM NAME

158:50-5-3. Bond and insurance requirements

(a) **Bond.**

(1) A corporate surety bond, (the "bond") in the sum of five thousand dollars ($5,000.00) payable to the Oklahoma Construction Industries Board and approved by the Administrator shall be permanently deposited with the Bonds and Insurance Unit prior to the issuance of the mechanical contractor's license.

(2) Said bond shall be executed by the applicant for the contractor's license and by a surety authorized to do business in the State of Oklahoma, and shall be a continuous bond with a 30 day cancellation notice to the Board.

(3) Said bond shall be in lieu of filing a bond with each municipality where the contractor works and shall be conditioned upon all of the following terms:

(A) The mechanical contractor, his agents and employees shall faithfully and properly conduct business in compliance with all the applicable provisions of ordinances and provisions of the municipality in which he is performing mechanical work;

(B) The mechanical contractor shall pay all fines and penalties imposed by courts of competent jurisdiction for the violation of said ordinances or provisions. The Board may seek payment through the surety bond of any fines or penalties, which the licensee fails to pay.

(C) The mechanical contractor shall protect, save harmless and indemnify the municipality and the state against any liability imposed by law against said municipality or state for the negligence of said contractor, his agents or employees, which arises from any act or omission of said individuals engaged in work pursuant to the Mechanical Licensing Act;

(D) Any person aggrieved may bring an action upon the bond for the recovery of the penalty thereof to the same extent and with equal rights as though such aggrieved person had been named as the obligee in the bond.

(b) **Insurance.** A mechanical contractor shall provide proof of financial responsibility by providing a certificate of insurance, which indicates a minimum general liability policy of $50,000. ~~The certificate shall include a 30 day cancellation notice to the Board.~~

(c) **Exceptions.** The bond and insurance requirement will be waived if:

(1) The mechanical contractor wishes to be inactive. A contractor may choose to place his license on inactive status and may practice as a journeyman but shall not practice as an active contractor. The inactive contractor can obtain an active license at any time if his inactive license is valid the bond and insurance requirements are met; or

(2) The mechanical contractor is employed by a corporation, partnership, public entity, or political subdivision and said corporation, partnership, public entity or political subdivision submits an affidavit on behalf of the contractor that the employee will only perform mechanical work on property owned by said corporation, partnership, public entity, or political subdivision and the employer assumes all financial responsibility in lieu of the contractor providing bond and insurance. The affidavit must include a statement by the employer that the Board will be notified if the contractor is no longer employed by said employer, or if the employer no longer wishes to assume financial responsibility for the contractor.

SUBCHAPTER 9. QUALIFICATIONS FOR MECHANICAL LICENSURE, LICENSE AND REGISTRATION FEES, DURATION OF LICENSE, MECHANICAL LICENSE APPLICATION, AND APPRENTICE REGISTRATION

158:50-9-7. Continuing Education

~~(a) **Continuing education hours.** For the license year beginning July 1, 2005, no mechanical contractor or journeyman license shall be renewed unless the licensee has completed at least six (6) hours of continuing education within one (1) year of adoption of the current, published revisions of the International Mechanical Code, International Fuel Gas Code, and International Residential Code. At least four (4) hours must consist of training on the revisions of the International Mechanical Code, International Fuel Gas Code, and International Residential Code. Not more than two (2) hours of continuing education may consist of manufacturer provided training in the installation of equipment or parts.~~

~~(b) **Continuing education course approval.** Entities seeking to offer continuing education courses to licensees must submit an application for approval to the Mechanical Licensing Unit prior to beginning instruction. The application shall include an outline or other synopsis of the subject matter for each unit of instruction, and a list of the course instructors with their qualifications. Upon recommendation of the Committee and approval by the Board, notice of the course approval will be sent to the applying entity. Licensees shall not receive credit for attending courses that have not been approved by the Board prior to the beginning of the course. All courses shall be presented as approved unless changes are submitted to the Mechanical Licensing Unit for consideration prior to the beginning of the course. Failure to obtain approval of changes may result in the loss of continuing education approval. After completion of the course, the entity shall submit sign-in sheets for all sessions. The sign-in sheets shall contain the signature and state mechanical license number of each person in attendance. Continuing education providers shall require attendees to present a photo I.D. prior to the attendee signing the sign-in sheet. The entity shall verify the total number of continuing education hours completed by each attendee. The Board may approve continuing education earned outside of Oklahoma if the course is approved by another state for continuing education in that state.~~

~~(c) **Approval requirements for continuing education.** All continuing education providers shall abide by the following requirements:~~

~~(1) Materials and information presented shall pertain to the use of the current adopted International Mechanical Code, International Fuel Gas Code, and International Residential Code or manufacturer provided training in the installation of equipment or parts that is relevant to the licensee's category of licensure.~~

~~(2) All courses shall be at least two (2) hours in length.~~

~~(3) The training location shall be outside the regular work place or after regular working hours.~~

~~(4) All attendees shall complete a course evaluation on a form provided by the Board. The entity shall return the completed evaluation forms to the Board with the sign-in sheets.~~

~~(5) Continuing education from manufacturers with a certificate of completion may be approved with a copy of the certificate.~~

~~(d) **Correspondence course approval.** Entities seeking to offer correspondence courses for continuing education shall submit a course curriculum and study material for review by the Committee and approval by the Board prior to the courses being accepted as continuing education. Approved correspondence courses shall be required to comply with all requirements for other continuing education courses except for sign-in sheets. Providing a student with a document of completion shall certify completion of approved correspondence courses~~

(a) **Continuing Education Requirements:**

(1) Within one year from the date of adoption of the appropriate code, and thereafter, no license will be renewed unless the licensee has completed 6 hours of continuing education. Continuing education shall consist of 6 hours training in the International Mechanical Code, International Fuel Gas Code and/or International Residential Code(as applicable pursuant to Mechanical Industry Regulations promulgated under this chapter) emphasizing revisions of the code or 4 hours training emphasizing revisions of the codes and 2 hours of manufacturer provided training in the installation of equipment and parts.

(2) Credit will be given for CE programs approved by the Mechanical Examining Committee, or its designee.

(3) Except as provided herein, these rules shall apply to every journeyman or contractor licensed by the Construction Industries Board.

(4) A licensee is exempt from the education requirements of these rules for the code year during which the licensee first passed an exam testing over the code.

(b) **Standards.** The following standards will govern the approval of continuing education programs by the Mechanical Examining Committee.

(1) The program provider shall submit evidence that the provider and instructional staff are qualified by reason of education, experience or training. The training provider and instructors will be of good reputation and of good moral character.

(2) Any written material that is distributed during the session shall be readable, of high quality and shall be made available to all attendees.

(3) The program shall be presented in a comfortable location such as hotel/motel conference room, corporate meeting room, or regular classroom.

(4) The training session shall be presented outside the regular workplace or after regular working hours. An on-site conference room, that meets standards imposed by number 3 above, shall be considered outside the regular workplace.

(5) Sixty minutes shall constitute one instructional hour.

(6) CE courses shall be presented in one of the following formats.

(A) Six instructional hours presented in one day.

(B) Two sessions of three instructional hours each presented within a seven day period.

(C) One session of two instructional hours for the purpose of presenting a manufacturer's installation course.

(D) An approved correspondence course.

(E) Another format approved by the Committee.

(7) **Verification of Credit.**

(A) The Course Provider shall verify the total number of continuing education hours completed by each attendee.

(B) Continuing education providers shall require attendees to present a photo I.D. prior to the attendee signing the sign-in sheet provided by the Construction Industries Board. Sign-in sheets shall include the name and license number of each licensee in attendance.

(C) Each attendee shall complete a course evaluation on a form provided by the Construction Industries Board.

(D) As soon as practicable but in any event on or before seven (7) days following an approved continuing education program, the provider shall furnish the original sign-in sheets and evaluations from the course to the Examining Unit of the Construction Industries Board.

(E) Providers shall maintain copies of all sign-in sheets and evaluations for a period of two (2) years following the conclusion of the course.

(8) Course providers or instructors may not advertise or promote the sale of any goods, products or services between the opening and closing of any Continuing Education Course.

(c) **Application Procedures.**

(1) A completed application form, with all supporting documentation, shall be submitted to the Construction Industries Board at least 30 days prior to the scheduled start date.

(A) Supporting documents shall include the following.

(i) A resume or brief summary of qualifications of all course developers and instructors.

(ii) A course agenda designating the beginning and ending of actual instruction times, sign-in times, breaks, lunches and evaluation time.

(iii) A course curriculum indicating the subject or code areas to be taught with sufficient detail to determine which code revisions are to be addressed or the product for which the installation is being provided.

(2) An application is to be submitted for each date, or dates, that constitute a single course.

(3) Each course must be included on a separate application.

(d) **Mechanical Examining Committee Acceptance.**

(1) The Committee, or its designee, will review each application for completeness of form and supporting documentation, as well as course content.

(2) The approval of any course will be made by a majority vote of the Committee at the regularly scheduled meeting of the Mechanical Examining Committee.

(3) The Committee's designee may approve additional dates and locations after the course has been approved by

Committee vote. Substantive change to course content must be brought before the Committee.

(4) The applicant will be notified in writing whether the program is approved or disapproved, detailing the basis of the decision if disapproved.

(e) **Committee Rejection and Reevaluation of a Course.**

(1) The Committee, or its designee, may refuse to accept any application for approval if the supporting documentation is insufficient or incomplete. The Committee may deny or revoke approval of an application for any of the following reasons.

(A) Failure to comply with the continuing education provisions.

(B) Inadequate application or supporting documentation.

(C) Failure to instruct on topic approved.

(D) Inadequate experience of program developer or instructor.

(E) Unsatisfactory evaluation of the course instructor or materials from previous classes.

(2) The Committee may, at any time, re-evaluate and grant or revoke approval of application or course.

(A) The Committee may, at any time, review courses for quality of instruction. The Committee may also investigate complaints regarding approved courses. The Committee may then take appropriate action, up to and including revocation of authority to provide CE courses.

(B) A provider's failure to comply with any continuing education rule constitutes grounds for disciplinary action, up to and including revocation of authority to provide CE, against the provider or for denial of future applications for course work.

(3) The Committee, or its designee, will notify the provider, in writing, of any changes in approval status.

(f) **Appeals.**

(1) Applicants denied approval of a course may appeal such a decision by submitting a written letter of appeal to the committee within fifteen days of the receipt of the notice.

(2) All appeals will be heard by the Committee at its next regularly scheduled meeting.

(g) **Course Presentation.**

(1) The program, including the named advertised participants, shall be conducted as approved by the committee, subject to emergency withdrawals and minor alterations.

(2) Changes including but not limited to location, date, instructors, or cancellations must be requested from the Committee, or its designee, in writing prior to start of class. All requests for change must include the course ID number.

(h) **Course Advertisement.**

(1) All advertising must include the course ID number.

(2) Approved program courses may be advertised.

(3) The provider of an approved continuing education program may announce or indicate as follows: Course # has been approved by the Construction Industries Board Mechanical Examining Committee for hours of CE credit.

(i) **Correspondence and Online Courses.**

(1) Applications, approvals and rejections, and appeals of all correspondence and online courses shall be the same as for classroom-based courses.

(2) Correspondence courses shall be required to comply with all requirements of continuous education courses, except sign-in sheets.

(3) Providers of an on-line course shall submit verification of six (6) hours of real time on-line instruction.

(4) Course providers shall provide a student with a document of completion which certifies completion of approved correspondence course.

(j) **Alternate Credit Method.** Credit may be earned through teaching an approved continuing education course. The Committee may award up to six hours of CE credit, not to exceed the number of approved hours for that CE course.

[OAR Docket #08-1042; filed 05-23-08]

TITLE 165. CORPORATION COMMISSION CHAPTER 20. GAS & HAZARDOUS LIQUID PIPELINE SAFETY

[OAR Docket #08-890]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Pipeline Assessments
165:20-3-1. Pipeline assessments [AMENDED]
AUTHORITY:
Article IX, §§ 18, 19, Oklahoma Constitution,52 O.S. §§ 5, 47.3; Corporation Commission
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Submitted to the House:
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Final Adoption:
April 17, 2008
Effective Date:
July 1, 2008
SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
The adopted rules impose a fee increase in the assessment rate charged to regulated pipeline facilities which will occur in increments spread out over the next five years. The increase will provide the funding required for the

Commission's inspection of gas and hazardous liquids pipelines and for the enforcement of federal regulations in regard to the operation of those pipelines.
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, 2008:

SUBCHAPTER 3. PIPELINE ASSESSMENTS

165:20-3-1. Pipeline assessments

(a) **Application.** Every operator of a pipeline subject to the jurisdiction of the Commission for pipeline safety shall pay assessments to the Commission as set forth in the provisions of this Section.

(b) **Calculation.** For purposes of this Section, the rate of assessment shall be determined on the basis of each operator's total number of miles of pipeline during any given assessable year within the state, subject to the jurisdiction of the Commission for pipeline safety, as follows:

(1) For gas pipelines as established by 165:20-5-21(1): ~~Each operator having more than thirteen one-third (13 a) miles of pipe subject to the provisions of this Section during the assessable year, the rate of assessment shall be fifteen dollars ($15.00) per mile.~~ The assessment for the following fiscal years shall be:

(A) FY2009: $20.00 per mile of pipeline subject to the provisions of this Section during the assessable year.

(B) FY2010: $22.50 per mile of pipeline subject to the provisions of this Section during the assessable year.

(C) FY2011: $22.50 per mile of pipeline subject to the provisions of this Section during the assessable year.

(D) FY2012: $25.00 per mile of pipeline subject to the provisions of this Section during the assessable year.

(E) FY2013 and thereafter: $25.00 per mile of pipeline subject to the provisions of this Section during the assessable year.

(2) For hazardous liquid pipelines as established by 165:20-7-1(a): ~~For each operator having pipelines more than six and two thirds (6 2/3) miles of pipe subject to the provisions of this Section during the assessable year, the rate of assessment shall be thirty dollars ($30.00) per mile.~~ The assessment for the following fiscal years shall be:

(A) FY2009: $45.00 per mile of pipeline subject to the provisions of this Section during the assessable year,

(B) FY2010: $60.00 per mile of pipeline subject to the provisions of this Section during the assessable year,

(C) FY2011: $60.00 per mile of pipeline subject to the provisions of this Section during the assessable year,

(D) FY2012: $75.00 per mile of pipeline subject to the provisions of this Section during the assessable year,

(E) FY2013 and thereafter: $75.00 per mile of pipeline subject to the provisions of this Section during the assessable year.

(3) For each operator subject to paragraphs (b)(1) or (b)(2) of this Section, the minimum assessment owed by each operator is $200.00. ~~that have mileage equal to or less than the specified amounts found in those paragraphs: The rate of assessment shall be two hundred dollars ($200.00), regardless of actual pipe mileage.~~

(c) **Payment.**

(1) For purposes of payment of assessment, an assessable year shall be the period of time from the first day of January of any given calendar year to the 31st of December of the same calendar year.

(2) All operators who must pay annual assessments under the provisions of this Section shall pay their annual assessment for any given year on or before the 15th of August following the assessable year.

(3) Operators who purchase or acquire pipeline systems subject to an annual assessment, after the assessable year, are responsible for payment of the assessment.

(4) All payments of assessments shall be deposited by the Commission in the "Corporation Commission Revolving Fund".

[OAR Docket #08-890; filed 5-15-08]

TITLE 165. CORPORATION COMMISSION
CHAPTER 25. UNDERGROUND STORAGE TANKS

[OAR Docket #08-891]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 25. Underground Storage Tanks [AMENDED]
AUTHORITY:
Oklahoma Corporation Commission
Article IX, §§18, 19 Oklahoma Constitution
17 O.S. §301 *et seq.*; 27A O.S. § 1-1-201 *et seq.* and § 1-3-101 *et seq.*; 42 U.S.C. § 6991 *et seq.*
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Effective Date:
July 1, 2008
SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
Incorporated standards:
Recommended Practice 1637, "Using the APPI Color Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals". [NEW]
~~PEI/RP 100-2000~~, RP 100 "Recommended Practices for Installation of Underground Liquid Storage Systems". [AMENDED]
RP 400-02, "Recommended Procedure for Testing Electrical Continuity of Fuel Dispensing Hardware". [NEW]
RP 500-05, "Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment". [NEW]
RP 900-07, "Recommended Practices for the Inspection and Maintenance of UST Systems". [NEW]
STIP3, "Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks". [NEW]
STI-R892-91, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems". [NEW]
~~STI-F894-91~~ STI-R894-91, "Specification for External Corrosion Protection of FRP Composite Underground Steel Storage Tanks". [AMENDED]
RP-972-01, "Recommended Practice for the Addition of Supplemental Anodes to STI-P3 USTs". [NEW]
~~American Society for Testing and Materials, ASTM Designation: E 1739-95, "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites".~~ [REVOKED]
Incorporating rules:
165:25-2-2
Availability:
8:00 a.m. to 5:00 p.m., Monday through Friday at the Office of General Counsel, Oklahoma Corporation Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73105, (405) 521-4255.
ANALYSIS:
The Federal Energy Act of 2005 necessitated operator training and certain State legislative changes, as well as comments by industry, necessitated these changes be made.
CONTACT PERSON:
Jeffrey Southwick 522-4457.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 3. DEFINITIONS

165:25-1-11. Definitions

In addition to the terms defined in 17 O.S. § 303, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

~~**"ANSI"** means the American National Standards Institute.~~

~~**"API"** means the American Petroleum Institute.~~

~~**"ASTM"** means the American Society for Testing and Materials.~~

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Airport" means landing facility for aircraft that is are routinely available for public use (whether routinely used or not). Airports as used in this Chapter do not include private airstrips or private airports.

~~**"Ancillary equipment"** means any device including, but not limited to devices such as piping, fittings, flanges, valves, and pumps that are used to distribute, meter, or control the flow of regulated substances to or from an underground storage tank.~~

"ATG" means automatic tank ~~gauging~~ gauge.

~~**"Backfill"** is the material that is placed in a tank and/or piping excavation to support and separate the tank and/or piping, from the natural environment.~~

~~**"Beneath the surface of the ground"** means beneath the ground's surface or otherwise covered with materials so that physical inspection is precluded or impaired.~~

"BTEX" means benzene, toluene, ethylbenzene and xylene.

"Bulk plant" means a petroleum storage tank facility where gasoline, aviation fuel, diesel and/or volatile blending materials used in motor fuels, like kerosene and ethanol, are received by tank vessels, ~~pipelines,~~ tank cars or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distribution by a tank vessel, ~~pipeline,~~ tank car, tank vehicle, portable tank or other container, for wholesale or retail sale.

"Cathodic protection" means a technique designed to prevent the corrosion of a metal surface by making that surface the cathode of an electrochemical cell. ~~For example, protection can be accomplished with an impressed current or galvanic anode system.~~

~~**"Change in service"** means discontinuing the use of a petroleum storage tank system for purposes regulated by the Commission.~~

"Commission" means the Oklahoma Corporation Commission (OCC) and includes its designated agents or representatives.

~~**"Compatible"** means the ability of two or more substances to maintain their respective physical properties upon contact with one another for the design life of the petroleum storage tank system under conditions likely to be encountered in the system.~~

"Construction tank" means a fuel tank used for ~~a limited period of time~~ twelve months or less at a construction site.

~~**"Contaminants"** or **"contamination"** means concentrations of chemicals at levels that may cause adverse human health or environmental effects and/or nuisance conditions.~~

~~**"Corrosion expert"** means a person who has knowledge of the physical sciences and principles of engineering and mathematics, acquired by education and/or experience, and is qualified to engage in the practice of corrosion control on buried or submerged metal tanks and metal piping systems. The person must be NACE certified or be a Registered Professional Engineer who has education and experience in~~

~~corrosion control of buried or submerged metal tanks and metal piping systems.~~

~~**"Corrosion technician"** or **"cathodic protection tester"** means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure to soil potential, and component electrical isolation measurements of buried metal piping and tank systems.~~

~~**"Dielectric material"** means a material that does not conduct direct electric current. Dielectric coatings are used to electrically isolate portions of tank systems under or in contact with the ground. Dielectric bushings are used to electrically isolate portions of the underground storage tank system (e.g., tank from piping).~~

"Division" means the Petroleum Storage Tank Division (PSTD) of the Corporation Commission.

"EPA" means the United States Environmental Protection Agency.

~~**"Excavation zone"** or **"excavation area"** means the volume containing the underground storage tank system and backfill materials, bounded by the ground surface, walls, and floor of the pit and trenches into which the underground storage tank system is placed at the time of installation.~~

"Farm tank" ~~means the planting, growing, cultivation and harvesting of shrubs, flowers, trees and other plants for sale. Farms also include ranching and dairy operations. Rural residential or non-commercial agricultural tanks are not included.~~ is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes but is not limited to fish hatcheries, rangeland, and nurseries with growing operations.

~~**"Flammable liquids"** means all grades of gasoline, kerosene, diesel fuel, and aviation fuel having a vapor pressure not exceeding forty (40) pounds per square inch (psi) absolute at one hundred (100) degrees Fahrenheit.~~

~~(A) Class I liquids.~~

~~(i) Class IA liquids have flash points below 73 degrees Fahrenheit and boiling points below 100 degrees Fahrenheit.~~

~~(ii) Class IB liquids have flash points below 73 degrees Fahrenheit and boiling points at or above 100 degrees Fahrenheit.~~

~~(iii) Class IC liquids have flash points at or above 73 degrees Fahrenheit and boiling points below 100 degrees Fahrenheit.~~

~~(B) Class II liquids. Class II liquids have flash points at or above 73 degrees Fahrenheit and below 140 degrees Fahrenheit.~~

~~(C) Class III liquids.~~

~~(i) Class IIIA liquids have flash points at or above 140 degrees Fahrenheit and below 200 degrees Fahrenheit.~~

~~(ii) Class IIIB liquids have flash points at or above 200 degrees Fahrenheit.~~

"Fleet and Commercial" means any facility as defined in this Chapter that uses underground storage tanks to store ~~gasoline or diesel fuel~~ regulated substances for use in its own vehicles or equipment. This definition extends to facilities that provide oil change and lube services to consumers.

"Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of material during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction to the process or for the storage of finished products or by-products from the production process.

~~**"Generation facilities"** means those tanks that are permanently installed, which routinely contain fuel to be used in emergency generators in the event of a power failure.~~

~~**"Impervious barrier"** means a barrier of sufficient thickness, density, and composition that is impenetrable to a regulated substance, has a permeability of at least 1 X 10^{-6} cm/sec., and will prevent the discharge into the environment of any regulated substance for a period of at least as long as the maximum anticipated time during which the regulated substance will be in contact with the impervious material.~~

~~**"In service"** means a petroleum storage tank that contains a regulated substance, and/or has a regulated substance regularly added to or withdrawn from it.~~

"Marina" means any fuel storage facility located by the water for the purpose of fueling watercraft.

~~**"Monitor well"** means a piezometer or other cased and screened excavation, boring or drilled hole, installed in any way that can be used for the continuous or periodic evaluation of groundwater quality or the detection of soil vapors.~~

~~**"Operational life"** means the period beginning from the time installation of the tank or system is commenced until it is properly closed or removed as provided for in this Chapter.~~

~~**"Out of service"** means an underground storage tank or system that:~~

~~(A) Is not in use (i.e., does not have regulated substances added to or withdrawn from the tank system); and~~

~~(B) Is intended to be placed back in service.~~

~~**"Overfill"** means a release that occurs when an underground storage tank is filled beyond its capacity.~~

~~**"Person in charge"** means the owner or person designated by the owner or operator as the one with direct supervisory responsibility for an activity or operation at a petroleum storage tank system or facility.~~

~~**"Positive sampling, testing, or monitoring results"** means the results of sampling, testing, or monitoring using any of the release detection methods described in this Chapter that indicate that a release from an underground storage tank system may have occurred.~~

"Private airport" means an airport used only by its owner and regulated as a fleet and commercial facility.

"Private airstrip" means a personal residential takeoff and landing facility part of the airstrip owner's residential property.

"PST" means petroleum storage tank.

"PSTD" means Petroleum Storage Tank Division.

"Public Utility" means any entity providing gas, electricity, water, or telecommunications services for public use.

"Regulated substance" means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel. It does not include compressed natural gas.

"Release detection" means determining whether a release of regulated substances has occurred from a petroleum storage tank or system into the environment or into the interstitial area between the underground storage tank system and its secondary barrier.

~~**"Repair"** means to restore a tank or petroleum storage tank system component that has caused a release of product from the petroleum storage tank system.~~

"Residential tank" ~~means an underground storage~~ is a tank ~~or system~~ located on ~~the~~ property ~~where contents are~~ used ~~by the residential occupants of the property~~ primarily for dwelling purposes.

~~**"Responsible person"** means a person other than a petroleum storage tank system owner or operator, such as an adjacent property owner, impacted party, or city, seeking corrective action of real property, and submits itself to the jurisdiction of the Commission.~~

"Retail facility" means a service station, convenience store or any other facility that is open to the general public.

~~**"Sacrificial anode"** means a device used to reduce or prevent corrosion of a metal in an electrolyte by galvanic coupling to a more anodic metal.~~

~~**"Secondary containment"** means a system installed around an underground storage tank or system that is designed to prevent a release from migrating beyond the secondary containment system outer wall (in the case of a double-walled tank system) or excavation area (in the case of a liner or vault system) before the release can be detected. Such a system may include, but is not limited to, impervious barriers (both natural and synthetic), double walls, or vaults.~~

~~**"Source of ignition"** means flammable tobacco products or smoking materials, lighters or operating internal combustion engines and includes fixed sources of ignition like open flame heaters, pilot lights, electric heating elements or electric motors with exposed brushes or any machinery that produces exposed sparks while in operation.~~

~~**"TCLP"** means toxicity characteristic leaching procedure, a test procedure for determining if a solid waste is hazardous because it exhibits toxicity characteristics as enforced under Resource Conservation and Recovery Act.~~

"Tank tightness testing" or **"precision testing"** means a procedure for testing an underground storage tank system's ability to prevent an inadvertent release of any stored regulated substances into the environment.

"Temporary closure" or "TOU" means the status of an underground storage tank system that has been taken out of service.

"TPH" means total petroleum hydrocarbons.

"Underground storage tank" or **"UST "** or **"tank"** means a regulated storage tank that has ten percent or more of its volume beneath the surface of the ground.

"Underground storage tank system" means an underground storage tank and any connected aboveground or underground piping, dispensers, and ancillary equipment or transport truck connected to the storage tank system.

"Used Motor Oil" is any spent oil removed from a motor vehicle ~~or similar petroleum substance that has been refined from crude oil or synthetic oil; used for its designed or intended purposes, and contaminated as a result of such use by physical or chemical impurities~~.

PART 5. SCOPE OF RULES

165:25-1-21. Overview of applicability and enforcement

This Chapter applies to ~~the~~ owners~~,~~ and operators of all underground storage tank systems for which the Commission has been given regulatory responsibility by 27A O.S. (Supp. 1999) § 1-3-101 (E) (5) (b) and 17 O.S. § 301 et seq.~~, which includes tanks that contain gasoline, kerosene, diesel or aviation fuel, including but not limited to tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities as well as pumps, hoses, dispensers, automatic gauging systems, and other ancillary equipment.~~

165:25-1-23.1. Specified applications

he following classes of underground storage tanks or systems are subject to ~~specified~~ specific regulations of this Chapter as follows:

(1) Airport hydrant fuel distribution systems are subject to release reporting, investigation, response and corrective action requirements only.

(2) Emergency power generator tanks are not subject to release detection requirements; owners and operators of these systems must comply with all other requirements of this Chapter.

165:25-1-24. Exclusions

The following classes of underground storage tanks or systems are specifically excluded from all provisions of this Chapter:

(1) ~~Agricultural~~ Farm and residential tanks with ~~a~~ an individual capacity of 1,100 gallons or less used for storing motor fuels for non-commercial purposes.

(2) Tanks used for storing heating oil for consumptive use on the premises where stored.

(3) Underground storage tank systems storing hazardous wastes regulated under Subtitle C of the Resources Conservation and Recovery Act (RCRA) or substances regulated as hazardous wastes under the Oklahoma Hazardous Waste Disposal Act. This exclusion does not apply to underground storage tank systems storing a regulated substance mixed with a de minimus quantity of hazardous substance as defined under RCRA, since such systems remain subject to all provisions of this Chapter.

(4) Pipeline facilities (including gathering lines) regulated under:

(A) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App., § 1671 et seq.);

(B) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App., § 2001 et seq.); or

(C) Intrastate pipeline facilities regulated under State law comparable to the provisions of law referred to in (A) or (B) of this paragraph.

(5) Flow-through process tanks.

(6) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(7) Tanks with a capacity of less than 110 gallons.

(8) Tanks storing diesel fuel at plants regulated by the Atomic Energy Commission.

(9) Tanks with a de minimis concentration of regulated substances, such as swimming pools and coffins.

(10) ~~Tanks that serve as emergency backup tanks, provided that they hold regulated substances for only a short period of time and are~~ Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

PART 6. ADMINISTRATIVE PROVISIONS

165:25-1-27. Changes to rules [REVOKED]

~~The adoption of this Chapter does not preclude the Commission from subsequently altering, amending, or changing the Chapter after proper notice and hearing. The Commission may amend this Chapter upon application of any person or upon its own application.~~

165:25-1-28. Variances

~~(a)~~ A variance to a provision of this Chapter may be granted by the Commission after application, notice and hearing. ~~, any time enforcement of the provision would impose a significant expense without furthering the purpose of the provision.~~

~~(b) Variances may be granted to help citizens avoid being caught between the conflicting rules of different agencies.~~

165:25-1-30.1. Consultation of Petroleum Storage Tank Division

At a tank owner's request, ~~the Petroleum Storage Tank Division~~ PSTD will confer with a tank owner planning a new ~~installation~~ facility or ~~a reconfiguration of~~ changes to an existing ~~installation~~ facility to assure the tank owner of compliance ~~in advance of the change or possible variances from this chapter~~.

PART 9. NOTIFICATION AND REPORTING REQUIREMENTS

165:25-1-41. General reporting requirements

~~The Commission~~ PSTD may require owners~~,~~ or operators~~,~~ of underground storage tank systems to provide information it deems necessary for the protection of human health, property and the environment. Use of the designated OCC form(s) is required for scheduling, tank registration, change in ownership, monthly release detection, testing, temporary change in service, permanent closure, or return to service. These forms are available at the OCC website, PSTD webpage: www.occeweb.com, follow link to Petroleum Storage Tank Division and link to PSTD Compliance Forms.

165:25-1-42. New tank systems

(a) Persons intending to install a new underground storage tank and/or new underground piping must give ~~the Petroleum Storage Tank Division~~ PSTD notification of the installation at least 24 hours before the tank and/or lines are to be installed by submitting the OCC scheduling notification form.

(b) Upon receipt of the scheduling form an authorization letter giving temporary approval to receive fuel into an un-permitted tank will be sent to the owner. This letter will expire 90 days after the date of issuance. After the tank installation is complete, the OCC registration form must be submitted to PSTD with copies ~~Owners of all new underground storage tank systems must notify the Commission of a new installation before any fuel is dispensed at a facility. The notice must be given on a form specified by the Commission and include at a minimum, the date of installation, the location, type of tank construction and piping construction, size of tank installed, the type of release detection method utilized, and the type of regulated substance being stored. Copies~~ of the tank tightness ~~testing~~, line tightness ~~testing~~, and line leak detector testing performed at installation ~~must be submitted with the notification form~~ within 30 days in order to receive a tank permit.

(c) Owners ~~of new systems~~ and Commission-licensed UST Installers must certify~~, either in~~ on the ~~notification~~ registration form that ~~or attachments to the form, the following:~~

~~(1)~~ The installation of tanks and piping meet the requirements of this Chapter.

~~(2) Corrosion protection of the tank system meets the requirements of this Chapter.~~

~~(3) The release detection method utilized meets the requirements of this Chapter.~~

~~(4) If monitoring wells are the selected method of leak detection, the plans for their placement must be approved by the Petroleum Storage Tank Division before they are installed. The installation and use of monitoring wells for the purpose of monthly release detection must comply with 165:25-3-5.3 and/or 165:25-3-5.4.~~

(d) If observation wells are the selected method of leak detection, the plans for their placement must be pre-approved by PSTD.

~~(d) All owners of new underground storage tank systems must ensure that the installer certifies in the notification form that the methods used to install the tanks and piping complies with the requirements of this Chapter.~~

~~(e) Any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of the tank of the owner's installation notification obligations under this Chapter.~~

165:25-1-48. Tank and line tightness testing

(a) ~~The results of any tank~~ Tank and line tightness testing results ~~required by this Chapter~~ in which any part of the tank system tested ~~fails to perform in accordance with the requirements of this Chapter~~ does not pass must be reported ~~by the owner and/or operator~~ to the OCC within 24 hours by the owner, operator, ~~or~~ their employees or agents, and also independently by the person or company performing the test ~~within 10 days of the testing.~~ Complete ~~complete~~ test results must be submitted within 7 days of testing. ~~The notice shall include:~~

~~(1) The types of testing equipment used.~~

~~(2) The name of the company performing the test.~~

~~(3) The name of the tester performing the test.~~

~~(4) The method of testing used.~~

~~(5) The results of the test.~~

~~(6) The details of steps taken or to be taken by the owner to repair, replace or remove the tank system.~~

(b) Tank tests must include both the wetted portion and ullage portion of the tank.

(~~b~~c) Hydrostatic line tightness tests and line leak detector tests must be conducted in accordance with and reported on the prescribed ~~Commission~~ PSTD form.

(~~c~~d) The tester performing line and leak detector tests must also certify that the line leak detector is installed properly.

165:25-1-51. Transfer of ownership

When the owner of an underground storage tank transfers ownership of the facility or tank to another person, the new owner must notify ~~the Commission~~ PSTD within 30 days of the transfer, by ~~completing~~ submitting the appropriate ~~Commission~~ PSTD form. The former owner must advise the Commission of the name and address of the new owner. All records required by PSTD must be transferred at no cost to the new owner.

PART 11. RECORDKEEPING

165:25-1-53. Availability of records

(a) Owners and operators of underground storage tank systems regulated by this Chapter must cooperate with ~~Commission~~ PSTD requests for submission of ~~inventory and monitoring~~ records. All leak detection records, including but not limited to, sampling, testing, inventory and monitoring records, must be available on site for each tank for ~~at least~~ the preceding 12 months. Emergency generator tanks at unmanned locations are not subject to leak detection requirements, and may forward any required records to the PSTD office or upon request to the PSTD Fuel Specialist. Copies of ~~all~~ the following records ~~required to be kept pursuant to this Chapter~~ must be readily available to the PSTD Fuel Specialist: ~~at the time of a facility's annual UST inspection.~~

(1) Tank tightness tests, monthly inventory reconciliation, statistical inventory reconciliation, vapor or groundwater monitoring, automatic tank gauge tests, and interstitial monitoring results that demonstrate compliance with release detection for tanks.

(2) Line tightness tests, electronic line tests, all sensor and alarm history results, and line leak detector function tests that demonstrate compliance with release detection for lines.

(3) Installation and repair records for spill containment, overfill prevention, tank and piping construction.

(4) Cathodic protection records specified in 25-1-56, tank lining certificates, and any other records that demonstrate compliance with corrosion protection for the tank system.

(5) Current owner and tank system registration and current permit for all tanks located at the facility.

(6) Certificate(s) of training for all classes of operators.

(b) Failure to have the required records available ~~when requested~~ upon request by ~~the Commission~~ PSTD may result in enforcement action.

~~(c) The owner may voluntarily forward the required records for compliance inspection monthly to the Petroleum Storage Tank Division. These records will be made electronically available only to the Fuel Specialist, who will have all necessary records upon arrival at the facility to be inspected. For participants in this program only, records necessary for compliance inspections need not be at the facility.~~

(~~d~~c) Release detection records must be maintained on forms specified by the Commission.

~~(e) When a change in an owner or operator of a petroleum storage tank system occurs, all records required by the Commission must be transferred at no cost to the new owner or operator.~~

165:25-1-54. Repair records

Owners and operators of underground storage tank systems regulated by this Chapter must maintain ~~records~~ documentation that ~~identify~~ identifies the location and nature of ~~the~~ all repairs~~, including documentation regarding the repairs~~. These records must be kept for the remaining operating life of the storage tank system. ~~In the event of a transfer of ownership the records transfer to the new owner.~~

165:25-1-55. Tank installation, closure and removal records

(a) Owners and operators of underground storage tank systems must maintain records regarding the installation for the lifetime of the system~~;~~ or~~, at the owner's option, give~~ provide copies of installation records to ~~the Petroleum Storage Tank Division~~ PSTD for retention in the Division's files. ~~Owners who have purchased systems must maintain the installation information if it is available.~~

(b) Owners and operators of underground storage tank systems must maintain records ~~capable of~~ demonstrating compliance with the closure and removal requirements for tanks that are temporarily taken out of service or permanently removed. ~~These closure and removal records must provide the results of any excavation area site assessment required in 165:25-2-136 for permanently removed tanks. These results must be maintained for at least 3 years after removal of the~~

~~tanks and permanent closure of the system in one of the following ways:~~

~~(1) By the owner or operator who took the underground storage tank system out of service,~~

~~(2) By the current owner or operator of the property where the tanks were located, or~~

~~(3) By mailing these records to the Commission.~~

(c) The owner or owner's representative (as directed by the owner) must submit ~~a~~ the OCC Closure Report Form and all required attachments ~~report in writing~~ to ~~the Commission~~ PSTD within 45 days from the date the tanks are permanently taken out of service or removed. ~~The information must include, but is not limited to, the following:~~

~~(1) Owner's name, address and facility location.~~

~~(2) An accurate drawing showing the location of the tank, piping runs, dispensing units, property lines, and any sampling locations.~~

~~(3) Disposition of the soil removed from the tank and piping areas.~~

~~(4) Disposition of the tanks.~~

~~(5) Copies of laboratory reports on any samples collected. The lab reports must show the facility address and sample identification matching code systems used in the closure report. The part of a closure report pertaining to sampling must contain a verification statement signed by the licensed Remediation Consultant in supervisory control of the sampling.~~

~~(6) Verification statement by the OCC licensed UST Remover that closure was supervised and performed in accordance with OCC rules and regulation found in this Chapter.~~

165:25-1-56. Release detection and cathodic protection records

(a) Owners and operators of underground storage tank systems regulated by this Chapter must maintain release detection records for a minimum of one year.

(b) Owners and operators of underground storage tank systems regulated by this Chapter who use cathodic protection must maintain the following records. ~~that demonstrate compliance with the performance standards of this Chapter.~~

(1) ~~Records must include the original~~ Original cathodic protection design with drawings, ~~or~~ plans, description of materials used, and suitability study depicting all of the cathodic protection system components in accordance with National Association of Corrosion Engineers (NACE) RP0285. ~~, along with the credentials of the company which designed the system~~.

(2) Rectifier readings for impressed current systems conducted at least every 60 days on the appropriate OCC form.

(3) Results of the last three inspections or cathodic protection system tests completed by a corrosion tester.

(c) If ~~external leak detection methods~~ observation wells are used as release detection, the PSTD approved site assessment must be maintained on site. ~~, the records must include the dates the monitoring wells were checked, the name of the person performing the inspection, the type of instrument used, and calibration data on the instrument.~~

165:25-1-57. Spill and overfill records

Owners and operators of underground storage tank systems must keep records of spills and overfills for review and inspection by ~~the Commission~~ PSTD for a period of 3 years from date of such spill or overfill.

165:25-1-58. Piping records

Tank owners should maintain a current map of their underground tank system ~~piping if that information is available to them~~ and update it within 30 days of any changes.

PART 13. FEES

165:25-1-64. Fees

This Chapter requires the following persons to pay fees according to the schedule set out in 165:5-3-2:

(1) Owners or operators of all underground storage tank systems in use during the fiscal year.

(2) Licensed UST Installers, UST Removers, and ~~or Monitor~~ Observation Well Technicians who become licensed pursuant to the provisions of this Chapter.

PART 15. SHUTDOWN OF OPERATIONS

165:25-1-67. Shutdown of operations

(a) The ~~Commission~~ PSTD may close (shut down) a UST system:

(1) If the system poses an imminent threat to health, safety, or the environment.

(2) If the owner or operator is operating tanks for which permit fees have not been paid.

(3) If the owner or operator fails to comply with a Commission order.

(4) For failure to properly operate and/or maintain leak detection, spill, overfill, or corrosion equipment if the owner/operator has been issued a written notice of violation and has failed to take corrective action.

(5) Failure to protect a buried metal flexible connector from corrosion if the owner/operator has been issued a written notice of violation and has failed to take corrective action.

(b) The PSTD must close (shut down) a UST system:

(1) If required spill prevention equipment is not installed.

(2) If required overfill protection equipment is not installed.

(3) If required leak detection equipment is not installed.

(4) If required corrosion equipment is not installed.

(5) If 2" or more of water is found in the tank.

(6) If a meter is found to be off in calibration by more than 19 cubic inches per every 5 gallons.

(~~b~~c) Only ~~Commission Petroleum Storage Tank Division~~ PSTD designated employees have the authority to lock or seal dispensers and/or fill pipes of any UST system violating subsection (a) or (b) of this Section. The PSTD employee must explain to the owner or operator the reason the UST system is being locked or sealed.

(d) The PSTD "Out of Order" tag attached to each fill pipe of the tank(s) in violation shall serve to clearly identify the tank(s) as ineligible for delivery, deposit, or acceptance of product. Tank owners/operators and product deliverers are responsible for ensuring that product is not delivered into the tagged tank(s).

(~~c~~e) Owners, ~~or~~ operators, or any persons who remove a lock or seal without permission from ~~the Commission~~ PSTD will be subject to penalties imposed by this Chapter, or formal enforcement proceedings.

(~~d~~f) Upon confirmation that the UST system no longer poses an imminent threat to health, safety, or the environment, permit fees paid, violation(s) corrected, or Commission order requirements satisfied, the authority to remove a lock or seal by the owner or operator may be obtained as follows:

(1) Verbal or written permission from the PSTD employee who placed the lock or seal on the device; or

(2) Verbal or written permission from the Manager of Compliance and Inspection; or

(3) Application to and order of the Commission.

(~~e~~g) If a facility is closed under the provisions of this Section, the owner or operator of the facility will be afforded a hearing within ten (10) days of receipt by ~~the Commission~~ PSTD of the owner's or operator's application for a hearing.

PART 17. LICENSING PROCEDURES

165:25-1-101. Licensing procedure for UST Installers

(a) Any individual who would like to become a licensed UST Installer must:

(1) Complete ~~an~~ the OCC UST Installer application form.

(2) Provide sufficient proof of two years related work experience, completed within the last five years. Applicants must have ~~, with supervised~~ active participation in the completion of at least three UST installations. If applicant is a current UST installer license holder in another state, the work experience may be substituted for each confirmed year he or she held the license.

(3) The individual must pass an examination administered by ~~the Commission~~ PSTD.

(4) Installers must pay fees for applications, examinations, and licensing according to the schedule provided in OAC 165:5, the Commission's Rules of Practice.

(5) Installers must also certify that they will comply with all Commission rules and requirements for underground storage tanks.

(b) All examinations and licensing procedures must be completed within one (1) year of approval of the application. Failure to complete the exam and licensing procedures will result in forfeiture of fees and will require a new application and appropriate fees.

(c) Continuing education is required to maintain a UST Installer license; this consists of four hours of continuing education through a ~~Commission~~ PSTD-accredited program every two years.

~~(d) The Commission has the responsibility to deny, suspend, refuse to renew or revoke the license, or reprimand any underground storage tank installer who is found guilty of:~~

~~(1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.~~

~~(2) Any gross negligence, incompetence or misconduct in installation work performed pursuant to this Chapter.~~

~~(3) Knowingly making false statements or signing false statements, certificates or affidavits to the Commission or to clients with the intention to induce payment.~~

~~(4) Aiding or assisting another person in violating any provision of this Chapter.~~

~~(5) Signing a verification statement for work performed pursuant to this Chapter that was not performed by the UST Installer.~~

~~(6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.~~

~~(7) Failure to comply with this Chapter, Chapters 26, 27, 29 and the Oklahoma Petroleum Storage Tank Regulation Act (17 O.S. § 301 et seq.) Oklahoma Petroleum Storage Tank Release Indemnity Program will result in the Commission being authorized to seek a suspension and/or revocation of the UST Installer license.~~

~~(8) Being under indictment or convicted of any criminal offense.~~

~~(e) Prior to any license suspension, revocation, or refusal to renew, the Director of the Petroleum Storage Tank Division will have the matter investigated and a report made for his or her consideration. If the Director elects to pursue suspension, revocation, or refusal to renew, the Commission will schedule a hearing before an Administrative Law Judge and the licensee will be officially notified. The burden of proof is substantial evidence of violations of this Chapter, applicable state law, or incompetence and rests upon the Petroleum Storage Tank Division.~~

~~(f) This Section in no way exempts the UST Installer from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.~~

~~(g) UST Installers are not allowed to remove underground storage tanks and will be required to obtain a separate UST Remover license before they can remove underground storage tanks.~~

165:25-1-102. Licensing procedure for UST Removers

(a) Any individual who would like to become a licensed UST Remover must:

(1) Complete ~~an~~ the OCC UST Remover application form.

(2) Provide sufficient proof of two years related work experience, completed within the last five years~~,~~ Applicants must have ~~with supervised~~ active participation in the completion of at least three (3) ~~installations~~ UST removals. If applicant is a current UST remover license holder in another state, the work experience may be substituted for each confirmed year he or she held the license.

(3) Pass an examination administered by the ~~Commission~~ PSTD.

(4) Pay fees for applications, examinations, and licensing according to the schedule provided in OAC 165:5, the Commission's Rules of Practice.

(5) Certify that they will comply with all Commission rules and requirements for removal of underground storage tanks.

(b) All examinations and licensing procedures must be completed within one (1) year of approval of the application. Failure to complete will result in forfeiture of fees and will require a new application and appropriate fees.

(c) Continuing education is required to maintain a UST Removers license; this consists of four hours of continuing education through a Commission approved program every two years.

~~(d) The Commission has the responsibility to deny, suspend, refuse to renew or revoke the license, or reprimand any underground storage tank remover who is found guilty of:~~

~~(1) T he practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.~~

~~(2) Any gross negligence, incompetence or misconduct in removal work performed pursuant to this Chapter.~~

~~(3) Knowingly making false statements or signing false statements, certificates or affidavits to the Commission or to clients with the intention to induce payment.~~

~~(4) Aiding or assisting another person in violating any provision of this Chapter.~~

~~(5) Signing a verification statement for work performed pursuant to this Chapter that was not performed by the UST Remover.~~

~~(6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.~~

~~(7) Failure to comply with this Chapter, Chapters 26, 27, 29, and the Oklahoma Petroleum Storage Tank Regulation Act (17 O.S. § 301 et seq.) will result in the Commission being authorized to seek a suspension and/or revocation of the UST Remover license.~~

~~(8) Being under indictment or convicted of any criminal offense.~~

~~(e) Prior to any license suspension, revocation, or refusal to renew, the Director of the Petroleum Storage Tank Division will have the matter investigated and a report made for his or her consideration. If the Director elects to proceed with suspension, revocation, or refusal to renew, a Notice of Intent will be mailed to the licensee. If the Director elects to pursue suspension, revocation, or refusal to renew, the Commission will schedule a hearing before an Administrative Law Judge and the licensee will be officially notified. The burden of clear and convincing proof of violations of this Chapter or applicable state law rests upon the Petroleum Storage Tank Division.~~

~~(f) This Section in no way exempts the UST Remover from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.~~

165:25-1-103. Licensing procedure for ~~Monitoring~~ Observation Well Technician

(a) Monitoring of vapor and groundwater wells for the purpose of monthly release detection must be performed by an individual licensed by ~~the OCC Petroleum Storage Tank Division (~~PSTD~~)~~. An individual who applies to ~~be~~ become a licensed Well Technician ~~to perform monthly release detection of monitoring wells~~ must:

(1) Complete the OCC ~~Monitor Well Technician~~ application form.

(2) ~~Provide a copy of the manufacturer's instructions for the monitoring equipment that will be used and display~~ Demonstrate his/her competence in the use of the monitoring equipment to ~~the~~ PSTD. The use of new or different monitoring equipment will require the user to ~~submit the manufacturer's instructions and~~ display his/her competence in the use of the new or different equipment.

(3) Certify that they will comply with all Commission rules and requirements.

(4) Fees must be paid in accordance with 165:5.

(b) A Well Technician license ~~to monitor vapor and groundwater monitoring wells~~ for the purpose of monthly release detection must be renewed every two years.

(c) Individuals who are monitoring vapor and groundwater ~~monitor~~ observation wells for monthly release detection purposes must report readings that exceed ~~the~~ established levels in 165:25-3-6.23 or 165:25-3-6.24 to the ~~facility~~ owner ~~and/~~or operator within 48 hours.

~~(d) The Commission has the responsibility to deny, suspend, refuse to renew or revoke the license, or reprimand any monitor well technician who is found guilty of:~~

~~(1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.~~

~~(2) Any gross negligence, incompetence or misconduct in installation work performed pursuant to this Chapter.~~

~~(3) Knowingly making false statements or signing false statements, certificates or affidavits to the Commission or to clients with the intention to induce payment.~~

~~(4) Aiding or assisting another person in violating any provision of this Chapter.~~

~~(5) Signing a verification statement for work performed pursuant to this Chapter that was not performed by the Monitor Well Technician.~~

~~(6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.~~

~~(7) Failure to comply with this Chapter, Chapters 26, 27, 29, and the Oklahoma Petroleum Storage Tank Regulation Act (17 O.S. § 301 et seq.) Oklahoma Petroleum Storage Tank Release Indemnity Program will result in the~~

~~Commission being authorized to seek a suspension and/or revocation of the UST Installer license.~~

~~(8) Being under indictment or convicted of any criminal offense.~~

~~(c) Prior to any license suspension, revocation, or refusal to renew, the Director of the Petroleum Storage Tank Division will have the matter investigated and a report made for his or her consideration. If the Director elects to proceed with suspension, revocation, or refusal to renew, a Notice of Intent will be mailed to the licensee. If the Director elects to pursue suspension, revocation, or refusal to renew, the Commission will schedule a hearing before an Administrative Law Judge and the licensee will be officially notified. The burden of clear and convincing proof of violations of this Chapter or applicable state law rests upon the Petroleum Storage Tank Division.~~

~~(f) This Section in no way exempts the Monitor Well Technician from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.~~

165:25-1-107. License suspension or revocation

(a) The PSTD has the responsibility to deny, suspend, refuse to renew or revoke the license, or reprimand any licensee who is found guilty of:

(1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.

(2) Any gross negligence, incompetence or misconduct in installation work performed pursuant to this Chapter.

(3) Knowingly making false statements or signing false statements, certificates or affidavits to the PSTD or to clients with the intention to induce payment.

(4) Aiding or assisting another person in violating any provision of this Chapter.

(5) Signing a verification statement for work performed pursuant to this Chapter that was not performed by the licensee.

(6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.

(7) Failure to comply with this Chapter, Chapters 26, 27, 29, and the Oklahoma Petroleum Storage Tank Regulation Act (17 O.S. § 301 et seq.) Oklahoma Petroleum Storage Tank Release Indemnity Program will result in PSTD seeking a suspension and/or revocation of the license.

(8) Being under indictment or convicted of any criminal offense.

(b) Prior to any license suspension, revocation, or refusal to renew, the Director of PSTD will have the matter investigated and a report made for his or her consideration. If the Director elects to proceed with suspension, revocation, or refusal to renew, a Notice of Intent will be mailed to the licensee. If the Director elects to pursue suspension, revocation, or refusal to renew, PSTD will schedule a hearing before an Administrative Law Judge and the licensee will be officially notified. The burden of clear and convincing proof of violations of this Chapter or applicable state law rests upon the PSTD.

(c) This Section in no way exempts the licensee from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.

PART 19. OPERATOR TRAINING

165:25-1-120. Training requirements

Each underground storage tank system or group of underground storage tank systems at a facility must have a Class A, Class B, and Class C operator designated. Separate individuals may be designated for each class of operator or an individual may be designated to more than one of the operator classes.

165:25-1-121. [RESERVED]

165:25-1-122. Operator Class designations

(a) A Class A operator has primary responsibility to operate and maintain the underground storage tank system in the broader aspects of the statutory and regulatory requirements to achieve and maintain compliance.

(b) A Class B operator implements applicable requirements and standards for one or more facilities to monitor day-to-day aspects of operation and recordkeeping.

(c) A Class C operator is an onsite employee responsible for responding to alarms or emergencies caused by spills or release from underground storage tank systems.

165:25-1-123. [RESERVED]

165:25-1-124. Frequency and proof of training

(a) Each operator class must obtain initial certification from a PSTD-approved training provider no later than July 1, 2009. A Class A or Class B operator may train a Class C operator.

(b) Class A and Class B operators must be trained within 30 days after assuming operation and maintenance responsibilities for an underground storage tank system. Class C operators must be trained before assuming responsibility for responding to emergencies.

(c) Class B operators must be retrained in any areas (e.g. spill, overfill, corrosion protection) that are determined to be out of compliance with EPA and PSTD requirements for release prevention and/or release detection.

(d) Owners or operators must provide PSTD with documentation for all operator classes.

165:1-25-124. [RESERVED]

165:25-1-126. Enforcement of operator training requirements

Failure to properly train any operator class or comply with requirements of this Part will result in fines and/or formal enforcement action.

SUBCHAPTER 2. GENERAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS

PART 1. CODES AND STANDARDS

165:25-2-2. Incorporated codes and standards

Specific references to documents ~~listed below~~ are made ~~throughout~~ in this Chapter. Each of these documents or part thereof is ~~adopted and incorporated~~ included by reference as a standard. New editions of codes and standards supersede all previous editions. Commission rules will supercede in all conflicts between PSTD rules and any standard.

(1) National Fire Protection Association Standards:

(A) Standard Number 30, 2003, "Flammable and Combustible Liquids Code".

(B) Standard Number 329, 1992, "Underground Leakage of Flammable and Combustible Liquids".

(C) Standard Number 385, 1990, "Tank Vehicles for Flammable and Combustible Liquids".

(D) Standard Number 321, 1991, "Basic Classification of Flammable and Combustible Liquids".

(E) Standard Number 327, 1993, "Cleaning or Safeguarding Small Tanks and Containers".

(F) Standard Number 30A, 2003, "Automotive and Marine Service Station Code".

(2) American Petroleum Institute Standards:

(A) Recommended Practice 1615, 1996, "Installation of Underground Petroleum Storage Systems".

(B) Recommended Practice 1632, 1996, "Cathodic Protection of Underground Storage Tank and Piping Systems".

(C) Recommended Practice 1604, 1987, "Removal and Disposal of Used Underground Service Station Tanks".

(D) Recommended Practice 1631, 1992, "Interior Lining of Underground Storage Tanks".

(E) Recommended Practice 1621, 1993, "Bulk Liquid Stock Control at Retail Outlets".

(F) Recommended Practice 1626, 1993, "Storing and Handling Ethanol and Gasoline - Ethanol Blends at Distribution Terminals and Service Stations".

(G) Recommended Practice 1627, 1993, "Storing and Handling of Gasoline - Methanol/Cosolvent Blends at Distribution Terminals and Service Stations".

(H) Publication 1628, 1996, "A Guide to the Assessment and Remediation of Underground Petroleum Releases".

(I) Publication 2200, 1994, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipelines".

(J) Publication 2015, 1994, "Cleaning Petroleum Storage Tanks".

(K) Recommended Practice 1637, "Using the API Color Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals".

(3) National Association of Corrosion Engineers:

(A) Standard Number RP-0169-92, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems".

(B) Standard Number RP-0184-94, "Repair of Lining Systems".

(C) Standard Number RP-0285-95, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems".

(D) Standard Number RP-0286-86, "The Electric Isolation of Cathodically Protected Pipelines".

(4) Underwriter's Laboratory Standards:

(A) Standard UL58, 8th Edition, 1986, "Steel Underground Tanks for Flammable and Combustible Liquids".

(B) Standard UL1316, 2nd Edition, 1994, "Glass-Fiber- Reinforced Plastic Underground Storage Tanks for Petroleum Products".

(C) Standard UL1746, 2nd Edition, 1993, "External Corrosion Protection Systems for Steel Underground Storage Tanks".

(D) Standard UL567, 7th Edition, 1992, "Pipe Connectors for Flammable and Combustible Liquids and LP Gas".

(E) Standard UL971, 2005 "Nonmetallic Underground Piping for Flammable Liquids".

(5) American Society for Testing Materials:

(A) Standard D 4021-92, "Standard Specifications for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks".

(B) Standard ES 40-94 "Emergency Standard Practice for Alternative Procedures for the Assessment of Buried Steel Tanks Prior to the Addition of Cathodic Protection."

(C) Standard E 1739-95, "Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites".

(D) Standard G-158-98, Three Methods of Assessing Buried Steel Tanks".

(6) Petroleum Equipment Institute:

(A) ~~PEI/RP 100-2000,~~ RP 100 "Recommended Practices for Installation of Underground Liquid Storage Systems".

(B) RP 400-02, "Recommended Procedure for Testing Electrical Continuity of Fuel Dispensing Hardware".

(C) RP 500-05, Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment".

(D) RP 900-07, Recommended Practices for the Inspection and Maintenance of UST Systems".

(7) Steel Tank Institute:

(A) STIP3, Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks".

(B) STI-R892-91, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems".

(C) STI-~~F~~R894-91, "Specification for External Corrosion Protection of FRP Composite Underground Steel Storage Tanks".

(D) RP-972-01, "Recommended Practice For The Addition of Supplemental Anodes to STI-P3 USTs".

(8) Association of Composite Tanks, ACT-100, "Specifications for the Fabrication of FRP Clad/Composite Underground Storage Tanks."

(9) Factory Mutual 1920, "Flexible Pipe Couplings."

(10) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension, Existing Steel UST by Lining without Additional Cathodic Protection."

(11) National Groundwater Well Association, 1986, "RCRA Ground Water Monitoring Technical Enforcement Guidance Document (TEGD)".

(12) ~~American Society for Testing and Materials, ASTM Designation: E 1739-95, "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites."~~

~~(13)~~ U.S. Environmental Protection Agency Office of Water, 1997, Drinking Water Advisory: "Consumer Acceptability Advice on Health Effects Analysis on Methyl Tertiary-Butyl Ether (MTBE)."

(~~14~~13) Ken Wilcox Associates, Inc., First Edition: "Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera."

165:25-2-3. Other standards and regulations [REVOKED]

~~This Chapter does not limit the Commission to the above listed reference and standards, and the commission may use any other standards of nationally recognized associations or any other regulations of federal, state, city, county, or local governing bodies in discharging the Commission's regulatory duties.~~

165:25-2-4. Financial responsibility

(a) An ~~owner or operator~~ owner/operator may satisfy the requirements of Title 40 Code of Federal Regulations (CFR), 280.90 through 280.111, in (b) above, by use of the Petroleum Storage Tank Indemnity Fund (Indemnity Fund) (ref: Okla. Stat. Tit. 17 §350 et seq.) (ref: Okla. Stat. Tit. 17 §350 et seq.). ~~There is a $5,000~~ A deductible must be paid ~~for use of mechanisms and~~ for which compliance may be demonstrated by use of any of the mechanisms outlined in 40 CFR 280.90 through 280.111, and OAC ~~165:27-2-1.11~~ 165:27-18-3. For releases that occurred before June 4, 2004 the deductible is $5,000; for releases that occurred after June 4, 2004 the deductible is 1% of fund expenditures not to exceed $5,000.

(b) Regulations promulgated on or before November 9, 1989 by the United States Environmental Protection Agency are hereby adopted as provisions of this Chapter as though set forth herein with the exception that, and unless the context otherwise dictates, all references therein to "Implementing Agency" shall be considered references to the "Oklahoma Corporation Commission," and all references to "Administrator," "Regional Administrator," "Director," or "State Director" shall be considered references to the "Director of the Petroleum Storage Tank Division of the Oklahoma Corporation Commission."

PART 3. DESIGN AND INSTALLATION

165:25-2-31. Underground storage tank installation

All tanks, piping, and associated equipment used in conjunction with a UST installation shall be installed by personnel possessing appropriate skills, experience, and required ~~Commission~~ PSTD license to complete the installation in accordance with recognized industry standards and this Chapter. A licensed UST installer must be present at all times during the installation.

165:25-2-32. Compatibility

Owners and operators of all underground storage tank systems must use an underground storage tank system that is made of or lined with materials that are compatible with the substance stored in the system. ~~In addition, any material used as an impervious barrier as defined in this Chapter must also be compatible with the substance stored.~~

165:25-2-33. Approved tanks, tank design

~~The material used in the construction of a UST must be compatible with the regulated substance to be stored in the UST.~~

(a) Tanks must be properly designed and constructed, and any portion underground that routinely contains ~~product~~ a regulated substance must be protected from corrosion as specified ~~below:~~ in referenced codes and standards. All new or replacements tanks except those excluded by regulation in this Chapter must be double wall or jacketed secondarily contained in construction to prevent the release of regulated substances to the environment during the operational life of the system. Emergency power generator tanks excluded from release detection must also meet this requirement.

(1) Fiberglass-reinforced plastic tanks must conform to the standards contained in UL 1316 or ASTM D4021-86.

(2) Steel tanks clad with fiberglass-reinforced plastic must conform to the standards contained in UL 1746 or ACT-100.

(3) Tanks constructed of steel and cathodically protected must conform to the standards in UL 58, UL 1746 and NACE RP-0285 and must be protected in the following manner:

(A) The tank must be coated with a suitable dielectric material.

(B) Field-installed cathodic protection systems must be designed by a corrosion expert.

(C) Impressed current systems must be designed to allow determination of current operating status as required by this Chapter and manufacturer's specifications.

(D) Cathodic protection systems must be operated and maintained according to this Chapter and manufacturer's specifications.

(~~4~~b) ~~The Commission~~ PSTD may permit alternative types of tank construction, design, and corrosion protection if the owner demonstrates to ~~the Commission's~~ PSTD's satisfaction that the ~~alternative construction, design, and corrosion protection system~~ proposed system will prevent the release of any stored regulated substance ~~in a manner no less protective of human health and the environment than those set out in this Section~~ to the environment during the operational life of the system.

(c) All underground storage tank systems must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

165:25-2-34. Compliance with nationally recognized code of practice and manufacturer's instructions [REVOKED]

~~(a) All new underground storage tank systems must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.~~

~~(b) Compliance with the standards listed in this Chapter will be deemed compliance with this Part.~~

165:25-2-36. Tank system installation

(a) **Backfill material**

~~(1)~~ Backfill material used below, around, and/or above a new underground storage tank system installation must be clean, unused, non-corrosive porous material such as sand, crushed rock or pea gravel specified by the tank manufacturer. The licensed tank installer must be present and continuously supervise backfilling operations to ensure that proper procedures are followed.

~~(2) In the case of fiberglass-reinforced plastic tanks, the backfill material used must be in accordance with the tank manufacturer's specifications.~~

(b) **UST installation**

(1) Following the required 24-hour notification of new UST installations, ~~the assigned Fuel Specialist will obtain the construction schedule from the contractor. An~~ an on-site inspection may be required at the following critical junctures. The PSTD Fuel Specialist may observe and/or inspect:

(A) The air/soap test of tanks.

(B) The tank pit prior to the placement of tank(s).

(C) The backfilling of the lower quadrant of tank(s).

(D) The air/soap test and layout of piping prior to backfilling.

(E) The tightness test of tanks and piping, and leak detector tests prior to startup.

(2) Precautions must be taken to prevent damage to the tank or piping coating during installation. Any damage to the coating must be repaired in accordance with the manufacturer's instructions prior to the completion of the installation.

(3) Piping must be arranged to minimize crossed lines and interference with conduits and other tank system components. If crossing is unavoidable, adequate clearance must be provided to prevent contact between piping segments.

(4) Underground piping must have a minimum slope of one-eighth inch (1/8") per foot toward the tank.

~~(5) The owner and/or tank installer must continuously supervise backfilling operations to ensure that proper procedures are followed.~~

(~~6~~5) If a tank is installed in an area ~~with~~ subject to a high water table or flooding, anchoring must be used to prevent tank flotation~~, or the tank must be installed according to manufacturer's specifications to eliminate flotation if the tank is empty~~. Anchoring straps and associated equipment must be installed in a manner that will prevent damage to the tank and/or its coating.

~~(7) Anchoring straps and associated equipment must be installed in a manner that will prevent damage to the tank and/or its coating.~~

165:25-2-37. Storage tank spacing

(a) Underground storage tanks must be at least thirty-six inches (36") from the property line of the property on which they are installed.

(b) Fiberglass and steel underground storage tanks must be spaced ~~have an amount of spacing between tanks and between tanks and excavation walls in the tank pit~~ in accordance with manufacturer's instructions.

165:25-2-38. Fill pipe requirements

(a) Fill pipes that enter the top of a tank must have drop tubes installed and terminate within 6 inches (6", or 15 cm) of the bottom of the tank.

(b) Fill pipes should be installed or arranged so that vibration is minimized.

(c) Each fill pipe for liquid storage must be ~~identified~~ labeled by a ~~tag or other~~ permanent marking to ~~show~~ identify the product stored ~~for which the tank is used~~. The marking must be maintained in legible condition throughout the life of the tank installation. Color coding of the tank fill riser lids must ~~should~~ also be used ~~in addition to marking~~.

165:25-2-39. Spill and overfill protection

~~(a) Underground storage tanks must have spill and overfill protection on the tanks.~~

(~~b~~a) Owners and operators of underground storage tank systems, as well as those who transport regulated substances to these systems must do everything reasonably possible to ensure that releases due to spilling and overfilling do not occur.

(~~c~~b) Tight fill connections must be used on all deliveries made to underground storage tanks.

(~~d~~c) Tampering with overfill protection is not permitted. Any violation of this Section will be subject to the enforcement procedures of this Chapter and any other fines or contempt proceedings as provided by law.

(~~e~~d) Except as provided in ~~(f)~~ (e) of this Section, in order to prevent spilling and overfilling associated with product transfer to the petroleum storage tank system, the following prevention equipment must be used:

(1) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill bucket ~~or a drain system~~).

(2) Overfill prevention equipment that will automatically shut off flow into the tank when the tank is no more than 95 percent full.

(A) A drop tube with overfill device is required on all tank systems installed after July 1, 2001.

(B) Tanks installed before July 1, 2001, must be upgraded to meet these standards before July 1, 2002, unless ~~documentation can be provided at the time of inspection for compliance that proves the petroleum storage tank system is~~ equipped with ~~a~~ an operational ball float overfill device. Use of ball floats is prohibited with suction systems.

(~~f~~e) The spill and overfill prevention equipment specified in ~~(e)~~(d) of this Section is not required if~~:~~

~~(1) The~~ the underground storage tank system is filled by transfers of no more than 25 gallons at one time. ~~; or~~

~~(2) Alternative equipment is used that is determined by the Commission to be no less protective of human health and the environment than the specified equipment specified in (a) of this Section.~~

165:25-2-40. Installation testing

(a) All tanks must be tested with air pressure prior to installation, and/or tested according to manufacturer's specifications. Pressure must not exceed 5 pounds per square inch (psi). The entire tank must be soaped during this period and inspected for bubbling.

(b) All suction piping must be tested while disconnected from the tank, pumps, and dispensing units. The piping must be subjected to an air test with the following specifications:

(1) The piping must be subjected to an air test of at least 50 psi for a period of one hour.

(2) All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks.

(3) As an alternative to the preceding methods in (1) and (2) above, the piping may be subjected to a vacuum test while connected to tanks, pumps and dispensing units.

(c) Pressurized piping must be tested while connected to tanks, pumps and dispensing units and must be subjected to an air test of at least 50 psi.

(1) Air test secondary piping for a period of one hour, using the test pressure prescribed by the piping manufacturer.

(2) Apply soap solution to all joints and piping surfaces and inspect for leaks.

(d) Tightness (also called precision) ~~tests for tanks and piping~~ testing of the entire system must be performed after all paving over the tanks and piping has been completed and before the system is placed in operation~~,~~: ~~and must be performed in accordance with the applicable requirements of this Chapter.~~

(1) A precision tightness test must be performed by a certified tester, and in accordance with manufacturer's instructions; or

(2) The following alternative to a precision tightness test will be accepted, but only if conducted before the system is put into service:

(A) The tank must be filled to at least 80 percent capacity~~.~~and

(B) A certified ~~automatic tank gauge~~ ATG capable of detecting a leak of 0.10 gallons per hour must be used to test the filled portion of the tank~~.~~and

(C) A precision tightness test of the ullage portion of the tank must be completed.

(3) Testing of both interstice and primary tank of a double wall tank as specified by tank manufacturer must be performed.

(4) Primary tank openings, manways and risers must be tested during the installation of all double wall tanks.

(~~3~~5) The product line(s) must be hydrostatically tested by a NWGLDE approved ~~nationally recognized~~ testing device capable of detecting a leak of 0.10 gallons per hour with a test pressure of 50 psi or $1\frac{1}{2}$ times the operating pressure, whichever is greater. The lines must be tested for a minimum of one hour.

(~~4~~6) Mechanical and electronic leak detector(s) must be tested for function by simulating a leak and operate in accordance with manufacturer's specifications ~~instructions~~.

(~~5~~7) If an ATG system with electronic line leak detector(s) is installed, it must complete a leak detector test in each of the modes in which it is certified as capable of detecting a leak (e.g. 3 gph, 0.2 gph and 0.1 gph).

~~(6) A function test must be performed on all line leak detectors at installation.~~

165:25-2-42. Certification of installation [REVOKED]

~~(a) Owners of underground storage tank systems must ensure that the installer has been licensed by the Commission in accordance with this Chapter.~~

~~(b) There must be a Commission licensed UST Installer who has the authority to assure that UST systems are installed in accordance with this Chapter in supervisory control, present at the job site during UST systems installation.~~

~~(c) The OCC Tank Registration Form must be signed by the tank owner and the installation certified by the OCC licensed Installer.~~

PART 5. PROTECTION AGAINST CORROSION

165:25-2-51. Corrosion protection

~~(a)~~ Any portion of a metallic tank or piping system in contact with the soil must be protected from corrosion. A cathodic protection system must be ~~engineered~~ designed by a corrosion expert, installed and maintained in accordance with recognized standards of design. , such as:

~~(1)~~ American Petroleum Institute Publication 1632, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems;

~~(2) Underwriters Laboratories of Canada ULC-S603.1-M, Standard for Galvanic Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids;~~

~~(3) Steel Tank Institute:~~

~~(A) Standard No. Sti-P3®, Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks;~~

~~(B) STI-R-892-91, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems".~~

~~(C) STI-R-894-91, "Specification for External Corrosion Practices for Installation of FRP Composite Underground Steel Storage Systems".~~

~~(D) STI-R-972-01, "Recommended Practice for Addition of Supplemental Anodes to STI-P3 USTs".~~

~~(4) National Association of Corrosion Engineers Standard RP-01-69 (1996 rev.), Recommended Practice, Control of External Corrosion of Underground or Submerged Metallic Piping Systems;~~

~~(5) National Association of Corrosion Engineers ("NACE") Standard RP-02-85-95, Recommended Practice, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems; and~~

~~(6) Underwriters Laboratories Inc., ("UL") Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks, UL 1746, Part 1.~~

~~(b) Approved or listed corrosion resistant materials or systems include special alloys, fiberglass reinforced plastic, or fiberglass reinforced plastic coatings.~~

165:25-2-53. Frequency and criteria of inspections and tests

~~Cathodic protection systems shall be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:~~

(1) All cathodic protection systems must be tested within 6 months of installation and/or repair, and at least every 3 years thereafter.

(2) Every 60 days impressed current cathodic protection systems must be inspected by the owner ~~or operator (~~or owner's designated representative~~)~~ to ensure the equipment is working properly.

(3) The criteria that are used to determine whether cathodic protection is adequate must be in accordance with a code of practice developed by a nationally recognized organization, such as NACE RP-0285.

165:25-2-53.1. Underground storage tank internal lining requirements

(a) A previously lined steel tank that fails precision tightness testing ~~may~~ shall not be repaired and must be removed.

(b) Tank lining may not be used as a method of repair for an unlined ~~leaking~~ tank~~, (bare steel or cathodically protected)~~.

(c) Within 10 years after lining, and every five years thereafter, lined USTs must be internally inspected and found to be structurally sound, with the lining still performing in accordance with original design specifications.

(d) Standards that must be referenced during the periodic inspection of lined USTs:

(1) American Petroleum Institute (API) Publication 1631.

(2) Ken Wilcox Associates, Inc. "Recommended Practices for Inspecting Buried Lined Steel Tanks Using a Video Camera," First Edition, 1999, Methods A and D.

(3) National Leak Prevention Association Standard 631.

(4) PSTD Internal Tank Lining Guidance document and PSTD Interior Lining Inspection Form available on OCC website at www.occeweb.com.

(e) UST owners/operators must submit to ~~the OCC~~ PSTD a copy of the certificate of performance (Interior Lining Inspection Form) completed by the inspection provider attesting that the UST meets the performance requirements for both the UST and the lining material. Any UST failing to meet the specified performance requirements cannot be relined. Minor imperfections may ~~must~~ be repaired and the tank must be upgraded with a cathodic protection system within six months of the lining repair, or be removed. Suitability of the tanks for upgrade by adding cathodic protection must be determined prior to application.

(f) USTs upgraded by the addition of both internal lining and cathodic protection do not require internal periodic inspection if the cathodic protection system has been properly installed and maintained on the UST system.

(g) Tank owners or their representative must provide 48 hour notification for all lining procedures to ~~the OCC~~ PSTD by submitting the OCC scheduling form.

PART 6. PIPING

165:25-2-55.1. Underground storage tank piping materials

(a) All new or replacement underground pressurized piping ~~installed at new facilities~~ must be installed as follows:

(1) Nonmetallic;

(2) Double-walled;

(3) A tracer locator wire must be installed in all piping trenches; and

(4) Tank, ~~and~~ dispenser ~~sumps~~, and transition sumps must be installed~~,~~ and ~~they must be~~ monitored per 165:25-3-6.29.

(b) All new or replacement suction product piping must meet the requirements of 165:25-3-6.29 as follows:

(1) Nonmetallic;

(2) ~~May be either single- or double~~ Double-walled;

(3) A tracer locator wire must be installed in all piping trenches; and

(4) Tank, ~~Dispenser~~ dispenser, and transition sumps must be installed and monitored per 165:25-3-6.29 ~~by a sensor, float or similar mechanical device at each sump~~.

(c) Existing facilities that are replacing ~~metallic~~ piping must upgrade pursuant to (a) or (b) of this Section. If ~~the~~ metallic line fails due to corrosion, the entire product line must be immediately removed, and cannot be repaired.

(d) Existing facilities that ~~have metallic or single-walled nonmetallic piping and~~ are ~~removing, replacing, relocating or adding a~~ making any alteration to a fuel island must install dispenser sumps and monitor as pursuant 165:25-3-6.29. ~~Any additions to the metallic piping must be nonmetallic single or double-walled piping.~~

(e) Existing facilities that are replacing dispensers must install dispenser sumps and monitor as pursuant to 165:25-3-6.29 if modifications are made below the dispenser cabinet. ~~where the fuel islands are not being removed, replaced, relocated, or added may add to the existing piping using the same piping material, and dispenser sumps do not have to be installed.~~

(f) Existing facilities that are replacing underground storage tanks or making repairs to a submersible pump that requires concrete removal must install tank ~~may re-use single-walled nonmetallic piping. Tank~~ sumps ~~must be installed,~~ and they must be monitored ~~as~~ pursuant 165:25-3-6.29.

(g) Existing facilities that are replacing underground storage tanks must replace all ~~metallic~~ single walled piping per (a) or (b) of this section.

(h) Piping installed as a siphon or to manifold tanks may be single wall non-metallic pipe.

165:25-2-55.2. Vent piping requirements

(a) Where vent pipes from tanks storing gasoline are adjacent to buildings or public ways, they must be located not less than 12 ft. (3.6 meters) above the adjacent ground level or 3 ft. above the roof line at the highest point of attachment. Effective July 2003, newly installed vent pipes must be 5 ft. above the roof or canopy.

(b) In order to aid in dispersion, vapors must be discharged upward. Vent outlets must be located so that flammable vapors will not accumulate to an unsafe location or trapped under eaves and shall be at least 5 ft. (1.5 meters) from building openings and 15 ft. (4.5 meters from powered ventilation air intake devices.

(c) All new or replacement underground vent piping must be non-metallic. Aboveground vent risers must be steel pipe.

PART 7. DISPENSERS

165:25-2-71. Dispensers

~~(a) Liquids must be transferred from storage tanks by means of fixed pumps designed and equipped to allow control of the flow and prevent leakage or accidental discharge.~~

~~(b) Dispensing devices for Class I liquids must be listed.~~

~~(1) Existing listed or labeled dispensing devices may be modified provided the modifications made are "Listed by Report" by an approved testing laboratory or as otherwise approved by the Commission.~~

~~(2) Modification proposals must contain a description of the component parts used in the modification and the recommended methods of installation on specific dispensing devices, and must be made available to the Commission upon request.~~

(~~c~~a) A control must be provided that will permit the pump to operate only when a dispensing nozzle is removed from its bracket or normal position with respect to the dispensing device and only when the switch on this dispensing device is manually activated. This control must also stop the pump when all nozzles have been returned either to their brackets or to the normal non-dispensing position.

(~~d~~b) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed on each hose ~~dispensing any class of liquids~~. These devices must be installed and maintained in accordance with the manufacturer's instructions. Where hoses are attached to a hose-retrieving mechanism, the listed emergency breakaway device must be installed between the point of attachment of the hose-retrieving mechanism to the hose and the hose nozzle valve.

(c) If a submersible pump system is used, a UL listed emergency shutoff/shear valve must be installed at each dispensing device. Both the emergency shutoff/shear valve and dispensing device shall be rigidly anchored in place.

165:25-2-73. Nozzles

At any installation where the normal flow of product may be stopped other than by the hose nozzle valve e.g., at pre-pay stations, the system must include listed equipment with a feature that causes or requires the closing of the hose nozzle valve before product flow can be resumed or before the hose nozzle valve can be replaced in its normal position in the dispenser~~; or the hose nozzle valve must not be equipped with a latch-open device~~.

165:25-2-76. Sources of ignition

(a) Smoking materials, including but not limited to matches and lighters, must not be used within 20 feet (20', or 6 m) of areas used for fueling, servicing fuel systems for internal combustion engines, or receiving or dispensing of Class I liquids.

~~(b) Conspicuous and legible signs prohibiting smoking must be posted within sight of the customer being served.~~

~~(c) The motors of all equipment being fueled must be shut off during the fueling operation.~~

(~~d~~ b) At least one fire extinguisher must be readily accessible in the pump area, as well as at the service bay(s), where applicable.

PART 9. ELECTRICAL

165:25-2-91. Electrical requirements

(a) All electrical work must be installed by a ~~state or federally~~ licensed ~~electrical contractor~~ electrician.

(b) All electrical wiring and electrical ~~utilization~~ equipment must be of a type specified by and must be installed in accordance with NFPA 30A and ~~NFPA~~NEC 70, National Electrical Code.

~~(c) All electrical wiring and electrical utilization equipment must be suitable for the locations in which they are installed.~~

~~(d) NFPA 30A regulations should be used to delineate and classify areas for the purpose of installation of electrical wiring and electrical utilization equipment. The designation of classes and divisions of classified locations is defined in Chapter 5, Article 500, of NFPA 70, National Electrical Code.~~

~~(e) Electrical wiring and electrical utilization equipment integral to the dispensing hose or nozzle must be suitable for use in Class I, Division 1 classified locations.~~

~~(f) Where Class I liquids are stored, handled, or dispensed, electrical wiring and electrical utilization equipment must be designed and installed in accordance with the requirements for Class I Division 1 or 2 classified locations, set forth in NFPA 70, National Electrical Code.~~

(~~g~~c) Clearly identified and easily accessible switch(es) or circuit breaker(s) must be provided at a location remote from dispensing devices, including remote pumping systems, to shut off the power to all dispensing devices in the event of an emergency.

~~(h) Electrical components for dispensing liquids must be installed according to the guidelines established in Electrical Installations of NFPA 30A. All electrical equipment must be installed and used in accordance with the requirements of NFPA 70, National Electrical Code, as it applies to wet, damp, and hazardous locations.~~

(~~i~~d) Electrical equipment that was installed in compliance with an earlier state or national code will not require modification unless the equipment is hazardous to people or property.

PART 13. REMOVAL AND CLOSURE OF UNDERGROUND STORAGE TANK SYSTEMS

165:25-2-131. Tank removal and closure

(a) ~~Owners and Operators~~ Owners/operators of all underground storage tank systems must notify the ~~Petroleum Storage Tank Division~~ PSTD at least 14 days prior to the removal or permanent closure of underground storage tanks and/or lines by submitting the OCC scheduling form. If events require a change in the date of removal, ~~the Division~~ PSTD shall be given 48 hours notice of the new date.

(b) An authorized agent of ~~the Commission~~ PSTD may be present to observe the removal and to inspect the closed tank system and the surrounding environment prior to backfilling.

(c) Tanks and lines must be removed upon closure unless ~~the~~ a Commission order grants a variance that allows the tanks to be closed in place ~~by filling~~.

~~(d) All underground storage tanks must be removed by a licensed UST Remover.~~

(~~e~~d) ~~Any company that removes underground storage tank systems must have a~~ The licensed UST Remover must be on the job site during all removal activities, beginning with break-out of concrete.

165:25-2-132. Compliance with removal and closure requirements [REVOKED]

~~Owners and/or operators of all underground storage tank systems that are temporarily taken out of service, permanently closed, or removed must comply with all the requirements of this Part.~~

165:25-2-133. Temporary removal from service

(a) When an underground storage tank system is taken temporarily out of service, the owner or operator must:

(1) Continue the operation, testing, and maintenance of corrosion protection as required by this Chapter; .Electricity must be maintained for an impressed current CP system to be operational.

(2) Continue release detection as required by this Chapter;

(3) Comply with the requirements of this Chapter concerning release reporting and corrective action; and

(4) Notify ~~the Commission~~ PSTD of a change in service on the prescribed form.

(b) Release detection is not required as long as the underground storage tank system is empty. ~~For the purposes of this Subchapter, the~~ The underground storage tank system is empty when all ~~materials~~ regulated substances have been removed ~~using commonly employed practices~~ so that no more than 1 inch (1") of residue remains in the tank.

165:25-2-134. Temporary closure; requirements for returning to service

(a) When an underground storage tank system is taken out of service for 3 months or more, but less than 12 months, the ~~owner or operator~~ owner/operator must ~~comply with the requirements of 165:25-2-133 and~~ meet the following additional requirements:

(1) All tanks must be drained.

(2) All vent lines must be left open and functioning.

(3) All other lines, pumps, manways, and ancillary equipment must be capped and secured.

(b) When an underground storage tank system is returned to service a tank and line tightness test, performed by a certified tester, must be completed on the underground portion of temporarily closed systems prior to returning the system to service if it has been out of service for more than 12 months.

165:25-2-135. Permanent closure

~~(a)~~ Systems out of service for more than 12 months must be removed if they do not comply with the requirements ~~for release detection and corrosion protection~~ as stated in 165:25-2-133 and 165:25-2-134.

~~(b) All permanent tank closures must be performed by a licensed UST Remover.~~

~~(c) All permanent tank closures must be completed by removing the tank(s) and lines from the ground, unless the Commission grants a variance of this requirement. A variance will only be granted by application, notice and hearing. The burden of proof rests on the person seeking a variance.~~

165:25-2-136. Assessing the site at closure or change in service

~~(a) Before permanent closure, or~~ a change in service, ~~or~~ tank or line repair, and/or replacement is completed, the ~~owner~~ owner/operator must measure for the presence of a release where contamination is most likely to be present at the underground storage tank system site. ~~The Commission, at its discretion, may have a witness present to verify that sampling is completed appropriately. Failure of the owner or the owner's representative to schedule the sampling 14 days in advance with the PSTD and to advise PSTD at least 48 hours in advance of schedule changes, will result in the PSTD requiring a post-closure site assessment, and Commission initiated enforcement.~~

(b) ~~In selecting sample types, sample locations, and measurement methods, the owner must consider the method of closure, the nature of the stored substance, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence of a release.~~ Please refer to the ~~OCC~~ PSTD removal guidance document relating to UST closure sampling. ~~Sample locations should be outside of the UST system in native soil or another location approved by the Commission. All samples required to be collected and analyzed pursuant to this Section must be analyzed by an Oklahoma Department of Environmental Quality certified laboratory.~~

~~(1) For tank systems containing petroleum product, analyses must be done for both TPH and BTEX.~~

~~(2) Levels of contamination in native soils and groundwater that shall require further action, at the direction of the commission, are:~~

~~(A) Benzene~~

~~(i) Native Soils - 0.5 mg/kg~~

~~(ii) roundwater - 0.005 mg/l~~

~~(B) Toluene~~

~~(i) Native Soils - 40.0 mg/kg~~

~~(ii) Groundwater - 1.0 mg/l~~

~~(C) Ethyl Benzene~~

~~(i) Native Soils - 15.0 mg/kg~~

~~(ii) Groundwater - 0.7 mg/l~~

~~(D) Xylene~~

~~(i) Native Soils - 200.0 mg/kg~~

~~(ii) Groundwater - 10.0 mg/l~~

~~(E) TPH~~

~~(i) Native Soils - 50.0 mg/kg~~

~~(ii) Groundwater - 2.0 mg/l~~

~~(iii) I f BTEX concentrations are below action levels, a TPH concentration of 500 ppm or mg/kg in soil shall be required to confirm a case at the direction of the commission.~~

(c) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered, the owner must immediately begin corrective action in accordance with OAC 165:29, the Commission's Rules on Remediation.

(d) All sampling at closures must be under the supervision of a Licensed Remediation Consultant.

~~(e) Only soil and/or groundwater sampling results will be acceptable for site assessment at closure. Monitoring well records and/or inventory reconciliation records will not be accepted.~~

165:25-2-137. Applicability to previously closed underground storage tank systems

(a) When directed by ~~the Commission~~ PSTD, the ~~owner~~ owner/operator of an underground storage tank system closed before April 21, 1989 must assess the excavation zone and close the underground storage tank system in accordance with this Chapter. ~~The Commission~~ PSTD may direct the ~~owner~~ owner/operator to assess the site or may assess the site itself if releases from the underground storage tank system may, in the judgment of ~~the Commission~~ PSTD, pose a current or potential threat to human health, safety ~~or welfare~~ or the environment.

(b) Petroleum storage tank systems closed after April 21, 1989 and not upgraded to meet December 23, 1998 upgrade deadline must ~~assess~~ be removed and the site assessed ~~the site~~ in accordance with 165:25-2-~~115~~ 136.

165:25-2-138. Closure records

~~Owners and operators~~ Owners/Operators must maintain records that demonstrate compliance with all tank closure requirements. Records of the results of the required site assessments must be maintained for at least three (3) years after completion of permanent closure or change in service in one of the following ways:

(1) By the owner or operator who took the UST system out of service.

(2) By the current owner or operator of the UST system site.

(3) Mailing these records to ~~the Petroleum Storage Tank Division~~ PSTD if they cannot be maintained at the closed facility.

SUBCHAPTER 3. RELEASE PREVENTION AND DETECTION REQUIREMENTS

PART 2. RELEASE DETECTION REQUIREMENTS AND METHODS

165:25-3-6.20. General monitoring requirements

Tanks must be monitored at least every 30 days for releases using one of the methods or combinations of methods listed in this Chapter. ~~Underground storage tanks that meet the performance standards and monthly inventory requirements may use tank tightness testing, performed by a certified tester, at least once every 5 years and only until 10 years after the tank is installed or upgraded with corrosion protection, whichever is later.~~

165:25-3-6.21. General release detection methods and devices

(a) ~~Owners and operators~~ Owners/operators of new and existing underground storage tank systems must use a release detection method, or a combination of release detection methods, that is:

(1) Capable of detecting a release of regulated substances from any portion of the underground storage tank system that routinely contains product.

(2) Designed, installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running conditions.

(3) Capable of meeting the performance requirements of this Chapter, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer.

(4) Sampled, tested, or checked for a release at least once every 30 days.

~~(b) If one of the external release detection methods in this Chapter is used, the owner of a new underground storage tank system must perform a necessary investigation to ensure proper operation of the release detection method.~~

~~(c) Owners and operators of all new underground storage tank systems must use one of the release detection methods, or a combination of methods, set forth in this Chapter. The owner or operator must notify the Commission in writing, at least 30 days after bringing a new system into operation, of the type of release detection method or combination of methods used at the new facility.~~

(~~d~~b) ~~Owners and/or operators~~ Owners/operators must keep all written manufacturer and installer performance specifications and the manner in which those specifications are determined.

165:25-3-6.22. Tank system tightness testing with monthly inventory control

When performed in accordance with the following requirements, this combination of functions is a stand-alone method of leak detection for tanks. This method expires ten (10) years after the corrosion protection upgrade of your tank(s) to 1998 standards or ten (10) years after a new tank is installed.

(1) **Tank tightness testing.** Tank tightness testing ~~(or another test of equivalent performance)~~ must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank ~~while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table~~.

(2) **Requirements for tank tightness testing.** If tank tightness testing is part of the chosen method of release detection, it must be conducted in accordance with the requirements of this Subchapter, performed by a tester certified by the manufacturer of the testing equipment, and completed once every five years.

(3) **Inventory control.**

~~(A)~~ ~~Product~~ Monthly inventory control ~~(or another test of equivalent performance)~~ must be conducted ~~monthly~~ to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:

(~~i~~A) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount remaining in the tank are recorded each operating day.

(~~ii~~B) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth inch (1/8").

(~~iii~~C) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.

(~~iv~~D) Deliveries are made through a drop tube that extends to within 6 inches (6") of the tank bottom.

(~~v~~E) Product dispensing is metered and recorded within an accuracy of 6 cubic inches for every 5 gallons of product withdrawn.

(~~vi~~F) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth inch (1/8") at least once a month.

(~~vii~~G) Use of ~~OCC~~ PSTD Monthly Inventory Reconciliation Form or an electronic equivalent is required.

~~(B) Compliance with API 1621, where applicable, will be deemed compliance with this Section.~~

165:25-3-6.23. Testing or monitoring for vapors

(a) Before installing a new vapor monitoring system or continuing to use an existing vapor monitoring system for monthly release detection a site-specific site assessment must be conducted to determine the following:

(1) The exact location and total depth of the tank(s) and piping to avoid damage to the UST system during well installation and to determine the number and placement of wells.

(2) That the backfill is sufficiently porous to allow diffusion of vapors from a release to migrate readily to the ~~monitoring~~ observation wells (i.e., sand, pea gravel or crushed rock).

(3) That background levels of contamination or naturally occurring organic hydrocarbons are low enough to allow a release from the tank(s) or piping to be detected. To determine background concentrations, a temporary vapor well can be installed in the UST excavation area and the device that will be used for monitoring can be used to get an initial reading.

(4) The location and historical levels of groundwater at the site. If the backfill is saturated with water, because of a perched water table, fluctuating water table, rainfall, etc. above the tank burial depth, a vapor monitoring system should not be used because dispersion of vapors would be restricted and a release could go undetected.

(5) Volatility of the stored product and its compatibility with the monitoring device that will be used.

(b) Individuals performing this site assessment must be a ~~Commission~~ PSTD licensed remediation consultant.

(c) The vapor ~~monitoring~~ observation wells must be installed within the tank excavation ~~and/or piping trench backfill~~. A minimum of 2 wells is required for multi-tank excavations, with at least one of the wells on the downgradient side. Wells must be spaced to cover a maximum 20-foot radius. One well is acceptable for single tanks of 3,000 gallons or less capacity, or for not more than 2-2,000 gallon tanks in one excavation provided the well is near the center of the excavation.

~~(d) In piping trenches, vapor monitoring wells must be placed at all piping joints and where piping changes direction, and be spaced to cover a maximum 20-foot radius of influence. A well must also be placed at each dispenser island, in backfill material and in a location least likely to be impacted by a surface spill caused by vehicle overfilling.~~

(~~e~~d) ~~Monitoring~~ Observation wells must be installed in accordance with OAC 785:35, Oklahoma Water Resources Board (OWRB), Well Driller and Pump Installer Licensing. OWRB rules allow ~~an~~ a ~~OCC~~ PSTD-licensed UST Installer to install ~~monitoring~~ observation wells during tank installations only. An OWRB-licensed driller must perform all other well installations.

(~~f~~e) In addition to 165:25-3-6.23(e), vapor ~~monitoring~~ observation wells must meet these minimum requirements:

(1) Be constructed from two- or four-inch polyvinyl chloride (PVC) or stainless steel casing with factory milled well screen.

(2) The well screen section should begin approximately two-feet below ground surface (bgs) for tank excavations ~~and one foot bgs for piping trenches~~. The well screen must extend to a depth of two feet below the tank bottom ~~and/or piping~~.

(3) A filter pack of graded gravel or uncontaminated quartz sand, silica, or other material that will not affect the groundwater quality must be placed around the entire length of the well screen.

(4) The area above the well screen must be sealed (annular seal) to prevent surface spills from contaminating the well, which would result in a false indication of a release. An anti-shrink concrete or grout seal must extend at least 12 inches from within the ~~monitoring~~ observation well manhole. The remainder of the well above the well screen must be sealed with a cement-bentonite mixture or bentonite pellets.

(5) A concrete or cement surface pad must be installed around the casing at the surface with minimum dimensions of 3 feet in diameter by 3.5 inches thick. The surface pad must be sloped so to ensure that all surface water flows away from the well. The surface pad is not required if the well is completed in competent concrete or asphalt paving.

(6) The well(s) must be installed within manholes competent to withstand anticipated traffic flow. The well casing must be secured with a tight fitting cap and the manhole cover bolted to prevent unauthorized tampering. The manhole cover must be clearly marked with an equilateral triangle to identify the well as a ~~monitoring~~ observation well or site assessment observation well.

(~~g~~f) Records demonstrating compliance with this Section must be submitted to ~~the Petroleum Storage Tank Division~~ PSTD before a new vapor monitoring system may be used or before an existing vapor monitoring system may continue to be used after July 15, 2005. At a minimum, these records must include a site map that includes the location of tanks, piping, dispensers and all ~~monitoring~~ observation wells, copies of the OWRB Multi-Purpose Completion Report for each well, name of the company and individual performing the assessment.

(~~h~~g) All vapor ~~monitoring~~ observation wells must be checked by a licensed ~~monitoring~~ observation well technician.

(~~i~~h) The vapor monitoring equipment must be designed and operated to allow the threshold level to be preset specifically for the type of regulated substance stored in the tank system and be capable of detecting any significant increase in the concentration of regulated substance, component or components of that substance (in a range of 0 to 10,000 units/ppm) or a tracer placed in the tank system above background levels.

(~~j~~i) ~~Monitoring~~ Observation well readings above 4,000 units/ppm for gasoline and above 1,500 units/ppm for diesel, or above 1,500 units/ppm for a tank pit containing both gasoline and diesel tanks, must be reported to ~~the Commission~~ PSTD by telephone at (405) ~~521-6575~~ 521-4683 or toll free at 1-888-621-5878 within 24 hours of the owner, ~~or~~ operator, ~~or~~ any of their ~~his or her~~ employees, or agents knowing the reading.

(~~k~~j) An increase in vapor levels of 500 units/ppm above background or historical levels detected by monthly monitoring, even though below the 24-hour reporting level, must be reported if the increase does not correct itself in the second month of monitoring. The report must be made within 24 hours of the owner or operator or any of his or her employees knowing the second month's monitoring results.

(~~l~~k) If a monitoring report under the circumstances above is not made within 24 hours, the owner or operator must be prepared to show documentation or evidence that would reasonably indicate ~~his or her~~ why knowledge of monitoring results or release conditions was delayed.

165:25-3-6.24. Testing or monitoring for liquids on the groundwater

(a) Before installing a new groundwater monitoring system, or continuing to use an existing groundwater monitoring system for monthly release detection a site-specific site assessment must be conducted to determine the following:

(1) The exact location and total depth of the tank(s) and piping to avoid damage to the UST system during well installation and to determine the number and placement of wells.

(2) That the backfill is sufficiently porous to allow migration of product from a release to the ~~monitoring~~ observation wells (i.e., sand, pea gravel or crushed rock).

(3) That background levels of contamination or naturally occurring organic hydrocarbons are low enough to allow a release from the tank(s) or piping to be detected. Groundwater monitoring may not be effective if the site has had prior spills or releases.

(4) The location and historical levels of groundwater at the site. Groundwater monitoring cannot be used if the water table is less than three feet below ground surface or more than 20 feet below ground surface.

(5) Fluctuation of groundwater. The well screen must intercept the water table at both high and low elevations. Free product floating on top of the water surface cannot enter a well if the water level is higher than the well screen, nor can free product enter a well if the water level is below the bottom of the well screen. It must be determined that groundwater conditions are such that a release would not go undetected.

(6) The stored product's compatibility with the monitoring device that will be used. The detection device must be able to detect the presence of at least one-eighth of an inch of free product on top of the groundwater in the monitoring wells. Groundwater monitoring is only effective if the stored product is lighter than water (i.e., has a specific gravity less than 1.0), which allows the product to float on the water surface. The stored product must not be soluble in water. Products that are highly soluble in water would not be detected as a separate liquid phase.

(b) Individuals performing this site assessment must be ~~Commission~~ PSTD licensed remediation consultants.

(c) The groundwater ~~monitoring~~ observation wells must be installed in the tank excavation ~~and/or piping trench backfill~~. Two wells are sufficient for single tanks of 3,000 gallons or less capacity or for not more than 2-2,000 gallon tanks in one excavation. For multiple tanks, a minimum of 3 wells must be installed with at least one of the wells placed on the downgradient side. A sufficient number of wells must be installed so that the entire UST system is covered. Under normal circumstances, groundwater monitoring on piping runs would not be appropriate due to the depth to groundwater and the time required to detect a leak.

(d) ~~Monitoring~~ Observation wells must be installed in accordance with OAC 785:35, Oklahoma Water Resources Board (OWRB), Well Driller and Pump Installer Licensing. OWRB rules allow a ~~Commission~~ PSTD licensed UST Installer to install ~~monitoring~~ observation wells during tank installations only. An OWRB-licensed driller must perform all other well installations.

(e) Groundwater ~~monitoring~~ observation wells must meet these minimum requirements:

(1) Be constructed from two- or four-inch polyvinyl chloride (PVC) or stainless steel casing with factory milled well screen.

(2) The well screen section should begin approximately two-feet below ground surface (bgs) for tank excavations. The well screen must extend to a depth of two feet below the tank bottom ~~and/or piping~~.

(3) A filter pack of graded gravel or uncontaminated quartz sand, silica, or other material that will not affect the groundwater quality must be placed around the entire length of the well screen unless the tank and/or piping is backfilled with pea gravel.

(4) The well screen must ~~terminate~~ begin no less than ~~at least~~ 18-inches below ground surface. The area above the well screen must be sealed (annular seal) to prevent surface spills from contaminating the well, which would result in a false indication of a release. An anti-shrink concrete or grout seal must extend at least 12 inches from within the monitoring well manhole. The remainder of the well above the well screen must be sealed with a cement-bentonite mixture or bentonite pellets.

(5) A concrete or cement surface pad must be installed around the casing at the surface with minimum dimensions of 3 feet in diameter by 3.5 inches thick. The surface pad must be sloped so to ensure that all surface water flows away from the well. The surface pad is not required if the well is completed in competent concrete or asphalt paving.

(6) The well(s) must be installed within manholes competent to withstand the anticipated traffic flow. The well casing must be secured with a tight fitting cap and the manhole cover bolted to prevent unauthorized tampering. The manhole cover must be clearly marked with an equilateral triangle to identify the well as a ~~monitoring~~ observation well or site assessment observation well.

(f) Records demonstrating compliance with this Section must be submitted to ~~the Petroleum Storage Tank Division~~ PSTD before a new groundwater monitoring system may be used or before an existing groundwater monitoring system may continue to be used after July 15, 2005. At a minimum, these records must include a site map that includes the location of tanks, piping, dispensers and all monitoring wells, copies of the OWRB Multi-Purpose Completion Report for each well, name of the company and individual performing the assessment.

(1) Any indication of free product floating on the water table must be reported to ~~the Commission~~ PSTD by telephone at (405) ~~521-6575~~ 521-4683 within 24 hours of the ~~owner or operator~~ owner/operator or any of their ~~his or her~~ employees or agents discovering the product.

(2) If a monitoring report under the circumstances of above is not made within 24 hours, the owner or operator must be prepared to show documentation or evidence that would reasonably indicate ~~his or her~~ why knowledge of the existence of free product was delayed.

(g) All groundwater ~~monitoring~~ observation wells must be checked by a ~~Commission~~ PSTD licensed ~~monitoring~~ observation well technician.

165:25-3-6.25. Interstitial monitoring

~~Interstitial monitoring between the underground storage tank system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product. It must meet one of the following requirements:~~

~~(1)~~ For double-walled underground storage tank systems, the sampling or testing method must detect a release monthly ~~in accordance with the manufacturer instructions~~ through the inner wall in any portion of the tank that routinely contains product in accordance with the manufacturer instructions.

~~(2) For underground storage tank systems with a secondary barrier within the excavation zone, the sampling~~

~~or testing method used must detect a release between the underground storage tank system and the secondary barrier.~~

~~(A) The secondary barrier around or beneath the underground storage tank system must consist of artificially constructed material that is sufficiently thick and impermeable (at least 1.0 X 10^{-6} cm/sec) to direct a release to the monitoring point and permit its detection.~~

~~(B) The barrier must be compatible with the regulated substance stored so that a release from the underground storage tank system will not cause a deterioration of the barrier, allowing a release to pass through undetected.~~

~~(C) For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system.~~

~~(D) Groundwater, precipitation, or soil moisture must not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days.~~

~~(E) The site must be assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain, unless the barrier and monitoring designs are specifically intended for use under such conditions.~~

~~(F) Monitoring wells must be clearly marked and secured to avoid unauthorized access and tampering.~~

~~(3) For tanks with an internally fitted liner, an automated device must be used that can detect a release between the inner wall of the tank and the liner. In addition, the liner must be compatible with the substance stored.~~

165:25-3-6.26. Automatic tank gauging systems

(a) Automatic tank gauging systems (ATG's) that test for the loss of product must conduct an automatic product level monitor test at a minimum frequency of once every 30 days, and be capable of detecting at least a 0.2 gallon per hour leak rate ~~with a probability of detection of 0.95 and a probability of false alarm of 0.05~~.

(b) ATG's that cannot detect a 0.1 gallon per hour leak rate monthly ~~or perform inventory reconciliation~~ are also required to have monthly inventory reconciliation ~~done in conjunction with them~~.

(c) ~~Automatic tank gauging systems (~~ATGs~~)~~ must be third party certified for the size of tanks and for the quantity of tanks that are manifolded together. Only third party certifications that have been reviewed and approved by the National Work Group on Leak Detection Evaluations (NWGLDE), ~~as evidenced by their posting on the~~ found at NWGLDE Web Site, will be accepted (www.nwglde.org).

165:25-3-6.27. Manual tank gauging

(a) **Restrictions.** Manual tank gauging may be used as an approved method of release detection if:

(1) The tank has a nominal capacity of 1,000 gallons or less; or

(2) The tank has a nominal capacity of between 1,001 and 2,000 gallons and manual tank gauging is combined with periodic (every five years) tank tightness testing as required by this Subchapter;

(b) **Requirements.**

(1) Tank liquid level measurements are taken at the beginning and ending of the period appearing in Appendix Q, during which no liquid is added to or removed from the tank.

(2) Level measurements are based on an average of 2 consecutive stick readings at both the beginning and ending of the period.

(3) The equipment used is capable of measuring the product over the full range of the tank's height to the nearest one-eighth inch (1/8").

(4) A leak is suspected and subject to the release reporting requirements of Subchapter 3, Part ~~1~~ 3 of this Chapter if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the table in Appendix Q.

165:25-3-6.28. Statistical Inventory Reconciliation (SIR)

(a) Deliveries, withdrawals and balance remaining must be recorded each operating day on the OCC Monthly Inventory Reconciliation Form or an electronic equivalent and data must be reconciled monthly.

(b) The tank must be equipped with a drop tube and measured for water at least monthly.

(c) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth inch (1/8").

(d) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.

(e) Records must be submitted to a certified SIR vendor for monthly evaluation. Only third party certifications that have been reviewed and approved by the National Work Group on Leak Detection Evaluations (NWGLDE), ~~as evidenced by their posting on the~~ found at the NWGLDE Web Site, will be accepted (nwglde.org).

(f) SIR analysis reports may include a summary report of the quantitative results and must include copies of all Monthly Inventory Reconciliation Forms.

(g) Results of monthly SIR analysis must be on premises no later than the end of the following month.

(h) This method is approved as release detection for tanks only.

165:25-3-6.29. ~~Installation and~~ Monitoring requirements for piping

Underground piping that routinely contains regulated substances must be ~~installed and~~ monitored for releases in a manner that meets the following requirements:

(1) **Pressurized piping.**

(A) All underground piping that conveys regulated substances under pressure must be equipped with ~~an automatic~~ a mechanical or electronic line leak detector installed and operated in accordance with this Chapter.

(B) New installations and facilities replacing a piping system must have ~~at least one~~ a sump sensor, float or similar mechanical device at each ~~submersible pump, or at the lowest~~ tank, transition, and dispenser sump ~~at the lowest island for each tank, whichever is at the lowest end of the piping gradient~~. Sensors should be mounted near the bottom of the sump(s) and accessible for annual testing.

(C) New installations and facilities replacing a piping system must have double-walled piping. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs.

(D) The underground pressure piping from the master dispenser to the satellite must be designed and installed so that the satellite piping is tested by the automatic line leak detector. An annual line tightness test is required on the satellite underground piping.

(2) **Suction piping.** ~~Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every 3 years by a certified tester, or use a monthly monitoring method conducted in accordance with this Chapter. No release detection is required for suction piping designed and constructed to meet the following standards:~~

(A) Suction piping installed after July 2008 must be double-walled piping. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs.

(B) New installations and facilities replacing a piping system must have a sump sensor, float or similar mechanical device at each tank, transition, and dispenser sump. Sensors should be mounted near the bottom of the sump(s) and accessible for annual testing.

~~(A) The below grade piping operates at less than atmospheric pressure.~~

~~(B) The below grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released.~~

~~(C) Only one check valve is included in each suction line.~~

~~(D) The check valve is located directly below and as close as is practical to the suction pump.~~

(3) **Methods of release detection for pressurized piping.** Each method of release detection for piping must be done in accordance with the following requirements.

(A) ~~Automatic mechanical~~ Mechanical line leak detectors and annual line tightness testing.

(i) ~~Methods which alert the owner and/or operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 psi line pressure within 1 hour.~~

~~(ii)~~ An annual function test of the operation of the leak detector must be conducted by simulating a leak in accordance with the manufacturer's requirements.

~~(iii) Automatic line leak detectors installed on or after September 22, 1991 must be capable of detecting the leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05.~~

(~~iv~~ii) A hydrostatic line tightness test must be done annually by a certified tester in accordance with this chapter.

(B) Sump sensors with automatic line leak detectors.

(i) Double walled piping with sump sensors, floats or similar mechanical devices at each ~~dispenser and tank~~ sump may be used in lieu of annual line tightness testing except at marinas where a line tightness test is required by April 1st of each year.

(ii) The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors status and alarm history reports must be printed and retained each month. ~~must also be checked monthly to insure that they are operational.~~

(iii) An annual function test of the operation of the leak detector must be conducted by simulating a leak in accordance with the manufacturer's requirements.

(C) Electronic line leak detection. A certified electronic line leak detector may be used in lieu of a~~n automatic~~ mechanical line leak detector and annual tightness test only if:

(i) The system is capable of detecting and tests for a leak of 3 gallons per hour before or after each operation of the submersible turbine pump; and

(ii) The system is capable of detecting and tests for a leak of 0.2 or 0.1 gallons per hour at least once every month; and

(iii) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually, AND the system is function tested annually by simulating a leak, and if necessary, calibrated in accordance with manufacturer's specifications.

~~(D) Monthly vapor monitoring. Monthly vapor monitoring may be used in lieu of an annual line tightness test only if the vapor monitoring system is installed and monitored in accordance with 165:25-3-6.23 for vapor monitoring.~~

~~(E) Other methods applicable to tanks and lines. Any of the acceptable methods for tanks listed in Subchapter 3 of this Chapter (Vapor monitoring and interstitial monitoring for double-walled piping and tanks) may be used in lieu of annual line tightness testing if it is designed to detect a release from any portion of~~

~~the underground piping that routinely contains regulated substances.~~

(4) **Methods of release detection for suction piping.**

(A) Safe Suction Piping. No release detection is required for suction piping installed prior to July 2008 if it is designed and constructed to meet i through iv below:

(i) The below-grade piping operates at less than atmospheric pressure.

(ii) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released.

(iii) One check valve is included in each suction line.

(iv) The check valve is located directly below and as close as is practical to the suction pump.

(B) Tri-annual Line Tightness Testing. Underground piping that conveys regulated substances under suction must ~~either~~ have a line tightness test conducted at least every 3 years by a certified tester. ~~, or meet all requirements for safe suction piping as described in 165:25-3-6.29~~. ~~No release detection is required for safe suction piping.~~

(C) Sump sensors.

(i) Double walled piping with sump sensors, floats or similar mechanical devices at each sump may be used in lieu of tri-annual line tightness testing except at marinas where a line tightness test is required by April 1st of each year.

(ii) The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors status and alarm history reports must be printed and retained each month.

165:25-3-6.30. Commission -approved alternative methods [REVOKED]

~~(a) Any other type of release detection method, or combination of methods, may be used if:~~

~~(1) The method can detect a 0.2 gallon per hour leak rate or a release of 130 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or~~

~~(2) The owner can demonstrate that the method proposed can detect a release as effectively as any of the methods allowed in this Subchapter. In comparing methods, the Commission will consider the size of release that the method can detect and the frequency and reliability with which it can be detected.~~

~~(b) The Commission may impose additional conditions on the use of any alternative method as it deems necessary to protect the public health and safety and the environment.~~

165:25-3-7. Release reporting

(a) The reporting requirements of this Part do not relieve the ~~owner or operator~~ owner/operator of the responsibility to take necessary corrective action pursuant to OAC 165:29, the Commission's Rules on Remediation, to protect the public health, safety and the environment, including the containment and cleanup of spills and overfills that are not required to be reported by this Chapter.

(b) All underground storage tank system owners, operators, their employees or agents, or transporters must report any of the following events to ~~the Commission~~ PSTD by telephone at (405) 521-6575 or toll free at 1-888-621-5878 (if after hours or on weekends or holidays, a detailed message must be left on ~~the Commission's~~ PSTD's answering machine) within 24 hours of knowing of any of the following situations. Owners or operators must provide written confirmation to follow within 20 days in accordance with the requirements established in this Chapter.

(1) The discovery of released regulated substances at the ~~underground storage tank system~~ facility or in the surrounding area (such as the presence of free product or vapors in soils, basements, crawlspaces, sewer and utility lines, and nearby surface water).

(2) Any unusual operating conditions observed~~ by owners and/or operators~~, such as the unexplained erratic behavior of product dispensing equipment, the sudden loss of product from the underground storage tank system, or an unexplained presence of water in the tank, unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced.

(A) In the case of inventory control, two consecutive months where the Total Gallons Over/Short is greater than the "Leak Check" (1 percent of product sales plus 130 gallons) must be reported to ~~the Commission~~ PSTD within 24 hours of the ~~owner or operator~~ owner/operator knowing the inventory control results.

(B) Any UST system failure from a third party-certified Statistical Inventory Reconciliation (SIR) analysis must be reported to ~~the Commission~~ PSTD within 24 hours of the ~~owner or operator~~ owner/operator knowing of the failure. An immediate investigation into the cause of the failed report must be conducted and results reported to ~~the Commission~~ PSTD within 7 days.

(C) An "Inconclusive" report from an SIR monthly analysis must be reported within 24 hours of the owner or operator knowing of the report. An Inconclusive means that the UST system has failed to meet leak detection requirements for that month.

(3) An unusual level of vapors on the site that is of unknown origin. A vapor ~~monitor~~ observation well reading in excess of 4,000 units/ppm from a pit containing gasoline tanks, and in excess of 1,500 units/ppm for a pit containing diesel or both gasoline and diesel, must be reported to ~~the Commission~~ PSTD within 24 hours of the ~~owner or operator~~ owner/operator or any of his or her employees at the facility knowing the monitoring results. Within 10 days, the ~~owner or operator~~ owner/operator must submit to ~~the Commission~~ PSTD all vapor monitoring well data~~, including background data,~~ for the last 12 months. Upon examination of the submitted data, ~~the Commission~~ PSTD

will advise the ~~owner or operator~~ owner/operator what action, if any, ~~he or she needs to take~~ is needed. ~~When a 1,500 units/ppm reading is reported, the Petroleum Storage Tank Division will perform a preliminary investigation at its own expense prior to opening a cleanup case; if it finds no reason to open a case, the owner or operator is not liable for any expenses.~~

(4) An increase in vapor levels of 500 units/ppm above background or historical levels detected by monthly monitoring, even though below the 24-hour reporting level, must be reported if the increase does not correct itself in the second month of monitoring~~.~~ and it ~~It~~ must be reported to ~~the Commission~~ PSTD within 24 hours of the owner or operator or any of his or her employees at the facility knowing the monitoring results.

(5) Monitoring results from a release detection method required by this Chapter that indicate a release may have occurred unless the monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result.

(c) While aboveground releases of petroleum of less than 25 gallons need not be reported, they must be recorded by the ~~owner or operator~~ owner/operator and contained and cleaned up immediately. All of the following releases must be reported to PSTD by telephone within 24 hours of discovery, with a written confirmation to PSTD ~~to follow~~ within 20 days in accordance with the requirements established in this Chapter:

(1) All known belowground releases in any quantity; for example, a release resulting from a line broken during an excavation.

(2) Any aboveground release of petroleum greater than 25 gallons.

(3) Any aboveground release of petroleum which is less than 25 gallons, but cannot be contained and cleaned up within 24 hours.

(d) All ~~owners and/or operators~~ owners/operators of underground storage tank systems must maintain records of all reportable and nonreportable events listed in this section sufficient to permit adequate inspection and review by ~~the Commission~~ PSTD. These records must be kept for 3 years following the date of the event.

(e) If any of the possible, probable or definite release conditions ~~in subsections (a) through (c)~~ above are not reported within 24 hours, the ~~owner or operator~~ owner/operator must be prepared to provide documentation or evidence that would reasonably indicate ~~his or her~~ why knowledge of release conditions or monitoring results was delayed.

PART 3. RELEASE INVESTIGATION REQUIREMENTS

165:25-3-8. Release investigation and confirmation

(a) This Section applies to the investigation of all reportable releases unless the ~~Commission's staff~~ PSTD specifically waives any part of this Section in writing.

(b) ~~Owners and/or operators~~ Owners/operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under this Chapter within 7 days of receipt of notice from ~~the Commission~~ PSTD using the following steps or another procedure approved by ~~the Commission,~~ PSTD:

(1) **System test.** ~~Owners and/or operators~~ Owners/operators must conduct tightness tests ~~(according to the requirements for precision tightness testing in this Chapter)~~ that determine whether a leak exists in the storage tank system ~~or the attached delivery piping, or both~~.

(A) ~~Owners and/or operators~~ Owners/operators must repair~~,~~ or replace~~, or upgrade~~ the underground storage tank system and begin investigation in accordance with (b)(2) of this Section if the test results for the system, tank, or delivery piping indicate that a leak exists.

(B) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and chemical concentrations of regulated substances detected in soil or water are not the basis for ~~suspecting~~ suspicion of a release.

(C) ~~Owners and/or operators~~ Owners/operators must conduct a site check as described in (b)(2) of this Section if the test results for the system, tank and delivery piping do not indicate that a leak exists but indicate concentrations of regulated substances detected in soil or water are above action levels cited in (c).

(2) **Site check.** ~~Owners and/or operators~~ Owners/operators must measure for the presence of a release where released chemicals are most likely to be present at the underground storage tank system site. In selecting sample types, sample locations, sample depths, and measurement methods, owners and/or operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. Sample locations should be approximately 5 feet (5') from the outside of the UST system in native soil or another location approved by ~~the Commission~~ PSTD. Analyses for both BTEX constituents and the appropriate TPH must be obtained in all cases. Site check investigations must be conducted by an OCC licensed Remediation Consultant. ~~For sites where used oil may be involved, as determined through a TPH analysis, TCLP analysis for metals, semi-volatiles, and volatiles will be required. The TCLP results will be used on a case-by-case basis to establish cleanup levels. The selected method must be able to detect the most stringent cleanup levels required in this Chapter. The Total Petroleum Hydrocarbon (TPH) Laboratory Methodology 418.1 will not be accepted for this Chapter.~~

(A) If the test results for soil and/or groundwater taken outside the excavation zone or the underground storage tank system site confirm that a release has

occurred, owners and/or operators must begin corrective action in accordance with OAC 165:29, the Commission's Rules on Remediation.

(B) If the test results for the native soil and/or groundwater or the underground storage tank system site do not indicate that a release has occurred, further investigation is not required.

(c) Levels of chemical constituent concentrations that may confirm a release are:

(1) Benzene

(A) Native Soils - 0.5 mg/kg

(B) Groundwater - 0.005 mg/l

(2) Toluene

(A) Native Soils - 40.0 mg/kg

(B) Groundwater - 1.0 mg/l

(3) Ethyl Benzene

(A) Native Soils - 15.0 mg/kg

(B) Groundwater - 0.7 mg/l

(4) Xylene

(A) Native Soils - 200.0 mg/kg

(B) Groundwater - 10.0 mg/l

(5) TPH

(A) Native Soils - 50.0 mg/kg

(B) Groundwater - 2.0 mg/l

(C) If BTEX concentrations are below action levels, a TPH concentration of 500 ppm or mg/kg in soil shall be required to confirm a case at the direction of ~~the Commission~~ PSTD.

(d) Within 20 days after the reporting of a release, the owner and/or operator must submit a report to ~~the Commission~~ PSTD summarizing the steps taken under (a) of this Section and any resulting information or data. If a release is confirmed through performance of the steps taken under this Section, then the report must be submitted in accordance with a format established by the Commission, after which a remediation may be undertaken under the provisions of Chapter 29.

PART 15. CORRECTIVE ACTION REQUIREMENTS

165:25-3-70. Corrective action

Corrective action must be ~~taken~~ conducted in accordance with OAC 165:29, which governs the remediation of contaminated sites.

SUBCHAPTER 5. UPGRADES

165:25-5-1. Alternatives allowed

No later than December 23, 1998, owners/operators of existing underground storage tank systems shall:

(1) Comply with the requirements for new underground storage tank systems under Subchapter 2 of this Chapter; or

(2) Comply with the upgrading requirements in 165:25-5-2; or

(3) Permanently close the underground storage tank system and take any necessary corrective action, in accordance with this Chapter.

165:25-5-2. Tank upgrading requirements

Existing steel tanks must be upgraded (by December 23, 1998) to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory:

(1) Interior lining. A tank may be upgraded by interior lining if:

(A) The tank is repaired in accordance with 165:25-2-111 of this Chapter and the liner is installed in accordance with a recognized association or an independent testing laboratory.

(B) Within 10 years after lining and every 5 years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.

(2) Cathodic protection. A tank may be upgraded by cathodic protection if the cathodic protection system meets ~~Commission~~ PSTD requirements and the integrity of the tank is ensured using one of the following methods:

(A) The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion.

(B) The tank has been installed for less than 10 years and is monitored monthly for releases in accordance with ~~Commission~~ PSTD requirements.

(C) The tank has been installed for less than 10 years and is assessed for corrosion holes by conducting 2 tightness tests that meet ~~Commission~~ PSTD requirements. The first tightness test must be conducted prior to installing the cathodic protection system. The second tightness test must be conducted between 3 and 6 months following the first operation of the cathodic protection system.

(D) The tank is assessed for corrosion holes by a method that is determined by ~~the Commission~~ PSTD to prevent releases in a manner that is no less protective of human health and the environment that (A), (B), or (C) of this paragraph.

(3) Internal lining combined with cathodic protection. A tank may be upgraded by both internal lining and cathodic protection if:

(A) The lining is installed in accordance with the requirements of Subchapter 2, Part 5 of this Chapter.

(B) The cathodic protection system meets ~~Commission~~ PSTD requirements.

(C) The following codes and standards may be used to comply with 165:25-5-2: API 1631, API 1632, NLPA 631, and NACE RP-0285.

165:25-5-3. Piping upgrading requirements

Metal piping of an existing underground storage tank system that routinely contains regulated substances and is

in contact with the ground must be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and must meet ~~Commission~~ PSTD requirements.

SUBCHAPTER 6. SPECIAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS UTILIZED BY AIRPORTS OPEN TO THE PUBLIC

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:25-6-1. Application

(a) This Subchapter contains provisions that particularly apply to storage tank systems for aircraft fuel at airports. A storage tank system consists of an underground storage tank and the pipes, pumps and dispensers attached to it. Aircraft fuel servicing vehicles are not included.

(b) This Subchapter governs airport operations only insofar as they relate to the installation, operation, maintenance and inspection of fuel storage tank systems.

(c) Subchapters 1 General Provisions, 2 General Requirements for UST's, 3 Release Prohibition and Detection, and 5 Upgrades shall also apply in addition to this Subchapter.

SUBCHAPTER 8. SPECIAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS UTILIZED BY MARINAS

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:25-8-1. Application

(a) This Subchapter contains provisions that particularly apply to the storage, handling and use of gasoline and diesel fuel at marinas.

(b) Subchapters 1 General Provisions, 2 General Requirements for UST's, 3 Release Prohibition and Detection, and 5 Upgrades shall also apply in addition to this Subchapter.

(c) The tank and piping system must come in compliance with the rules of this subchapter before July 15, 2007July 1, 2009. Compliance may be required sooner for any part of a system that poses a threat to property, people, or to the environment.

(d) A licensed UST installer must be on the jobsite at all times during the installation of an underground storage tank and/or piping.

~~(e) All new underground product piping at existing facilities must be installed in accordance with 165:25-2-55.1 "Underground storage tank piping materials".~~

(~~f~~e) All dock or pier product piping from the shoreline to the dispensers at new or existing facilities must be installed according to 165:25-8-3 "Over-water piping at marinas" and 165:25-8-4 "Installation requirements for over-water piping".

~~(g) All dock or pier product piping from the shoreline to the dispensers at existing facilities must be installed according to 165:25-8-3 "Over-water piping at marinas" and 165:25-8-4 "Installations requirements for over-water piping".~~

PART 11. MISCELLANEOUS SAFETY REQUIREMENTS

165:25-8-36. Fire extinguishers

(a) Each marina must be provided with listed fire extinguishers that have a minimum total capacity ~~capability~~ of 40 pounds, Class B, C.

(b) A minimum of three extinguishers must be located at the fuel dock, and one or more must be located within 50 feet (15 m) of each pump, dispenser, underground fill pipe opening and lubrication or service room.

(c) ~~Where practical, there should be a frost-proof water hydrant with a minimum of five eighths inch (5/8") diameter hose on the fuel dock.~~ Piers that extend more than 500 feet (500', or 152 m) in travel distance from shore must have a Class III standpipe installed in accordance with NFPA 14, Standard for the Installation of Standpipe and Hose Systems.

(d) There must be a knife readily accessible at the fuel dock for quickly cutting mooring lines in an emergency and a push pole for shoving away a boat.

SUBCHAPTER 14. SPECIAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS UTILIZED BY BULK PLANT FACILITIES

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:25-14-1. Application

~~(a)~~ This Subchapter applies to the storage, handling and use of regulated substances ~~gasoline, aviation fuel, diesel fuel and volatile blending materials used in motor fuel like kerosene and ethanol~~ at bulk plant facilities. Bulk plants built after July 1, 2001 must comply with all provisions of this Chapter and Subchapter.

~~(b) Those bulk plants already in existence when this Subchapter was adopted vary in size, in the way they are built, in their local surroundings, in the customers they serve and in their role in the local economy. It is difficult to make good rules that can be fairly applied to all these older bulk plants. The goal in the application of this Subchapter to pre-existing bulk plants is to achieve the maximum safety that is practically possible at the least possible expense. If a safety or environmental threat does exist at a bulk plant, the owner will only be required to correct the specific problem and to do so in the most cost-effective way possible.~~

(~~c~~b) Subchapters 1 General Provisions, 2 General Requirements for UST's, 3 Release Prohibition and Detection, and 5 Upgrades shall also apply in addition to this Subchapter.
~~(d) Any company that installs underground storage tank systems must have a UST installer on the job site during the installation of the UST and piping regardless of whether it is installing UST's for itself or for another company.~~

PART 11. MISCELLANEOUS SAFETY PROVISIONS [REVOKED]

165:25-14-33. Required signs [REVOKED]
~~(a) Conspicuous and legible signs prohibiting smoking must be posted within sight of the customer being served.~~
~~(b) Warning signs must be conspicuously posted in the dispensing area incorporating the following or equivalent wording:~~
~~(1) WARNING: It is unlawful and dangerous to dispense gasoline into unapproved containers.~~
~~(2) NO SMOKING.~~
~~(3) STOP MOTOR.~~

SUBCHAPTER 18. INSPECTIONS, NOTICES OF VIOLATION, AND CITATIONS

PART 1. INSPECTIONS

165:25-18-1. Owner/operator cooperation
(a) ~~Owners and operators~~ Owners/operators of storage tank systems regulated by this Chapter must cooperate with inspections, monitoring, and testing requested by or conducted by ~~the Commission~~ PSTD.
(b) Upon the request of ~~the Commission~~ PSTD, owners and operators must, at all reasonable times:
(1) Furnish information relating to the ~~owners' or operators'~~ owners/operators' storage tank facilities, the contents of those facilities, and the associated equipment connected to those facilities.
(2) Conduct monitoring or testing of storage tank facilities.
(3) ~~Permit the Commission~~ Provide PSTD ~~to have~~ access to the facility~~, and~~ to review, inspect, and copy records relating to storage tank facilities.

165:25-18-2. Authority of the Commission
~~The Commission~~ PSTD has the responsibility and authority at any reasonable time to:
(1) Enter any ~~storage tank~~ facility or other place where a storage tank system is located within the State.
(2) Inspect and obtain samples of any regulated substances stored in a storage tank system at any regulated facility.
(3) Conduct monitoring, sampling and ~~or~~ testing of the tanks, piping, associated equipment, contents, observation well, or the environment at these facilities.

165:25-18-3. Completion of inspections
All inspections, whether done by ~~the Commission~~ PSTD or ordered by ~~the Commission~~ PSTD to be conducted by the owner or operator, must be started and completed with reasonable promptness, and the results submitted to ~~the Commission~~ PSTD consistent with the provisions of this Chapter.

165:25-18-4. Inspection for compliance
(a) All storage tank systems regulated by this Chapter must be physically inspected for compliance with the provisions of this Chapter.
(b) These inspections may include, but not necessarily be limited to, review of:
(1) Records of installation.
(2) Records of repair and retrofit operations.
(3) Release containment practices.
(4) Release detection practices.
(5) Compliance with prior Commission orders to perform corrective action.
(6) Records of removal and closure.
(c) In addition, ~~the Commission~~ PSTD may perform any other inspection, testing, or monitoring necessary to ensure compliance with this Chapter and to protect property, human health, safety and welfare and the environment.

PART 3. NOTICES OF VIOLATION AND CITATIONS

165:25-18-10. Notices of Violation and Citations
The purpose of this Section is to create a procedure that allows the ~~Commission's Petroleum Storage Tank Division~~ PSTD Fuel Specialists to issue Notices of Violation (NOVs); and for the Manager of Inspection and Compliance to issue citation(s) for any violation(s) found during PSTD Fuel Specialists' onsite inspections of storage tank systems and facilities. The issuance of a Notice of Violation or citation will allow petroleum storage tank owners and operators to quickly address and correct storage tank violation(s).

165:25-18-11. Notices of Violation
(a) When a ~~Petroleum Storage Tank Division~~ PSTD Fuel Specialist finds a violation of any rule or order of the Commission regarding the regulation of petroleum storage tanks, the Fuel Specialist may issue a Notice of Violation (NOV) pursuant to Appendix S.
(1) A Notice of Violation is to alert the tank owner or operator that a violation has been found. The NOV will describe the violation and advise that further ~~Commission~~ PSTD enforcement action may occur.

(2) In all situations where an NOV is issued, it must explain to the person to whom it is given what the offense is and how the person can correct it.

(b) Notices of Violation will state the following information:

(1) A clear description of the violation(s).

(2) A date by which the violation(s) must be corrected.

(3) The name of the PSTD Fuel Specialist issuing the NOV, along with a telephone number and address so that the tank owner or operator can ask the PSTD Fuel Specialist questions.

(c) A Fuel Specialist will give the NOV(s) to the ~~owner or operator~~ owner/operator of the storage tank facility, if he or she is at the facility. If the ~~owner or operator~~ owner/operator is not present, managers at the storage tank facility can be given NOVs.

(d) ~~The Fuel Specialist~~ PSTD will mail, email, or fax a copy of all NOVs to any facility's corporate office at that company's request. ~~The company must make a request in writing to the Manager of Inspection and Compliance of the Petroleum Storage Tank Division.~~

165:25-18-12. Re-inspection and Fine Citation

(a) On or after the date that the violation is to be corrected, a Fuel Specialist will re-inspect the storage tank facility to verify that the violation has been corrected.

(b) If the re-inspection shows that the violation has not been corrected, the Fuel Specialist may:

(1) Issue a new NOV and refer the violation to the Inspection and Compliance Manager for enforcement action; and/or

(2) ~~If the~~ The storage tank facility ~~constitutes an immediate hazard, it~~ may be shut down pending a correction of the problem or a ~~Commission~~ PSTD hearing on the issue.

165:25-18-13. Payment of fine or hearing

(a) The storage tank ~~owner or operator~~ owner/operator can either pay the amount of the fine as stated in the Fine Citation or request an evidentiary hearing.

(b) The tank ~~owner or operator~~ owner/operator will have thirty (30) days from the date the citation was issued to pay the fine.

(1) A fine may be paid with cash, a money order, or check. Any cash payment must be made at the Commission's cashier window. All checks must be made payable to the Oklahoma Corporation Commission - Petroleum Storage Tank Division. If sending payment through the mail, a copy of the citation must be sent with the payment to ensure proper credit.

(2) Payment of a fine within the 30-day timeframe will not be considered an agreement or disagreement with the citation.

(c) If the storage tank ~~owner or operator~~ owner/operator disagrees with the citation, ~~he or she~~ they may ~~have a~~ appear at the Citation hearing at the Commission.

~~(1) To request a hearing, the procedure as provided on the citation should be followed and must be made within seven (7) days from the date the citation was issued.~~

~~(2) The Commission will set a date for a hearing and will notify the tank owner or operator of the date and time of the hearing.~~

~~(3)~~ If found guilty at the hearing, the tank owner or operator must pay the amount of the fine, as well as an administrative cost of $250.00.

(d) If a Fine Citation has not been paid within ninety (90) days of being issued or within ninety (90) days of a Commission order confirming the fine, the amount of the fine will double. Refusal to comply with an order of the Commission may result in an additional fine being levied after notice and hearing in an amount as allowed by law, and shutdown of the facility for failure to pay fines.

(e) Failure of a tank ~~owner or operator~~ owner/operator to appear at the hearing will result in additional enforcement action.

(f) An appeal from the hearing must be to the Commission en banc in accordance with OAC165:5.

(g) A tank ~~owner or operator~~ owner/operator is still responsible for following the Commission's rules regarding petroleum storage tanks regardless of paying a fine or correcting a violation.

PART 5. PENALTIES

165:25-18-19. Penalties

~~(a)~~ Pursuant to 17 O.S. § 306, any ~~owner or operator~~ owner/operator of a regulated ~~aboveground~~ underground storage tank system located within the State who violates any of the provisions of this Chapter may be issued a citation or may be subject to an administrative penalty not to exceed $10,000.00 for each day that the violation continues.

~~(b) 17 O.S. § 311 provides that any person who has been determined by the Commission to have violated any provisions of the Storage Tank Regulation Act or any rule promulgated or order issued pursuant to the provisions of the Oklahoma Storage Tank Regulation Act may be held liable for an administrative penalty of not more than $10,000.00 per day of continuing violation and 17 O.S. § 365(H) provides that owners or operators who fail to comply with any order issued by the Commission for corrective or enforcement action may be subject to an administrative penalty not to exceed $25,000.00 per tank per day of violation. Under this Chapter the Manager of Inspection and Compliance may issue citations under the authority of 17 O.S. § 306 and Part 5 of this Subchapter, but only the Commission after notice and hearing may impose a larger fine.~~

APPENDIX S. FINE CITATIONS TABLE [REVOKED]

APPENDIX S. FINE CITATIONS TABLE [NEW]

Rule	Violation	Fine Amount
Registration & Permit Requirements		
165:25-1-42	Failure to register tanks within 30 days of bringing the system into service	$500
165:25-1-41 165:25-1-51	Failure to amend registration within 30 days to reflect change in ownership or tank status	$500
165:25-1-64 165:25-1-67	Failure to pay permit fees prior to due date	Not > 50% of fee
165:25-1-126	Failure to certify training for all operator classes, per owner not facility	$500
165:25-1-126	Second offense within 12 months Third offense, formal enforcement	$1,000
Notification Requirements		
165:25-1-41	Failure to properly identify all storage tank systems on OCC forms after third request, including a letter advising tank owner of the penalty	$1,000
165:25-1-41	Failure to provide installation information on OCC forms after third request, including a letter advising tank owner of the penalty	$1,000
165:25-1-42 165:25-1-55	Failure to notify the OCC prior to tank installation or closure	$500
165:25-1-48	Failure to report tank and line tightness test results as required	$500
Required Reports		
165:25-1-55	Failure to submit tank closure report within 45 days	$250
165:25-1-48 165:25-3-8 165:29	Failure to submit required reports pertaining to suspected release investigations and/or corrective action activities in a timely manner	$250
	Second offense and thereafter for same case or tracking number	$500
165:25-3-6.28	Failure to maintain SIR analysis on premises no later than the end of the following month	$500
General Leak Detection Requirements		
165:25-3-1	Failure to notify OCC of indicated release	$250
165:25-2-6.20 165:25-2-6.21	Failure to provide adequate release or leak detection for storage tank system (first offense)	$250
	Second offense	$500
	Third offense	$1,000
165:25-2-6.20 165:25-3-6.21	Failure to use an approved method of release or leak detection method for tanks	$250
165:25-2-55.1 165:25-3-6.29	Failure to use an approved method of release or leak detection monitoring for piping	$250
165:25-3-6.23 165:25-3-6.24	Failure to use a licensed technician for ~~montoring~~ monitoring vapor or groundwater wells as required	$250
165:25-1-53 165:25-3-6.21	Failure to maintain records of release or leak detection monitoring	$250
165:25-1-53	Failure to maintain results of sampling, testing, or monitoring	$250

Rule	Violation	Fine Amount
165:25-1-53 165:25-1-54	Failure to retain records of calibration, maintenance, and/or repair of release or leak detection equipment	$250
165:25-2-40 165:25-3-6.29	Failure to install or test leak detection on pressurized piping	$250
Spill Protection & Overfill Prevention		
165:25-2-39 165:25-1-57	Tank owner/operator accepting delivery into UST without spill protection	$1,000
165:25-2-39 165:25-1-57	Tank owner/operator accepting delivery into UST that does not have overfill prevention	$1,000
165:25-3-7	Failure to report a spill over 25 gallons	$100
165:25-3-70	Failure to investigate a spill over 25 gallons	$100
165:25-3-70	Failure to investigate an spill resulting from overfill	$100
165:25-3-7	Failure to clean up any spill or overfill	$500
Operation & Maintenance of Corrosion Protection		
165:25-2-51	Tank owner/operator accepting delivery into a UST that does not have a required corrosion protection system	$1,000
165:25-1-56	Failure to provide cathodic protection system design or suitability study	$1,000
165:25-2-53 165:25-2-53.1	Failure to properly operate and maintain corrosion protection, inspect tank lining, or make necessary repairs (first offense)	$150
	Second offense	$500
	Third offense	$1,000
165:25-2-53	Failure to properly and/or timely test corrosion protection every 60 days	$250
165:25-1-56	Failure to maintain records of cathodic protection installation, repair, inspections or testing	$250
165:25-2-53	Failure to use a qualified cathodic protection tester to certify corrosion protection system operation at least once every 3 years (first offense)	$500
	Second offense	$1,000
165:25-2-53 165:25-2-111	Failure to test cathodic protection system within 6 months of installation or repair	$250
Release Investigation		
165:25-3-7 and 165:25-3-8	Failure to conduct tightness test(s) to investigate suspected leak(s) from the storage tank system as required	$250
Temporary & Permanent Closure		
165:25-2-132 165:25-2-133	Failure to operate and maintain corrosion protection in a temporarily closed storage tank system as required	$500
165:25-2-133	Failure to provide adequate release or leak detection as required in a temporarily closed storage tank system	$250
165:25-2-134	Failure to cap and secure all storage tank related equipment for temporary closure	$250
165:25-2-135	Failure to measure for the presence of a release before permanent closure as required	$500
165:25-2-138	Failure to maintain proper closure records	$250
165:25-2-131	Failure to use an OCC licensed UST Remover	$500

Rule	Violation	Fine Amount
165:25-2-136	and/or Remediation Consultant	
165:25-5-1	Failure to upgrade UST with CP by December 1998 deadline or remove tank within 12 months of December 1998 deadline	$500/tank
Repairs Allowed		
165:25-2-42 165:25-2-111	Failure to use an OCC licensed UST Installer or repair person for installation or repair as required	$500
	Second offense (per owner, not per facility)	$1,000
165:25-2-40 165:25-2-111	Failure to perform tightness test on storage tank system after installation or repair	$300
165:25-1-54	Failure to maintain repair records for operating life of storage tank	$250
Other Violations		
165:15	Misrepresentation of octane level per location	$500
	Second offense within one year	$1,000
	Third offense – Closure and Hearing	$5,000
165:25-1-41 165:25-1-53	Failure to provide records upon request	$100
	Second offense or thereafter (per owner, not per facility)	$500
Administrative Penalty	Any owner/operator of a storage tank system who fails to comply with any order issued by the Commission for corrective or enforcement actions may be subject, after notice and hearing, to an administrative penalty in an amount as allowed by law.	

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TITLE 185. CRIME VICTIMS COMPENSATION BOARD CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #08-957]

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The rules affected by the changes relate to Oklahoma Crime Victims Compensation Act 21 O.S. 142.1. The rules will affect the types of payments that can be awarded under the Act and the process in which those payments are made and decided upon.
CONTACT PERSON:
Tina Harman, Public Information Officer, District Attorneys Council, 421 N.W. 13th, Ste. 290, Oklahoma City, OK 73103, 405-264-5006

PURSUANT TO THE ACTIONS DESCRIBED 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, 2008:

185:1-1-4. Powers and duties of the Board and Administrator

The Board or administrator shall have the duty to award compensation for economic loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for compensation have been met. The Administrator of the Crime Victim Compensation Board may determine initial victims' claims and any victim's claim under ~~two~~ ten thousand ~~five hundred~~ dollars ~~($2500.00).~~ ($10,000.00). The Board may delegate any other victims' claim to the administration of the Crime Victims Compensation Board at their discretion. The claimant shall have the right to appeal to the Board for any claim in dispute. The Board shall have the power:

(1) To hear and determine all matters relating to claims for compensation of ~~two~~ ten thousand ~~five hundred dollars ($2500.00)~~ dollars ($10,000.00) or more and may hear claims under ~~two~~ ten thousand ~~five hundred~~ dollars ~~($2500.00).~~ ($10,000.00). The Board or administrator shall be able to reinvestigate or re-open claims without regard to statutes of limitation. However, claims that have been inactive for a period of more than three (3) years from the date of the last action by the Board or administrator shall be deemed closed and any further action forever barred. Claim files may be destroyed by the district attorneys council and or the local district attorney's office after a claim is closed. Claims which have been declined may be destroyed after nine (9) months, following the last Board or administrative action, provided~~,~~ the claimant has not notified the Board staff of any intentions to request reconsideration of the claim.

(2) To subpoena witnesses, compel their attendance, require the production of records and other evidence, administer oaths or affirmations, conduct hearings and receive relevant evidence.

(3) To regulate its own procedures except as otherwise provided in the Act.

(4) To adopt rules and regulations to implement the provisions of the Act.

(5) To define any term not defined in the Act.

(6) To prescribe forms necessary to carry out the purposes of the Act.

(7) To have access to any reports of investigations or other data necessary to assist the Board or administrator in making a determination of eligibility for compensation.

(8) To publicize the availability of compensation and information regarding the filing of claims.

(9) To order the claimant to supply any additional medical or psychological reports available relating to the injury or death for which compensation is claimed.

(10) To deny, withdraw or reduce an award of compensation upon finding that the claimant did not fully cooperate with the appropriate law enforcement agencies.

(11)To reconsider a decision granting or denying a compensation award, based on its own motion or on request of the claimant, providing such motion is not made after three years from the last action by the Board on a claim.

(12) To continue claims for compensation pending disposition of a criminal prosecution that has been commenced or is imminent, but the Board may make a tentative award.

(13) To join in civil action as a party plaintiff to recover the compensation awarded if the claimant brings such action.

(14) And the duty to prepare and transmit an annual report to the Governor, the Speaker of the House and the President Pro Tempore of the Senate.

(15) To determine whether costs of services rendered are reasonable.

(16) The Board and administrator shall also have such other powers and duties as provided by Statute.

(17) To take judicial notice of general, technical, and scientific facts.

(18) In certain cases wherein mental health expenses are being claimed, the Board or Administrator may request assistance from a panel of professionals in the mental health field. The panel of professionals may only act in an advisory capacity to the Board.

(19) The Board or administrator shall have the authority to set limits of compensation on any medical or mental health treatment, and require that providers of medical or mental health treatments be licensed prior to compensating for said treatment.

185:1-1-8. Opportunity to appear before the Board

(a) Pursuant to Title 21 O.S. 1981 Supp. Secs. 142.1 through 142.18 of the Oklahoma Statutes, any claimant may be represented by licensed counsel, or may represent him/herself before the Board, for any claim of ~~$2500.00~~ $10,000.00 or more, under the following circumstances:

(1) at the discretion of the claimant to provide support for a claim filed with the Board for compensation; or,

(2) at the request of the Board to provide testimony relative to a claim filed for compensation.

(b) A claimant and/or counsel shall have the opportunity to appear before the Board and shall be so notified no less than fourteen (14) days in advance of the Board meeting in which his/her claim is to be considered. If the claimant and/or counsel wish to appear before the Board to support the claim, the following procedure will be utilized by the claimant:

(1) Complete the Invitation to Appear form which notifies the claimant of the date, time and place of the meeting in which the Board will consider his/her claim.

(2) Mail the complete Invitation to Appear form at least three (3) days prior to the scheduled meeting, to the Oklahoma Crime Victims Compensation Board. If subpoenas are requested, the claimant should follow procedures set forth in 185:1-1-13.

(3) If the Board has not received the completed Invitation to Appear form at least three (3) days prior to the scheduled meeting, it shall be assumed that the claimant or counsel does not wish to and will not appear before the Board to provide support for his/her claim.

(4) It is not mandatory that a claimant or counsel appear before the Board in order for a claim to be considered unless specifically so ordered by the Board.

185:1-1-9. Order to appear before the Board

(a) If the Board wishes to have any person appear personally before it, and/or furnish records or other evidence, the Board will comply with the following procedure:

(1) Execute a subpoena ~~(Appendix B or C)~~ signed by the Chairperson or Administrator, stating date, time and place of the Board meeting and requested records wherein consideration will be given to the claim filed by the claimant.

(2) Mail the subpoena by certified mail, return receipt requested, ten (10) days in advance of meeting wherein attendance is required or obtain personal service of the subpoena within five (5) days.

(3) Should the person under subpoena be unable to comply with the terms of the subpoena, it shall be the responsibility of that person to so notify the Administrator either by mail or phone at least three (3) days prior to said meeting of the reason of inability to attend or produce records.

(4) It shall then be the responsibility of the Board to either:

(A) continue consideration of the claim to the next regularly scheduled meeting or,

(B) to consider the claim without the appearance of the person or records subpoenaed.

(b) In certain cases, the failure of a claimant to appear before the Board when subpoenaed, may be considered failure to cooperate in the claim investigation and the claim may be denied, withdrawn, or reduced accordingly by the Board.

[OAR Docket #08-957; filed 5-20-08]

TITLE 185. CRIME VICTIMS COMPENSATION BOARD
CHAPTER 10. CRIME VICTIMS COMPENSATION PROGRAM

[OAR Docket #08-958]

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The rules affected by the changes relate to Oklahoma Crime Victims Compensation Act 21 O.S. 142.1. The rules will affect the types of payments that can be awarded under the Act and the process in which those payments are made and decided upon.
CONTACT PERSON:
Tina Harman, Public Information Officer, District Attorneys Council, 421 N.W. 13th, Ste. 290, Oklahoma City, OK 73103, 405-264-5006

PURSUANT TO THE ACTIONS DESCRIBED 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, 2008:

185:10-1-3. Definitions

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

"Allowable expenses" means:

(A) charges incurred for needed products, services and accommodations, including, but not limited to, medical care, wage loss, rehabilitation, rehabilitative occupational training, and other remedial treatment and care.

(B) any reasonable expenses related to funeral, cremation or burial, up to the statutory limit.

(C) reasonable costs for counseling family members of a homicide victim, and

(D) reasonable costs associated with homicide crime scene clean up.

(E) reasonable cost of vehicle impound fees associated with the collection and security of crime scene evidence.

"Board" means the Oklahoma Crime Victims Compensation Board, hereinafter referred to as the Board.

"Claimant" means any of the following persons applying for compensation under this act:

(A) a victim,

(B) a dependent of a victim who has died because of criminally injurious conduct, or

(C) a person authorized to act on behalf of any of the persons listed above. The Board has the discretion to require sufficient proof of authority to act on behalf of a victim.

"Collateral source" means a source of benefits or advantages for economic loss for which the claimant would otherwise be eligible to receive compensation under this Act which the claimant has received, or which is readily available to the claimant from the sources identified by statute.

"Criminally injurious conduct" means a misdemeanor or felony which occurs or is attempted in Oklahoma, or against a resident of this state in a state that does not have an eligible crime victims compensation program, as such term is defined in the Federal Victims of Crime Act of 1984, Public Law 98-473; that results in bodily injury, threat of bodily injury or death to a victim.

(A) "Criminally injurious conduct" results in personal injury or death to a victim which is:

(i) punishable by fine, imprisonment or death, or

(ii) if the act is committed by a child, could result in such child being adjudicated a delinquent child.

(B) Pursuant to 21 O.S. 142.11, an award may be made whether or not any person is prosecuted or convicted as an adult offender or adjudicated a delinquent child. Proof of conviction of a person whose acts give rise to a claim or a copy of the adjudication order for a delinquent child whose acts give rise to a claim is conclusive evidence that the crime was committed. The Board or administrator may continue a claim pending disposition of a criminal prosecution or delinquent child adjudication that has been commenced or is imminent, but may make a tentative award.

(C) The term "criminally injurious conduct" shall not include acts arising out of the negligent maintenance or use of a motor vehicle unless the vehicle was:

(i) operated or driven by the offender while under the influence of alcohol, with a blood alcohol level in excess of the legal limit, or any other intoxicating substance or,

(ii) operated or driven by the offender with the intent to injure or kill the victim or,

(iii) operated in a manner imminently dangerous to another person and evincing a depraved mind, although without any premeditated design to injure or effect the death of any particular person ~~(iv)~~ or the offense involved willful, malicious or felonious failure to stop after being involved in a personal injury accident to avoid detection or prosecution, provided the victim of the accident was a pedestrian or was operating a vehicle moved solely by human power or a mobility device at the time of contact.

(iv) one or more vehicles that results in the death of the victim due to the reckless disregard for the safety of others by the offender. As used in this division, reckless disregard for the safety of others is defined as the omission to do something which a reasonably careful person would do, or the lack of the usual and ordinary care and caution in the performance of an act usually and ordinarily exercised by a person under similar circumstances and conditions.

(D) The term "criminally injurious conduct" shall include an act of terrorism, as defined in Section 2331 of Title 18, United States Code, committed outside the United States.

"Dependent" means a natural person wholly or partially dependent upon the victim for care or support, and includes a

child of a victim born after the death of the victim where the death occurred as a result of criminally injurious conduct.

"Economic loss" means monetary detriment consisting only of allowable expense, work loss, replacement services loss and, if injury causes death, economic loss and replacement services loss of a dependent, but shall not include non economic loss.

"Economic loss of a dependent" means loss after death of the victim of contributions of things of economic value to the dependent, not including services which would have been received from the victim if he or she had not suffered the fatal injury.

"Non-economic detriment" means pain, suffering, inconvenience, physical impairment and nonpecuniary damage.

"Replacement services loss" means expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the victim would have performed, not for income, but for the benefit of self or family, if the victim had not been injured or died.

"Replacement services loss of a dependent" means the loss reasonably incurred by dependents after death of the victim in obtaining ordinary and necessary services in lieu of those the deceased victim would have performed for their benefit had the deceased victim not suffered the fatal injury, less expenses of the dependent avoided by reason of death of the victim and not subtracted in calculating the economic loss of the dependent.

"Victim" means a person victimized within the State of Oklahoma who suffers personal injury or death as a result of criminally injurious conduct and shall include a resident of this state who is injured or killed by an act of terrorism committed outside the United States.

"Work loss" means loss of income from work the victim would have performed if such person had not been injured or died, reduced by any income from substitute work actually performed by the victim or by income the victim would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake, or loss of income from work the victim's caregiver would have performed if the injuries of the victim sustained as a result of criminally injurious conduct had not created the need for the caregiver to miss work to care for the injured victim.

185:10-1-4. Eligibility criteria for compensation

(a) The criminally injurious conduct leading to the filing of the compensation claim must have occurred in Oklahoma. Beginning November 1, 1989, residents of Oklahoma who are victimized in states without eligible crime victims compensation programs, as such term is defined in the federal Victims of Crime Act of 1984, Public Law 98-473, will be eligible claimants under the Oklahoma Crime Victims Compensation Act. Proof of conviction of the person causing the criminally injurious injury to the victim is conclusive evidence that the crime was committed.

(b) The incident must have occurred on or after October 19, 1981.

(c) The incident must have been reported to law enforcement officials within 72 hours or would have been reported within the period of time except for good cause shown. In claims wherein the victim is under the age of eighteen (18), the crime resulting in the claim must have been reported to authorities within seventy-two (72) hours after disclosure to a responsible adult except for good cause shown. This shall also apply to persons who are diagnosed as mentally handicapped.

(d) The claim for compensation must be filed in the Oklahoma City office within one (1) year of the incident date or death of the victim. The Board may, at its discretion, waive this requirement, if the Board finds there was good cause for failure to file the claim within one (1) year, but in no event shall the filing of a claim be permitted after two (2) years from the date of injury or death upon which the claim is based. The good cause exception shall be permitted only for injury or death occurring on or after November 1, 1989. If the victim is mentally handicapped, or is a child under eighteen (18) years of age, the Board may use the date the criminal incident was disclosed to a responsible adult when establishing whether or not the claim was timely filed. The Board may, at its discretion, extend the filing deadline beyond two (2) years in child sexual assault cases.

(e) The victim must have suffered physical or psychological injury or death as a result of the criminal action of another.

(f) The claimant and/or victim must have cooperated with law enforcement officials, the District Attorneys office, and the Crime Victims Compensation Board during entire investigation. In the event the Board or administrator finds the claimant and/or victim was not cooperative, a claim may be denied, withdrawn, or reduced.

(g) The net amount of compensation requested in the claim must not have been paid by a collateral source, however, the Board or administrator shall not require any claimant to seek or accept any collateral source contribution, unless the claimant was receiving such benefits prior to the occurrence giving rise to the claim under the provisions of the Act.

(h) The claimant and/or victim was not the offender or an accomplice of the offender, and, the compensation award shall not be used to benefit the offender or accomplice. Number one through four below were developed in accordance with Section 7129 of the Victims of Crime Act.

(1) In determining whether a compensation award can be made without unjustly enriching an offender, the Board or administrator shall evaluate whether the victim has reported the crime and is cooperating with the criminal justice system in the investigation and prosecution of the crime, and whether the victim will do what is possible to prevent access by the offender to compensation paid to the victim. If the victim is cooperating fully, and if the offender will not benefit from or have access to a substantial portion of any cash award made by the Board to the victim, then the award shall not be declined on the basis that the award would benefit the offender.

(2) A determination that the award would benefit the offender shall not be based solely on the presence of the offender in the household at the time of the award. The presence of the offender in the household is only one factor to be considered in determining that he/she would benefit from the award; a determination of whether the offender

will benefit from an award shall be made in each case, based on the totality of the circumstances.

(3) In determining whether an award would benefit the offender, the Board must weigh whether the benefit to the offender is substantial or in-consequential. Factors to be considered include the amount of the award and whether a substantial portion of the compensation award will be used directly by or on behalf of the offender. If the offender has direct access to a cash award and/or if a substantial portion of it will be used to pay for his/her living expenses, that portion of the award that will substantially benefit the offender may be reduced or denied. When enrichment is inconsequential or minimal, the award may not be reduced or denied.

(4) Collateral resources available to the victim from the offender shall be examined. Collateral resources may include court-ordered restitution, an offending spouse's medical insurance, or other resources of the offender available to cover the victim's expenses. In evaluating the availability of collateral resources, a determination shall be made first as to whether the offender has a legal responsibility to pay; second, whether the offender has resources to pay; and third, whether payment is likely. The victim shall not be penalized for the failure of an offender to meet legal obligations to pay for the costs of the victim's recovery. If the offender fails to meet legal responsibilities to pay restitution or provide for the medical and support needs of a spouse or child, or if the offender impedes payment of insurance that may be available to cover a spouse's or child's expenses, the Board will attempt to meet the victim's needs to the extent allowed, and may pursue whatever actions are appropriate to seek reimbursement from the offender. The Board is subrogated to any restitution the offender may owe the victim if an award is made.

(i) The claim must not have been the result of negligent maintenance or use of a motor vehicle by the offender, unless the vehicle was operated or driven by the offender while under the influence of alcohol or any other intoxicating substance or, unless the vehicle was operated or driven by the offender with the intent to injure or kill the victim or in a manner imminently dangerous to another person and evincing a depraved mind, although without any premeditated design to injure or effect the death of any particular person or the offense involved willful, malicious or felonious failure to stop after being involved in a personal injury accident to avoid detection or prosecution, provided the victim of the accident was a pedestrian or was operating a vehicle moved solely by human power or a mobility device at the time of contact.

(j) Compensation may be diminished or denied to the extent or degree of responsibility for the cause of the injury or death attributable to the victim, as determined by the Board or administrator. Compensation may also be diminished or denied if the Board or administrator finds that the victim was legally intoxicated or under the influence of a controlled dangerous substance (CDS), and the victim's intoxicated state contributed to his/her injury or death. Any person over the age of 18, injured while voluntarily riding with a legally intoxicated driver or someone under the influence of a CDS, may be found to have contributed to his/her injury or death, provided there is evidence that the victim knew of the drivers intoxicated state prior to the injury.

(k) the offense involving one or more vehicles results in the death of the victim due to the reckless disregard for the safety of others by the offender. As used in this division, reckless disregard for the safety of others is defined as the omission to do something which a reasonably careful person would do, or the lack of the usual and ordinary care and caution in the performance of an act usually and ordinarily exercised by a person under similar circumstances and conditions.

185:10-1-5. Types of compensation available

Compensation is available for economic loss sustained by a victim or dependent arising from criminally injurious conduct of another. Economic loss would include: Allowable expenses (i.e. medical, psychiatric, dental, optical, rehabilitation; work loss, caregiver work loss, replacement services loss; and, if injury causes death, expenses related to burial or cremation, homicide crime scene clean up, economic loss and replacement services loss of a dependent~~.~~, vehicle impound fees. Future economic loss is also compensable but may be reduced or discontinued if recipients circumstances change. Compensation is limited to the amounts set forth by Statute.

185:10-1-6. Maximum compensation amounts and methods of payment

(a) Compensation payable to a victim or claimant sustaining economic loss due to injury or death may not exceed the statutory limit.

(b) Compensation for work loss, replacement services loss, dependents economic loss and dependents replacement services loss may not exceed the statutory limit.

(c) The Board or administrator may provide for the payment to a claimant in a lump sum or in installments.

(d) Upon request of the claimant, the Board or administrator may convert future economic loss, other than allowable expense, to a lump sum, but only upon a finding by the Board, or administrator that the award in a lump sum will promote the interest of the claimant.

(e) An award payable in installments for future economic loss may be made only for a period that the Board can reasonably determine future economic loss and may be modified by the Board provided there is a finding that a significant change in circumstances has occurred.

(f) The Board may review claims in the order in which they appear on the docket. Claim payments will be made in the same manner. Once the Crime Victims Compensation Fund has been depleted, all remaining claims on the docket may be continued and placed on the next docket when funds become available.

(g) Mental health treatment for the victim is a compensable loss. The Board may, at any time, refer a claim to the Mental Health Review Panel for review and advice regarding length and relevance of treatment being provided, and whether the treatment was as a direct result of the crime. Panel members agree to provide this service to the Board at no cost. Panel members may create documents to assist them in their review

of the claims with the guidance and support of the Victims Compensation division staff. After the Mental Health Review Panel reports their findings, the claim will be set on a future Board docket for review and decision.

(h) When a person files a claim, all health care providers that have been given notice of a pending claim, shall refrain from all debt collection activities relating to medical treatment received by the person in connection with such claim until an award is made on the claim or until a claim is determined to be noncompensable pursuant to the provisions of this act. The statute of limitations for collection of such debt shall be tolled during the period in which the applicable health care provider is required to refrain from debt collection activities under this subsection. For the purposes of this section, debt collection activities means repeatedly calling or writing to the claimant and threatening either to turn the matter over to a debt collection agency or to an attorney for collection, enforcement, or filing of other process. The term shall not include routine billing about the status of the claim. This requirement will pertain to all claims pending and all claims filed after the time of the enactment of 21 OS 142.9 H.

185:10-1-8. Application review procedure

(a) A victim, dependent of a victim, or person legally acting on behalf of the victim, must first secure a copy of the Official Victims Compensation Claim Form. In the event assistance is needed by the claimant in completing the form, such assistance will be provided by the victim-witness coordinator, or by the staff located at the District Attorneys Council in Oklahoma City.

(b) A claim form must be completed, signed and received at the District Attorneys Council within one (1) year of the incident date or death of the victim. If the Board or administrator finds good cause for failure to file the claim within one (1) year, the filing period may be extended up to, but not exceeding, two (2) years, beginning with incidents occurring on or after November 1, 1989. In child sexual assault cases, the Board may at its discretion, extend the filing deadline beyond two (2) years.

(c) The victims compensation staff shall log the claim form as being received and forward it to the victim-witness coordinator in the district where the crime occurred. Upon completion, the claim shall be returned to the Oklahoma City office for processing.

(d) The Board, victim-witness coordinators, and staff have the authority to conduct investigations and/or request any additional information from the victim and/or claimant, the investigating law enforcement agency, medical personnel and/or facilities, witnesses, employers and others as may be deemed necessary for the proper review and verification of the claim.

(e) The staff shall make a thorough analysis of the claim once it is completed and received from the victim-witness coordinator.

(f) Once the claim has been reviewed (staff review and summary completed), the claim will be placed on the next appropriate Board or administrative docket for consideration. A claim must be reviewed at least fifteen (15) calendar days prior to a Board meeting for consideration at that meeting. Those claims not reviewed fifteen (15) calendar days prior to a regular meeting shall be considered at the next scheduled Board meeting. New claims will be reviewed by the staff in the order in which the completed claims are received in the Oklahoma City office.

(g) Agendas and supporting material shall be mailed to the Board no less than ten (10) calendar days in advance of the Board meeting.

(h) Notification of Board meetings shall be filed with the Secretary of State in accordance with the Open Meeting Law. Copies of the meeting agendas giving date, location and time of meetings shall be posted in conspicuous places on the premises of the building wherein the Board meetings will be held and/or at offices of the Crime Victims Compensation Board. Claimants whose compensation claims are to be considered by the Board will be mailed notification of the meeting no less than fourteen (14) calendar days in advance and will have the opportunity to appear and be heard, and to offer evidence and argument on any issue relevant to the claim.

(i) Once a decision is made by the Board, the claimant shall be mailed notification of the decision within twenty (20) days.

[OAR Docket #08-958; filed 5-20-08]

TITLE 185. CRIME VICTIMS COMPENSATION BOARD CHAPTER 15. SEXUAL ASSAULT EXAMINATION FUND

[OAR Docket #08-959]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
185:15-1-5 [REVOKED]
185:15-1-6 [AMENDED]
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ANALYSIS:

The rules affected by the changes relate to Oklahoma Crime Victims Compensation Act 21 O.S. 142.1. The rules will affect the types of payments that can be awarded under the Act and the process in which those payments are made and decided upon.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JUNE 26, 2008:

185:15-1-5. Duties of the District Attorney [REVOKED]

~~(a) The District Attorney, or authorized Assistant District Attorney, for the District where the sexual assault was committed must complete and sign that portion of the Official Application for Sexual Assault Examination Payment (refer to Appendix A of this Chapter), designated "III. District Attorney."~~

~~(b) The District Attorney or authorized Assistant District Attorney, by his/her signature on the application, must affirm that:~~

~~(1) the crime was committed within his/her jurisdiction;~~

~~(2) the crime could be the basis of a legitimate criminal prosecution by the State of Oklahoma; and~~

~~(3) the District Attorney, or authorized Assistant District Attorney, recommends that the Fund pay the expense of the forensic examination and/or medications incident to the sexual assault as deemednecessary by the medical authority conducting the examination, not to exceed the statutory maximum. at the time the forensic exam was performed, there existed reason to believe that the individual was the victim of a sexual assault in his/her jurisdiction.~~

185:15-1-6. Insurance

(a) The payment of a sexual assault examination will be made, regardless of whether the victim is medically insured~~.~~. ~~providing said examination is approved by the District Attorney or an authorized Assistant District Attorney in the jurisdiction where the sexual assault occurred.~~

(b) In order to provide anonymity to the sexual assault victim and maintain confidentiality, any victim who has obtained a forensic sexual assault examination, will not be required to provide information to the Board relative to employment or insurance; and, shall not be required to file a claim with any private insurance company for the payment of a forensic sexual assault examination.

(c) If the victim or claimant chooses to file an insurance claim for the sexual assault examination, reimbursement should be made to the Sexual Assault Examination Fund upon payment from the insurance company.

(d) For sexual assault exams performed on adults and children, Medicaid or any other federally funded program is considered a collateral source and payment will not be made unless the denial of benefits is provided.

[OAR Docket #08-959; filed 5-20-08]

TITLE 208. EDGE FUND POLICY BOARD CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #08-987]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
208:1-1-1. Purpose [NEW]
208:1-1-2. Vision and Mission Statement [NEW]
208:1-1-3. Definitions [NEW]
208:1-1-4. Eligibility [NEW]
208:1-1-5 Programs and Projects Criteria [NEW]
Subchapter 3. Policy Board Operations
208:1-3-1. Authority and Operation [NEW]
208:1-3-2. Procedures for Adoption, Amendment and Repeal of Rules [NEW]
208:1-3-3. Requests for Declaratory Rulings [NEW]
208:1-3-4. Appeals [NEW]
Subchapter 5. Fund Operations
208:1-5-1. EDGE Fund Trust [NEW]
208:1-5-2. Technical Advisory Panel(s) [NEW]
208:1-5-3. Areas of Interest [NEW]
208:1-5-4. Funding Leverage [NEW]
208:1-5-5. Funding Limitations [NEW]
208:1-5-6. Notification Process [NEW]
208:1-5-7. Application Process [NEW]
208:1-5-8. Review Process [NEW]
208:1-5-9. Audit and Records Provisions [NEW]

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NA

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NA

ANALYSIS:

The State of Oklahoma has created a trust fund for Economic Development Generating Excellence known as the EDGE Fund. The EDGE Fund is an instrumentality of the State created pursuant to 62 O.S. Section 52. Section 52 creates an EDGE Fund Policy Board, which is responsible for expending the available funds according to the statutory directives.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 2, 2007:

SUBCHAPTER 1. GENERAL PROVISIONS

208:1-1-1. Purpose

(a) The rules of this Chapter have been adopted for the purpose of complying with the provisions of the Administrative Procedures Act. [75 O.S., §§ 250 *et seq.*] The State of Oklahoma has created a trust fund for Economic Development Generating Excellence known as the EDGE Fund. The EDGE Fund is an instrumentality of the State created pursuant to 62 O.S. (2006 Supplement), Sections 47 and 52. Section 47 creates the trust fund and designates a Board of Investors to manage and invest the trust fund assets. Section 52 creates an EDGE Fund Policy Board, which is responsible for expending the available funds according to the statutory directives. The instant rules, regulations, policies and procedures have been adopted for the purpose of implementing and administering the duties and responsibilities of the EDGE Fund Policy Board (the "Policy Board" or "Board"), as provided by law.

(b) The rules of this Chapter are adopted for the purpose of simplifying procedure, avoiding unnecessary delays, minimizing expenses and facilitating the administration of the Policy Board. To that end, these rules shall be given fair and impartial construction. The rules shall be cumulative to the Administrative Procedures Act of the State of Oklahoma as amended now and hereafter.

(c) The rules of this Chapter shall be known as the General Rules for the EDGE Fund Policy Board and shall govern formal proceedings of the Board.

(d) Informal proceedings may be held by agreement between the Board, or its agents and any interested party.

(e) The provisions herein contained are severable and the repeal, amendment or invalidity of any provision hereof shall not serve to repeal or invalidate the remaining provisions of the rules of this Chapter.

208:1-1-2. Vision and mission statement

The rules of the Policy Board have been framed to effectuate achievement of the vision and missions of the EDGE Fund. [62 O.S. 2006, 52]

(1) **Vision.** Oklahoma has created the EDGE Fund to be one of the nation's largest public funds dedicated to the development and commercialization of applied research. Investment in Oklahoma's knowledge infrastructure is essential to long-term growth. Research development, commercialization and entrepreneurialship will draw capital to Oklahoma, create more high-paying jobs, expand and diversify its economy, and provide greater prosperity for generations of Oklahomans to come.

(2) **Mission Statement.** The EDGE Fund uses available funds to increase public and private applied research and development, technology transfer and technology commercialization in Oklahoma. By its size, the EDGE Fund is intended to make impactive investments through grants, loans, contributions and other applications.

208:1-1-3. Definitions

In addition to terms defined in 74 O.S. 2002, §5060.4, the following terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Applicant" means the Person submitting the Application.

"Application" means the proposal submitted to the Policy Board and all completed forms required by the Solicitation.

"Contractor" means the Person that is awarded a Policy Board contract.

"Executive Director" means the person employed in such capacity by the Policy Board.

"OCAST" means the Oklahoma Center for the Advancement of Science and Technology.

"Person" means and include (i) an individual, (ii) a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, or an unincorporated organization, which may be formed either for-profit or not-for-profit, or (iii) an institution or governmental entity (or any department, agency or political subdivision thereof).

"Solicitation" means a request for proposals or letter of intent containing the detailed information required by the Policy Board.

208:1-1-4. Eligibility

The Solicitation will define Persons eligible for funding. Eligible applicants for funding may include the following Persons:

(1) private or public Oklahoma institutions of higher education,

(2) non-profit research foundations or other non-profit organizations, and

(3) private enterprises.

208:1-1-5. Programs and projects criteria

The Policy Board funds those projects and programs that satisfy one or more of the following criteria. A project or program must:

(1) expand directly the number of researchers, technicians, support services and associated business activity within Oklahoma,

(2) have a high potential to result in the formation and growth of advanced technology companies in Oklahoma,

(3) have a high potential to improve the health status and quality of life for Oklahomans, or

(4) leverage of additional federal research grants and/or privately funded and sponsored research in Oklahoma research institutions. [62 O.S. 2006, §52.A (2)]

SUBCHAPTER 3. BOARD OPERATIONS

208:1-3-1. Authority and operation

(a) **Authority of the Board.** The Policy Board is responsible for implementing the provisions of its authorizing legislation, as enumerated in 62 O.S. 2006, §52. The Board may exercise its official powers at any location in the State of Oklahoma.

(b) **Policies of the Board.** All bylaws, procedures or other written statements of policy or interpretations formulated, adopted or used by the Board shall be available at the principal office during regular business hours.

(c) **Availability of records.** All final orders, decisions and opinions and all forms, applications and instructions related to or necessary for gaining access to the Policy Board's operations included in agency data bases and public files, and other services of the agency shall be made available at the principal office during regular business hours. Copies of all official records not protected from disclosure by law shall be available for inspection in accordance with the Oklahoma Open Records Act, at the principal office during regular business hours. Copies of such records may be made and the expense of such copies shall be paid by the person requesting said copies. Fees for such copies shall be in accordance with a fee schedule established by the Executive Director of the Policy Board.

(d) **Office location; hours.** The principal office of the Policy Board is c/o OCAST, 755 Research Parkway, Suite 110, Oklahoma City, Oklahoma, 73104, unless otherwise designated by the Board. Unless otherwise designated by the Executive Director of the Policy Board, office hours shall be from 8:00 a.m. to 5:00 p.m., Monday through Friday inclusive, excepting legal holidays established by statute or by executive order.

(e) **Policy Board Governance.**

(1) **Number and composition.** The Policy Board is composed of seven members, as follows:

(A) Four individuals who serve as senior officers of an Oklahoma business or financial company having knowledge of the Oklahoma economy and the potential to advance to a technology-based economy; the Governor appoints two of these individuals and the President Pro Tempore of the Senate and Speaker of the House of Representatives appoint one each;

(B) One scientist, engineer or officer of a technology-based Oklahoma company or public or private research institution appointed by the President Pro Tempore of the Senate;

(C) One attorney licensed to practice law in Oklahoma, who has experience with start-up companies and business practices appointed by the Governor; and

(D) One venture capitalist with experience in the commercialization of technology and investment in technology-based companies appointed by the Speaker of the House of Representatives. [62 O.S. 2006, §52.B]

(2) **Service.** The members of the Policy Board shall serve at the pleasure of their appointing authorities. The Governor, President Pro Tempore of the Senate and Speaker of the House of Representatives may make appointments to the Board from a list of names meeting one or more of the criteria provided in this subsection. The Department of Commerce shall develop the list in consultation with the largest statewide organization representing commerce and industry and the two largest metropolitan organizations representing commerce and industry. Each person recommended by each of the two largest metropolitan organizations representing commerce and industry shall be residents of the metropolitan area represented by the organization that makes the recommendation for inclusion of such person on the list. Each person recommended by the largest statewide organization representing commerce and industry shall be a resident of an area other than the metropolitan areas represented by the two largest metropolitan organizations representing commerce and industry. The list shall be maintained in a manner to provide that at least one qualified person is eligible for appointment to each and every position to which appointments may be made. [62 O.S. 2006, §52.B] The appointing authorities shall select appointees from the list submitted to serve on the Policy Board. [62 O.S. 2006, §52.B]

(3) **No Board compensation; reimbursement.** The members of the Policy Board shall receive no salary for serving on the Policy Board. All members shall receive necessary travel expenses for the performance of their duties from the Office of the Governor in accordance with the provisions of the State Travel Reimbursement Act. [62 O.S. 2006, §52.C]

(4) **Board Chair.** The Governor shall select a chair and a vice-chair, who shall preside over meetings in the absence of the chair, and any other officers, provided that no member shall serve as chair for more than two (2) consecutive years. [62 O.S. 2006, §52.D]

(5) **Quarterly meetings.** The Board of Directors shall meet at least once each calendar quarter and at other times upon call by the Board Chair, or the Executive Director or upon written request by a majority of the members of the Board. [62 O.S. 2006, §52.D]

(6) **Regular and special meetings.** All regular and special meetings of the Board shall be held at the principal business offices of the Policy Board, or at such other locations within the State of Oklahoma, as may be determined by the Board from time to time. Meetings of the Board and of committees created or overseen by the Board are subject to the Open Meetings Act [25 O.S. 2006 §301 et seq.], and the Open Records Act [51 O.S. 2006 §24A.1-29]. Executive Sessions may be held to discuss personnel matters and confidential proprietary information submitted to or compiled by the Board, as determined by the Board or its committees. [62 O.S. 2006, §52.E]

(7) **Quorum; vacancies.** A majority of the members of the Policy Board shall constitute a quorum to transact business. All actions will be taken by a majority vote of

the quorum present. Tie votes shall be considered non-majority. Members of the Board shall not vote by proxy. No vacancy shall impair the right of the remaining members to exercise all of the powers of the Policy Board. Any vacancy in a position shall be filled by the appointing authority in the manner prescribed by subsections (a) and (b) of this section. [62 O.S. 2006, §52.D]

(8) **Agenda items.** Items requested to be included on the agenda should be submitted to the Chair of the Board at the business office of the Policy Board, no later than ten days before a regularly scheduled meeting, three days before any special meeting, or 24 hours before any emergency meeting of the Board.

(9) **Executive Director.** The Policy Board may employ an Executive Director, who shall serve at the pleasure of the Policy Board. [62 O.S. 2006, §52.D]

(10) **Committees of the Board.** The Policy Board may designate one or more committees of the Board by a vote of a majority of the directors then in office. The committees may be standing or ad hoc.

(f) **OCAST administrative assistance.** Oklahoma Center for the Advancement of Science and Technology (OCAST) shall provide administrative, planning, and other assistance to the Policy Board, including the preparation of an annual report from each to the Governor, President Pro Tempore of the Senate and Speaker of the House on the status of the EDGE Fund and impact of funded projects and programs. OCAST shall employ one full-time-equivalent employee to provide staff assistance to the Policy Board and its Executive Director for the purposes of implementing this subsection. Subject to the availability of funding, the Executive Director, pursuant to a request from and approval by the Policy Board, may employ additional full-time-equivalent employees. In no event shall more than 1.0% of the total assets of the EDGE Fund be expended annually for administrative expenses associated with the EDGE Fund and the Policy Board. [62 O.S. 2006, §52 (I)]

(g) **Conflict of interest.** If a member of the Policy Board, officer, agent or employee of the Policy Board has any direct or any indirect interest in any approval contract or agreement upon which the member, officer, agent or employee may e called upon to act or vote, the Board member, officer, agent or employee shall disclose the same to the secretary of the Board prior to the taking of final action by the Board concerning such contract or agreement and shall so disclose the nature and extent of such interest and the acquisition thereof, which disclosure shall be publicly acknowledged by the board and entered upon the minutes of the Board. A Board member, officer, agent or employee who holds such an interest shall refrain from any further official involvement in regard to any such contract or agreement, from voting on any matter pertaining to such contract or agreement, and from communicating with other board members, officers, agents or employees concerning said contract or agreement. Any member of any advisory committee, panel, or contract review committee of the Policy Board shall be deemed, for purposes of these conflict of interest provisions, an agent of the Policy Board. Any disclosure by a person serving on any committee or panel of the Policy Board shall be deemed made, when made to the chair or secretary of such committee or panel, but in any event shall promptly thereafter be forwarded to the Secretary of the Board.

(h) **Reports, audits and reviews.**

(1) **Rules and procedures.** With assistance from OCAST, the Policy Board shall:

(A) Promulgate rules and develop procedures and protocols for establishing technical advisory panels, selection review criteria and competition criteria; and

(B) Develop procedures to account for funds and to measure the progress of projects and deliverables. [62 O.S. 2007 §52 (L)].

(2) **Annual report.** The Board shall submit an annual report no later than November 1 to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives that shall include a description of the accomplishments and activities of the EDGE Fund and the Policy Board for the prior fiscal year. The annual report may account for the ways in which the need, mission and programs of the Policy Board have been carried out, including a review of the Policy Board's operations and transactions according to the objective measures set forth in the business plan. The report may recommend specific changes in the activities of the Policy Board that are necessary to better carry out its need and mission. The report may include elements the Board identifies as hampering the state's economic progress and recommendations for changes.

(3) **Annual audit.** The Policy Board shall submit annually to an independent audit in accordance with generally accepted accounting principles that shall examine, among other things, actions governed by the Policy Board's administrative policies and procedures.

(4) **Project audits.** The projects and funds of the EDGE Fund shall be subject to audit by the State Auditor and Inspector. [62 O.S. 2006, §52.M]

208:1-3-2. Procedures for adoption, amendment and repeal of rules

(a) **The Board.** The Board may adopt, amend or repeal a rule of its own initiative, and may adopt, amend or repeal a rule at the request or recommendation of the Executive Director or one of its duly appointed advisory committees. The Board may, of its own motion, conduct hearings on proposed new rules, amendments or repeal of rules.

(b) **Interested parties.** Any interested person may petition the Board, requesting the adoption, amendment, or repeal of a rule. All such petitions shall be in writing, and be filed with the Chair of the Board at the principal office. The petition shall include the name and address of the petitioning party and shall state clearly and concisely all matters pertaining to the requested action and the reasons for the request.

(c) **Hearings.** The time and location of hearings shall be stated in the notice as required under the Oklahoma Open Meetings Act and shall be conducted in accordance with the Administrative Procedures Act. Any person who is interested or affected by proposed actions may appear at the hearing. An appearance may be made individually, by an attorney, or by an authorized agent.

(d) **Final action.** Before the adoption, amendment or repeal of a rule, the Board shall afford any interested Person a reasonable opportunity to submit data, views and arguments either oral or written. If the rule under consideration affects the substantive rights of any person, the Board shall grant any person or entity a reasonable opportunity to participate in an oral hearing if requested in writing by the person or entity. The Board shall, in the exercise of its sound discretion, determine whether the proposed action affects any such substantive rights. The Board shall inform the requesting person of its decision in writing. Should the Board find the immediate adoption of a rule is necessary, the Board shall initiate rule promulgation procedures pursuant to the Oklahoma Administrative Procedures Act.

208:1-3-3. Requests for declaratory rulings

Any interested person or entity may petition the Board for a declaratory order as to the applicability of any rule of the Board.

(1) **Petition requirements.** The petition shall identify the rule questioned, the date on which such rule became effective, and shall set forth the contents of the rule. The petition shall contain a brief statement of the issue or issues raised, by the rule that caused such a request to be made and a statement of the petitioner's personal interest in the ruling of the Board and how a ruling of the Board would affect those interests.

(2) **Receipt of petition.** Upon receipt of the petition for declaratory ruling the Board shall consider the petition and within a reasonable time following receipt thereof, either deny the petition in writing, stating its reasons for denial, or issue a declaratory ruling on the matter contained in the petition.

208:1-3-4. Appeals

Persons or entities desiring to petition the Board for administrative review of a final order, award or determination regarding the application of the Policy Board's rules, policies or procedures, shall submit such petition in writing to the Chair of the Board at the principal offices of the Policy Board. All petitions shall be filed with the Board within 30 days of the final order, award or determination or as provided by the Administrative Procedures Act.

(1) **Petition requirements.** The petition must include the following:

(A) The name, address and organizational affiliation, if any, of the petitioner and the name and title of any representative or agent filing the petition of appeal.

(B) A clear and concise statement of the grievance(s) or complaint(s), citing the specific rules or procedures at issue causing such an appeal to be requested and a statement of the petitioner's interests in the appeal and how a determination of the Board would affect those interests.

(2) **Receipt of petition.** Upon receipt of the petition, the Chair may designate an administrative employee or officer to review the petition and make recommendations to the Board.

(3) **Oral arguments/hearings.** If the petition is referred to the Board for administrative review, the Board may, in its discretion, review petitions with or without oral argument from the petitioner and render a decision within a reasonable time. Should the Board determine that a hearing is necessary, it shall conduct such hearing in accordance with the Oklahoma Administrative Procedures Act. Hearings shall be open to the public, unless otherwise provided by law or ordered by the Board. The Board shall issue decisions resulting from such hearings in writing to all parties to the petition or their duly authorized agents or representatives within 60 days of the date of the hearing.

SUBCHAPTER 5. FUND OPERATIONS

208:1-5-1. EDGE Fund

(a) **Statutory authority.** The EDGE Fund is a legislatively created trust fund for furthering the mission and purpose of the EDGE Fund. The Policy Board may expend funds from the EDGE Fund trust that are certified as available by the Board of Investors. [62 O.S. 2006, §§47 and 52].

(b) **Vision and mission.** In fulfilling the EDGE Fund's vision and mission, the Policy Board will provide for its designated projects and programs as it deems appropriate, which may include:

(1) matching funds for applied research,

(2) funds for proof of concept,

(3) funds for purchasing equipment or applied research, and

(4) seed capital including, but not limited to, capital for the OCAST Seed Capital Revolving Fund. [62 O.S. 2006, §52(A)]

(c) **Funding terms**

(1) **Funding awards.** The Policy Board shall promulgate rules and develop timelines governing the review of funding proposals. The Policy Board may set special requirements or limitations on the funding awards and those requirements or limitations shall be included in the funding specifications and published in the Policy Board's funding solicitations.

(2) **Allocations.** The Policy Board may establish the amount of funding to be allocated to its areas of focus for each fiscal year.

(3) **Submission periods.** The Policy Board shall establish the dates of the application submission period or periods for each fiscal year and announce the dates in the solicitation.

(4) **Preference to cooperative proposals.** In considering funding proposals, the Policy Board shall give preference to cooperative proposals that include researchers from multiple institutions, including higher education, nonprofit research institutions, and private enterprise. [62 O.S. 2006, §52 (K)]

(5) **Types of awards.** To the fullest extent permitted by law, the Policy Board may award the funding through grants, loans, contributions, investments, contracts or other agreed forms and subject to such terms and conditions, all as it deems appropriate in fulfilling the EDGE Fund's vision and mission.

(6) **Possible supplementary funding.** The Policy Board may elect to provide supplementary funding for existing programs including, but not limited to, the Oklahoma Health Research program, the Oklahoma Applied Research Support program, or such other programs as it may deem are necessary to advance the technology-based economy in Oklahoma. [62 O.S. 2006, §52.G]

(7) **Cooperative agreements with OCAST.** The Policy Board may enter into cooperative agreements with OCAST to provide assistance in program development, due diligence, project selection, administration and management of research and technology development programs, or any combination of the foregoing. [62 O.S. 2006, §52.H]

(8) **Contract periods.** The length of a contract shall not be less than one year. The maximum contract period shall be established by the Policy Board.

(9) **Additional funding terms.** The Policy Board may establish additional funding terms, which it would announce in the solicitation.

(10) **Confidentiality.** The Policy Board will make every reasonable effort to maintain the confidentiality of information submitted to or compiled by the Board. Any information submitted to or compiled by the Policy Board with respect to the marketing plans, financial statements, trade secrets, research concepts, methods or products, or any other proprietary information of persons, firms, associations, partnerships, agencies, corporations, institutions of higher education, nonprofit research institutions or other entities shall be confidential, except to the extent that the person or entity providing such information or the subject of such information consents to disclosure; provided, however, there shall be no guarantee that such information will remain confidential. [62 O.S. 2006, §52.E]

208:1-5-2. Technical advisory panel

The Policy Board shall establish an Advisory Committee, whose members shall have such expertise as the Board deems necessary or appropriate for fulfilling the EDGE Fund's vision and mission. The Committee acts in an advisory capacity to the Policy Board and its Executive Director and staff in the development of program specifications, organization and evaluation of proposals and peer reviews, awarding of contracts and on-going evaluation of contract performance.

208:1-5-3. Areas of interest

The Policy Board shall review annually areas of research and commercialization emphasis, with consideration given to the strategic strengths of Oklahoma's research infrastructure.

208:1-5-4. Funding leverage

The Policy Board shall attempt to leverage the research dollars of the EDGE Fund through collaboration with the following entities:

(1) OCAST;

(2) Oklahoma State Regents for Higher Education;

(3) Oklahoma Experimental Program to Stimulate Competitive Research;

(4) Oklahoma Department of Commerce;

(5) Oklahoma Capital Investment Board;

(6) any private, not-for-profit corporation created pursuant to §5060.26 of Title 74 of the Oklahoma Statutes; and

(7) any not-for-profit organization that is a contractor of OCAST pursuant to Sections 5060.20a and 5060.20b of Title 74 of the Oklahoma Statutes. [62 O.S. 2006, §52(J)]

208:1-5-5. Funding limitations

Expenditures from the EDGE Fund shall be subject to the following requirements and limitations:

(1) at least 25% of the monies available for distribution in any fiscal year shall be allotted to support technology transfer and technology commercialization; and

(2) no more than 20% of the monies available for distribution in any fiscal year shall be used for the purchase of equipment pursuant to proviso (a). [62 O.S. 2006, §52(F)]

208:1-5-6. Notification process

(a) **Announcements of solicitations.** The Policy Board may announce funding solicitations through any means reasonably calculated to disseminate notice to possible funding applicants. The Board shall provide written notice through a direct communication of solicitations to the following:

(1) **Higher Education.** Solicitations shall be sent to the institutional official or officials as designated by the president of each institution listed in the Oklahoma Higher Education Directory.

(2) **Nonprofit Research Foundations.** Solicitations shall be sent to officials designated by the heads of non-profit research organizations.

(3) **Previous Applicants.** Solicitations shall be sent to all persons who have applied to the program in the previous three years.

(4) **Requestors.** Solicitations shall be sent to all persons who contact the Policy Board and request a solicitation.

(b) **Public announcements posted.** The Policy Board will post public announcements of funding competitions at its principal office and the Oklahoma Department of Commerce at least 30 days before the application submission date.

(c) **Website announcements.** The Policy Board will announce funding competitions on its website at least 30 days before the application submission date.

(d) **Electronic notification.** Whenever these rules require notice or communication, the Policy Board may satisfy the requirement by any form of communication that creates a record that may be retained, retrieved, and reviewed by a recipient

thereof, and that may be directly reproduced in paper form. The form of communication includes e-mail, website or other Internet-based communications, and facsimile transmissions.

208:1-5-7. Application process

Applicants will apply for funding through the Policy Board's solicitation. Solicitations shall be available at the Policy Board principal office. No application fee shall be required. The application submission date or dates will be listed in the solicitation. Requirements for application completion and submission will be specified in the solicitation.

208:1-5-8. Review process

Applications shall be reviewed initially to determine compliance with the solicitation requirements. If the application complies with the solicitation requirements, the applications will be reviewed and evaluated by the Policy Board, which may act through its Executive Director, its staff, the Advisory Committee or a combination of these. No applicant will receive funding unless and until approved by the Policy Board.

208:1-5-9. Contractor audits and records

(a) **Records and accounts.** The Contractor shall maintain records and accounts that properly document and account for the source and application of all project funds and all such records and accounts shall be made available on demand by the Policy Board for inspection and use in carrying out its responsibilities for administration of the funds.

(b) **Access and examination.** The Contractor shall, as the Policy Board deems necessary, permit authorized representatives of the Policy Board and the State of Oklahoma to have full access to and the right to fully examine all records and accounts.

(c) **Audits.** The Contractor shall comply with the audit policy of the Policy Board.

[OAR Docket #08-987; filed 5-20-08]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 25. FINANCE

[OAR Docket #08-1053]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Funding Criteria
210:25-3-7. Financial information processing [AMENDED]
AUTHORITY:
70 O. S. § 3-104, State Board of Education
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N/A
INCORPORATION BY REFERENCE:
N/A
ANALYSIS:
The rule amendments will establish an effective deadline for submission of the final federal reimbursement claim for prior year expenditures that will ensure accurate financial reporting and timelines of all federal funds being claimed and reported prior to the final submission of the year-end revenue and expenditure reports.
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 26, 2008:

SUBCHAPTER 3. FUNDING CRITERIA

210:25-3-7. Financial information processing

These regulations apply to data processing service centers planning to provide services to schools, as well as to schools providing their own computer services (hereafter both referred to as Center), implementing Oklahoma Cost Accounting System (OCAS).

(1) The Center shall have available adequate data equipment to process the information.

(2) Personnel of the Center shall have an adequate understanding of the school finance laws and regulations implementing OCAS in the State of Oklahoma.

(3) No warrant/check shall be issued in excess of the properly approved appropriations or cash on hand for non appropriated funds.

(4) The Center will provide forms and/or means of transmitting proper information to and from the Center.

(5) The Center shall provide a complete audit trail of transactions in the form of a fiscal year-to-date (or monthly) detailed Budget Analysis, listing all encumbrances and payments by date.

(6) All financial transactions must be computer program generated for transfer of information to State Department of Education, coding to the bold or ability to roll to the bold codes if detailed coding is desired at district level, as printed in the OCAS manual.

(7) The Center must have the ability to transfer financial information, for all funds, for expenditures and revenue to the State Department of Education, when requested via the Web-based OCAS system.
(8) The Center must have ability to provide adequate audit trail for all entries.
(9) The Center is required to provide a computer generated program from the warrant registry with detail and summary expenditure reports on 8 1/2" X 11", unlined paper, in SDE approved format for claiming of federal fund reimbursements based on warrants issued. No expenditures will be processed on any report that has any manual changes on it.
(10) The Center must have ability to roll to the third digit of Function, first digit of Object in OCAS for federal programs report summary page.
(11) The Center must have ability to meet minimum criteria for software implementing OCAS as developed by the State Department of Education.
(12) Computer generated Record and Report of School District Expenditure forms requesting reimbursement against any federal program section of the State Department of Education must be received or postmarked on or before ~~September~~ August 1, effective July 1, ~~2004~~2008. Unclaimed funds in the federal program areas will become carry-over funds into the new school year and be spent and claimed for reimbursement.
(13) The Center will provide all necessary pertinent information requested by the school district and promptly make all required monthly, quarterly, and annual reports.
(14) The Center shall process budgetary changes provided that said budgetary changes conform with Statutes pertaining to School Finance.
(15) The Center shall not process a supplemental allocation unless said allocation is accompanied by a Supplemental Estimate (Form 150), or a Request for Approval of State Aid and/or Federal Aid (Form 307) or Cash Fund Estimate of Needs and Request for Appropriation of Funds for Schools (Form 308), properly signed, authorizing the allocation of an additional appropriation of funds.
(16) The Center is required to continuously report the condition of all prior fiscal year funds with active balances.
(17) The Center shall furnish all necessary instructions to the school personnel necessary to initiate and maintain the program.
(18) The Center and software vendor providing services for a school district during a fiscal year shall be required to process and incorporate all pertinent information of each of the affected current year's funds from the beginning of the fiscal year. They shall also be required to process all payroll information for the calendar year of initiation.
(19) The Center and software vendor may be required to continue services to a school district until all transactions for the current fiscal year are completed even though the school district does not contract for the ensuing fiscal year.
(20) The Center is subject to review by the State Board of Education.

[OAR Docket #08-1053; filed 5-23-08]

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

[OAR Docket #08-877]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Election Training
Part 1. The County Election Board
230:10-5-1. Statewide and regional workshops [AMENDED]
230:10-5-2. Reimbursement for workshops [AMENDED]
230:10-5-2.1. Training for trainers required [NEW]
Part 3. The Precinct Election Board
230:10-5-12. Precinct Official training [AMENDED]
AUTHORITY:
Title 26 O.S., Section 2-107. Secretary of the State Election Board
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Subchapter 5. Election Training
Part 1. The County Election Board
230:10-5-1. Statewide and regional workshops [AMENDED]
230:10-5-2. Reimbursement for workshops [AMENDED]
230:10-5-2.1. Training for trainers required [NEW]
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n/a
ANALYSIS:
The amendments in Chapter 10 concern training for County Election Board members and employees and training for Precinct Election Officials.

An amendment in one Section requiring training for County Election Board members and employees removes language implying that the County Election Board Chairman, Vice Chairman, and the two alternate members attend regional training workshops with the Secretary and office staff. Although once true, this has not been the case for many years. The State Election Board

usually provides training for the Chairman, Vice Chairman, and alternate members in their own county.

Amendments in a Section concerning reimbursement of expenses for attending training is amended to reflect changes in various rates of reimbursement that became effective October 1, 2007.

A new Section concerns special training for County Election Board personnel who train Precinct Election Officials. In the past, each County Election Board Secretary and staff was required to conduct training for Precinct Officials using standard materials produced by the State Election Board staff. While many of our County Election Board personnel are excellent trainers, there are a few who have difficulty with this aspect of their jobs. Beginning in 2005, the State Election Board staff experimented with a new method of providing training for Precinct Officials. The State Election Board staff conducted a special, voluntary train-the-trainer program for any County Election Board Secretary or employee who wanted to conduct Precinct Official training. Only trainers who complete this special training for trainers are authorized to train Precinct Officials. The purpose of this restriction is to make Precinct Official training as uniform as possible from county to county. Many of the persons who attended the train-the-trainer program agreed to travel to other counties to conduct Precinct Official training. From this group of authorized trainers, the State Election Board staff assigns trainers to other counties as needed. Several members of the State Election Board staff also are authorized trainers. The experimental program proved to be both effective and popular. Through emergency rulemaking, the new Section and an amendment in an existing Section formally instituted the program in time for the 2008 Precinct Official training season.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 5. ELECTION TRAINING

PART 1. THE COUNTY ELECTION BOARD

230:10-5-1. Statewide and regional workshops

(a) At least once every two years, the State Election Board will conduct either a statewide or regional workshop for the County Election Board ~~members~~ Secretary and ~~staffs~~ employees. Such workshops are designed to acquaint participants with effective office administration techniques and current developments in election administration. The workshops are scheduled at times which are convenient for election officials, and attendance by ~~Secretaries~~ the Secretary and ~~designated staff personnel~~ the Assistant Secretary or Chief Clerk is mandatory.

(b) At least once every four years, the State Election Board will provide training for the County Election Board Chairman and Vice Chairman and for the alternate members. Attendance at such training is mandatory.

230:10-5-2. Reimbursement for workshops

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

(b) The amount of reimbursement for lodging and meal expenses shall not exceed the amount allowed in the Internal Revenue Code of 1986, as amended. [74:500.9] Expenses for overnight lodging will be reimbursed at a rate not to exceed ~~$60~~ $70 per night. [74:500.9] Reimbursement for meal expenses will be made to persons in authorized overnight travel status at a rate not to exceed $39 per day. [74:500.8] In Oklahoma County, however, reimbursement for lodging is ~~$73~~ $81 per night and for meals is $49 per day, and in Creek, Osage, Rogers, and Tulsa Counties, reimbursement for lodging is ~~$68~~ $73 per night and for meals is $44 per day.

230:10-5-2.1. Training for trainers required

All County Election Board personnel who intend to conduct training for Precinct Officials first shall be required to attend training for trainers provided by the State Election Board. Training for trainers shall be conducted by the State Election Board at least once every two years prior to the state election season. In order to be eligible to participate in training for trainers, personnel must have been employed with the County Election Board for at least two years. However, the Secretary of the State Election Board may approve exceptions to this requirement. In the event that Precinct Official training is required in a county where no County Election Board staff member has attended the required training for trainers, the State Election Board shall provide a qualified trainer.

PART 3. THE PRECINCT ELECTION BOARD

230:10-5-12. Precinct Official training

The County Election Board Secretary ~~conducts~~ provides training for all Precinct Officials in the county before the regularly scheduled statewide elections in even-numbered years. [26:3-111] Each Inspector, Judge, and Clerk must attend training every two years before working in an election. The Secretary also schedules additional training sessions as needed for Precinct Officials appointed to fill vacancies or named as substitutes.

[OAR Docket #08-877; filed 5-12-08]

TITLE 230. STATE ELECTION BOARD
CHAPTER 15. VOTER REGISTRATION

[OAR Docket #08-878]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Voter Outreach

Part 3. Distribution of Voter Registration Application forms

230:15-3-27. Specifications for Oklahoma Voter Registration Application form [AMENDED]

Subchapter 5. Application for Voter Registration
Part 21. Voter Registration Application by Mail
230:15-5-84. Information required on voter registration application [AMENDED]
230:15-5-85. Other information requested on applications for voter registration [AMENDED]
Subchapter 9. Receiving and Processing Voter Registration Applications
Part 5. Processing Voter Registration Applications
230:15-9-18. Entering applications for voter registration in OEMS [AMENDED]
Part 7. Acknowledgment of Voter Registration Applications
230:15-9-31. Rejected applications [AMENDED]
230:15-9-32. Types of rejection notices [AMENDED]

AUTHORITY:
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ANALYSIS:
The amendments in Chapter 15 concern voter registration requirements and procedures.

The amendment in Subchapter 3 concerns specifications for printing the Oklahoma Voter Registration Application form. The amendment removes language requiring the form to be printed on white stock. The Secretary of the State Election Board will designate the color stock on which the form is to be printed.

The amendments in Subchapter 5 concern identification numbers requested from applicants for voter registration. The Oklahoma Voter Registration Application form asks for an applicant's Oklahoma driver license number and states that the last four digits of the applicant's Social Security number are required if the applicant does not have a driver license. However, while federal law (the Help America Vote Act of 2002) permits the states to ask for a driver license number, a state identification card number, or the last four digits of the applicant's Social Security number on voter registration applications, it also contains language which we interpret to mean that the rejection of voter registration application for failure to provide these numbers is prohibited. Many applicants refuse to provide these numbers due to fears of identity theft. (The Oklahoma Voter Registration Application form is an open record under state law.) The federal law requires states to create a unique identification number for applicants who do not have a driver license, state identification card, or a Social Security number. The voter registration software used in Oklahoma creates a unique number for each application entered and that number is also used for tracking purposes. Therefore, we no longer reject an otherwise complete and valid application for voter registration if the applicant fails to provide one of the requested identification numbers. Amendments are proposed in several sections to remove language that indicates applications submitted without the requested identification numbers are considered invalid are therefore rejected.

In addition, one Section is amended to clarify that only an application for new voter registration is rejected if the applicant does not provide his or her date of birth. A voter registration application for change of address, political affiliation, or name that does not include a date of birth is not rejected if the voter's record can be identified and if the date of birth has previously been provided.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 3. VOTER OUTREACH

PART 3. DISTRIBUTION OF VOTER REGISTRATION APPLICATION FORMS

230:15-3-27. Specifications for Oklahoma Voter Registration Application form

The Oklahoma Voter Registration Application form shall be printed on ~~white~~ 90-pound index stock of the color specified by the Secretary of the State Election Board and it shall be printed with black ink. The finished dimensions of the Oklahoma Voter Registration Application form shall be eight and one-half ($8\frac{1}{2}$) inches wide by twelve (12) inches deep. The Oklahoma Voter Registration Application form shall be printed on two sides. The form shall be perforated full width four (4) inches from the bottom. The form shall be scored full width four (4) inches from the top so that it can be folded in thirds to fit inside a legal-sized envelope.

SUBCHAPTER 5. APPLICATION FOR VOTER REGISTRATION

PART 21. VOTER REGISTRATION APPLICATION BY MAIL

230:15-5-84. Information required on voter registration application

(a) A person who is eligible to register to vote and who applies for voter registration shall be required to provide the information listed in (b) of this Section on a voter registration application form. Voter registration applications that contain all the required information shall be valid applications and shall be approved by the Secretary of the County Election Board and the applicant shall become a registered voter in the county. An application that does not contain the required information, except as provided in (c) and (d) of this Section, shall not be a valid application and shall be rejected.

(b) A valid voter registration application shall contain the following information.

(1) Applicant's full name.
(2) Applicant's date of birth.

(3) Applicant's county of residence. (See exception provided in (d) of this Section.)

(4) Applicant's residence address. (See (e) of this Section.)

(5) Applicant's mailing address. (See (f) of this Section.)

(6) Applicant's political affiliation. (See exception provided in (c) of this Section.)

(7) Applicant's Oklahoma driver license number or state identification card number~~. If the applicant does not have a driver license or a state identification card,~~ or the last four digits of applicant's social security number~~ are required~~.

(8) Applicant's original signature or applicant's original mark.

(9) Name and address of person who helped applicant complete application if applicant is unable to complete it unassisted.

(c) An application for voter registration that is valid in all other respects shall not be rejected because the applicant has made one of the errors listed below when indicating a political affiliation. County Election Board personnel shall be authorized to designate an applicant as an Independent if one of the errors listed below appears on an otherwise valid voter registration application form. A voter designated Independent by County Election Board personnel for one of the following reasons shall be entitled to declare a political affiliation at any time, even during the period beginning June 1 and ending August 31, inclusive, in even-numbered years when changes of political affiliation otherwise are prohibited. Such declarations of political affiliation shall be subject to the voter registration application deadline preceding an election. See 230:15-5-86.

(1) The applicant left the space on the application form for political affiliation blank.

(2) The applicant indicated more than one political affiliation and the applicant's intention cannot be determined.

(3) The applicant wrote the name of a political party or political organization not currently recognized in Oklahoma. See 230:15-5-77 and 230:15-5-79.

(d) An applicant for voter registration shall indicate the name of the county in which he or she resides on the application form. However, if an applicant fails to indicate his or her county of residence, the Secretary of the County Election Board shall not reject the application solely for this purpose if the residence address provided by the applicant in fact is located within the county.

(e) An applicant for voter registration must provide his or her address of residence. If the applicant has a street address (a street name and number, an apartment or suite number, if applicable, and zip code), that is the applicant's address of residence. [26:4-112] If the applicant does not have a street address, a physical description of the location of the residence that can be used to pinpoint the residence on a map must be provided. The applicant may provide a 911 address or may provide the legal description (a Section-Township-Range description, including the appropriate quarter section or quarter-quarter section designation). Neither a rural route address nor a post office box address is acceptable as an address of residence for voter registration purposes. A voter registration application that does not include an address of residence sufficient to locate the residence on a map shall be rejected by the Secretary of the County Election Board.

(f) A mailing address must include the city and zip code. An emergency notification address, or 911 address, a rural route and box number, a post office box, or a street address all constitute valid mailing addresses for voter registration purposes. [26:4-112] If an applicant's mailing address is the same as the applicant's residence address, the space for mailing address may be left blank.

230:15-5-85. Other information requested on applications for voter registration

(a) In addition to the information required on an application for voter registration as outlined in 230:15-5-84, other information is requested. This other information is optional and a voter's failure to provide the additional information shall not result in the rejection of the application if the application is determined to be valid in all other respects. The other, optional information shall include~~:~~

~~(1) Last four digits of applicant's Social Security number. (However, if the applicant does not have a driver license or a state identification card, the last four digits of the applicant's Social Security number are required.)~~

~~(2) Applicant's~~ the applicant's former voter registration information, including former residence address, former name, and/or former political affiliation.

(b) Applicants who submit their voter registration application forms by mail may be asked to show identification at the polling place when they vote for the first time in a federal election. Applicants may choose to submit a copy of one of the following forms of identification with their voter registration application form, but they are not required to do so.

(1) A current driver license or other photo identification.

(2) A utility bill, bank statement, government check, paycheck, or other government document that shows the applicant's name and address.

SUBCHAPTER 9. RECEIVING AND PROCESSING VOTER REGISTRATION APPLICATIONS

PART 5. PROCESSING VOTER REGISTRATION APPLICATIONS

230:15-9-18. Entering applications for voter registration in OEMS

(a) **Entering voter registration application information in OEMS.** All information provided by the applicant on the voter registration application form shall be entered into OEMS. Follow the appropriate OEMS software instructions to enter the voter registration data. Refer to the following rules to resolve questions about individual applications.

(1) **Received date.** The received date is the date stamped or written on a voter registration application form by the agency that first receives it from the applicant.

(A) The received date for an application submitted by mail is the date the State Election Board received and stamped it.

(B) The received date for an application submitted at a motor license agency or at any voter registration agency identified in 230:15-5-122 and 230:15-5-123 is the date stamped or written by agency personnel in the space provided for this purpose on the form.

(C) The received date for a voter registration application bearing no stamped or written date is the application date entered by the applicant beside his or her signature.

(2) **Postmark.** The postmark date from a voter registration application submitted by mail shall be entered in OEMS. If there is no postmark or if the date is missing or illegible, leave the postmark field blank.

(3) **Name.** Enter the voter's name exactly as provided on the application form, even if it appears to be incomplete.

(4) **Political affiliation.** An application for voter registration that is valid in all other respects shall not be rejected because the applicant fails to indicate his or her political affiliation. The political affiliation field on the OEMS screen shall be left blank in the following circumstances with the result that OEMS automatically will record the applicant's affiliation as Independent. See also 230:15-5-84 and 230:15-9-22.

(A) The applicant left the space for political affiliation blank.

(B) The applicant marked more than one political affiliation and his or her intent cannot be determined.

(C) The applicant wrote the name of a political party or a political organization not currently recognized in Oklahoma.

(5) **Date of birth.** An applicant for new voter registration must provide his or her date of birth on the application form. See 230:15-5-84. An application for new registration that does not include the date of birth shall be rejected. See 230:15-9-31. In the event that a registered voter submits an application for change of registration and does not provide his or her date of birth, the application shall be rejected unless both of the following circumstances exist.

(A) The application is valid in all other respects and County Election Board personnel are able to make positive identification of the voter from other information on the application form and from information already recorded in OEMS.

(B) The voter's date of birth already is recorded in OEMS.

(6) ~~**Last four digits of Social Security number.** An applicant for voter registration is requested, but not required, to provide the last four digits of his or her Social Security number on the application form. However, if an applicant does not have a driver license or a state identification card, the last four digits of the applicant's Social Security number are required.~~

~~(7) **Oklahoma driver license number.** An applicant for voter registration is required to provide his or her Oklahoma driver license number or state identification card number on the application form. If the applicant does not have a driver license or state identification card, the last four digits of the applicant's Social Security number are required.~~ **Identification number.** Enter the Oklahoma driver license number and/or last four digits of the Social Security number. If the applicant does not provide either of these identification numbers, leave these fields blank so that OEMS can automatically create and assign a unique identification number to the application.

(~~8~~ 7) **Duplicates.** When voter registration application information is entered in OEMS, the system automatically searches for and identifies duplicate or potential duplicate records in the county. The search criteria are first name, last name, and date of birth and/or an identification number such as the last four digits of the Social Security number ~~and/or~~ or driver license number. If an application appears to duplicate either an existing voter registration or another pending application, follow the procedures outlined in 230:15-9-23 and the appropriate software instructions to investigate and resolve the potential duplication.

(~~9~~ 8) **Residence address.** An applicant for voter registration is required to provide his or her residence address on the application form. Enter the applicant's residence address in the appropriate fields on the OEMS screen. If the address cannot be assigned in the OEMS Street Guide based on the information entered, see 230:15-9-18.1.

(~~10~~ 9) **Mailing address.** If the applicant provided a mailing address different from his or her residence address, enter the mailing address. If the applicant's mailing address is the same as the residence address or if the space for mailing address is blank, leave the mailing address field on the screen blank.

(~~11~~ 10) **County of Residence.** An applicant for voter registration is required to indicate the county of his or her residence. An application on which the county of residence is not indicated shall be entered in OEMS.

(A) If the address is located within the county, the application shall be approved.

(B) If the address is not located within the county, the application shall be rejected with the "OT" ("Other") rejection code. When the blank rejection notice is printed, write or type the following in the space provided: "You did not indicate the county in which you reside on your application for voter registration. Your application cannot be processed without this information. You must submit a new application form that indicates your county of residence. Application forms are available in public libraries, post offices, and tag agencies across the state and also are available online at **www.elections.state.ok.us.**"

(11) **Rejection codes.** An application for new voter registration that does not contain all the required information listed in 230:15-5-84 shall be rejected. OEMS automatically applies a rejection code for an insufficient name, insufficient address, insufficient date of birth, if the application duplicates an existing registration or pending application, and if the applicant is under 18 years of age. (If an applicant who is under 18 will become eligible on or before election day, as described in 230:15-5-2, follow the software instructions to override the rejection code.) If the application is unsigned or if the application must be rejected for any other reason, County Election Board personnel flag the appropriate rejection code on the screen. See 230:15-9-31.

(12) **Source codes.** A code to identify the source of an application for statistical purposes shall be entered in OEMS. If the source of an application is a motor license agency, an agency code also shall be entered. After the source code is entered, the instruction section of the application form bearing the source identification shall be detached and destroyed.

(13) **Previous registration information.** If the applicant provided information about previous voter registration in another state or in another county in Oklahoma, enter the previous registration information in the appropriate fields on the screen. Do not enter information about former registration in the same county in these fields.

(14) **Identification provided.** If an applicant who submitted a voter registration application by mail included identification material with the application, enter the appropriate information in OEMS. (Applicants for voter registration are not required to provide identification.) After entering information in OEMS about the voter's identification, destroy the identification by shredding it.

(b) **Filing voter registration applications.** If a voter registration application is determined to be valid and approved, place the application form in the appropriate valid application file until voter identification cards are printed. After the voter identification card is mailed to the voter, file the application form in the Central File. If a voter registration application must be rejected, file the application in the appropriate rejected application file.

PART 7. ACKNOWLEDGMENT OF VOTER REGISTRATION APPLICATIONS

230:15-9-31. Rejected applications

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

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

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

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

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

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

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

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

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

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

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

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

230:15-9-32. Types of rejection notices

Three types of rejection notices are created by OEMS. When rejection notices are requested, OEMS assigns the appropriate type of rejection notice to each rejected application based upon the reason for the rejection. The types of rejections and reasons for which they are used are described as follows.

(1) **Insufficient Information Rejection Notice.** If a voter registration application is rejected because the applicant failed to provide sufficient information about his or her name, address, or date of birth, ~~or the last four digits of the applicant's social security number,~~ OEMS will generate a rejection notice that includes spaces for the applicant to provide additional information. The applicant may complete the requested information on this rejection notice, sign and date it and return it to the County Election Board. Rejection notices of this type that are returned to the County Election Board by the applicant with the requested information shall be used by County Election

Board personnel to change the application information previously entered into OEMS. See 230:15-9-35.

(2) **Rejection Notice.** If an applicant fails to sign his or her application, if an applicant is under 18 (except as provided in 230:15-5-2), or if the applicant is already registered to vote in the county or has another, identical application pending, OEMS will generate a rejection notice that explains the reason that the application was rejected. This rejection notice is used when the existing application cannot be corrected by additional information.

(3) **Blank Rejection Notice.** If an application is rejected for any other reason, OEMS generates a rejection notice that contains a statement to the applicant that his or her application has been rejected and that also contains space in which County Election Board personnel may write the specific reason for the rejection. Some other reasons for rejecting a voter registration application are described in 230:15-9-31(b)(7).

[OAR Docket #08-878; filed 5-12-08]

TITLE 230. STATE ELECTION BOARD CHAPTER 30. ABSENTEE VOTING

[OAR Docket #08-879]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Processing Applications
230:30-9-3. Processing applications for absentee ballots [AMENDED]
Subchapter 11. Receiving and Processing Absentee Ballots
230:30-11-2. Opening outer envelopes and examining affidavits [AMENDED]
Subchapter 13. Federal Write-in Absentee Ballot
230:30-13-1. Voters permitted to use federal write-in absentee ballots [AMENDED]
230:30-13-2. Receiving and processing federal write-in absentee ballots [AMENDED]
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The State Election Board staff revised the Application for Absentee Ballots forms to clarify some of the information required from applicants and to make it easier for County Election Board personnel to process the completed forms. Minor changes are required in one Section that concerns processing applications so that instructions match the revised form.

In 2005, the United States Congress made changes to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) that expanded the use of the federal write-in absentee ballot (FWAB). The Federal Voting Assistance Program, the federal agency charged with administering the UOCAVA, subsequently made changes to the FWAB materials that they provide to uniformed services members and to overseas civilian voters. Amendments in three Sections concern the expansion of the use of the FWAB and the changes to the FWAB materials.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 9. PROCESSING APPLICATIONS

230:30-9-3. Processing applications for absentee ballots

Applications from all absentee voters, except uniformed services voters and overseas voters, shall be processed according to the following procedures:

(1) Indicate ~~on the application form~~ in the "For County Election Board Use" space the date on which the application is received at the County Election Board office.

(2) Enter the application information into OEMS. When applications from absentee voters, nursing home voters, physically incapacitated voters, voters charged with the care of physically incapacitated persons and emergency incapacitated voters are entered into OEMS, the system automatically verifies the applicant's registration. If an applicant is not registered, see 230:30-9-4.

(3) If a voter requests absentee ballots for a school district or municipality other than the one to which he or she is assigned, mark the appropriate field on the OEMS screen. OEMS will generate a notice that tells the voter that he or she is assigned to a different school district or municipality than the one for which ballots were requested

and that ballots for the assigned district or municipality will be issued. If a voter is not assigned to a school district, the school district field will be empty. In this situation only, enter the appropriate code for the school district indicated by the voter on the absentee ballot application in the school district field. If a voter does not reside in a municipality, the municipality field will contain the word "None." If, however, a voter's municipal assignment cannot be determined, the municipal field will be blank. In this situation only, enter the code for the municipality indicated by the
voter on the absentee ballot application.

(4) If the application must be rejected for any reason, enter the reason for the rejection in the appropriate place on the screen. OEMS will produce a Notice of Rejection of Absentee Ballot Application letter for the voter. However, in the event that an Application for In-Person Absentee Ballot has been rejected, it shall not be entered into OEMS.

(5) Designate the election or elections for which the voter is requesting ballots in the appropriate place on the screen.

(6) Write the applicant's voter identification number and registration status (active or inactive) on the application form. ~~Fill in the information required in the shaded "For Election Board Use Only" box in the lower right corner of the form.~~

~~(7)~~ File the application form in the appropriate absentee voting materials file. If the applicant is a restricted records status voter, file the application in the restricted records status file.

(~~8~~7) If the application is from an in-person absentee voter and ballots were issued by the Absentee Voting Board, enter the date the application was processed by the Absentee Voting Board in the appropriate space on the screen to give the voter credit for voting. See 230:30-7-12. If the application was rejected, no entry shall be made in OEMS. A rejected Application for In-Person Absentee Ballot shall be retained with other rejected applications.

(~~9~~8) If ballots are available, immediately prepare the appropriate absentee voter packet with the correct ballots for the voter and mail it. See 230:30-9-1 and 230:30-9-2. If the letter "I" appears in the upper-right corner of the absentee mailing label, the voter is either an inactive voter or a voter unassigned to a school district due to insufficient address information. Enclose an Oklahoma Voter Registration Application form and an Absentee Voter Address Information Requested sheet with the absentee voter packet and ballots.

SUBCHAPTER 11. RECEIVING AND PROCESSING ABSENTEE BALLOTS

230:30-11-2. Opening outer envelopes and examining affidavits

The County Election Board may meet any time after 10 a.m. on the Thursday preceding the election to remove outer envelopes. [26:14-123] Unless the number of absentee ballots is extremely high, this meeting shall be scheduled on the day of the election. Upon meeting, the Board shall unlock each ballot box containing absentee ballots. Each envelope shall be removed from the ballot box. The outer envelopes shall be opened and removed and the affidavit envelopes examined. If an inactive voter has enclosed the Oklahoma Voter Registration Application form inside the outer envelope, set the application aside to be processed later. The examination shall determine whether or not the affidavit is properly executed. The following requirements shall be observed:

(1) The signature on a pink affidavit submitted by a physically incapacitated voter, a voter charged with the care of a physically incapacitated person or an emergency incapacitated voter must be witnessed by two other persons. [26:14-113.2]

(A) No one may witness signatures on more than five of these pink affidavits per election. [26:14-113.2(B)]

~~(B)~~ If someone witnesses signatures on more than five of these pink affidavits, the absentee ballots shall be counted but the witness shall be reported to the District Attorney. See 230:30-23-1.

(~~C~~B) No one who is a candidate for an office on the ballot may witness a pink absentee ballot affidavit. [26:14-113.2]

(~~D~~C) No one who is related within the third degree by consanguinity or affinity to a candidate for an office on the ballot may witness a pink absentee ballot affidavit. [26:14-113.2]

(2) The signature on a yellow affidavit submitted by an absentee voter must be witnessed by a Notary Public. [26:14-108] Affidavits from states other than Oklahoma may be notarized by a person other than a Notary Public who is authorized to administer oaths.

(A) The Notary Public must sign and impress the notarial seal on the affidavit for the attestation to be valid.

(B) The number and expiration date of a Notary Public in Oklahoma should be included in the attestation. However, the attestation shall be considered valid even if this information is missing.

(C) No one who is a candidate for an office on the ballot may notarize a yellow absentee ballot affidavit. [26:14-108]

(D) No one who is the chairman or treasurer of the campaign of a candidate for an office on the ballot may notarize a yellow absentee ballot affidavit. [26:14-108]

(E) No one who is related to a candidate within the third degree of consanguinity or affinity may notarize a yellow absentee ballot affidavit. [26:14-108]

(3) The signature on a pink affidavit submitted by a nursing home voter must be witnessed by two members of the nursing home Absentee Voting Board, who shall not be required to show their addresses. [26:14-115]

(4) Voters using the red and white affidavit need not have their signatures witnessed.

(5) ~~The outer (mailing) envelope of a federal write-in absentee ballot shall not be opened at this time. The voter's declaration/affirmation on the mailing envelope shall be examined.~~ The Voter's Declaration/Affirmation accompanying a federal write-in absentee ballot shall be examined. The voter's signature need not be witnessed. See 230:30-13-2 for more information about the Voter's Declaration/Affirmation.

(6) The cover sheet used by uniformed services and overseas voters to return voted ballots by fax must include the voter's signature on the affidavit and must include a waiver of right to secret ballot statement. The voter's signature need not be witnessed.

SUBCHAPTER 13. FEDERAL WRITE-IN ABSENTEE BALLOT

230:30-13-1. Voters permitted to use federal write-in absentee ballots

~~Uniformed~~ Absent uniformed services voters ~~who are stationed outside the territorial limits of the United States~~, those who are on active duty and absent from their voting residence, and overseas voters, those who are living outside the territorial limits of the United States, shall be permitted to use the federal write-in absentee ballot in Primary, Runoff Primary, Presidential Preferential Primary, and General Elections for federal offices. These absent uniformed services voters and overseas voters may use the federal write-in absentee ballot whether or not they have applied for regular absentee ballots.

230:30-13-2. Receiving and processing federal write-in absentee ballots

Upon receipt of a federal write-in absentee ballot, the Secretary shall ~~observe the following procedures:~~ indicate the received date on the front of the envelope and then shall place the envelope in the absentee ballot box. When the County Election Board meets to open outer envelopes and examine affidavits as decribed in 230:30-11-2, the Secretary also shall take the following steps.

(1) ~~Do not open the mailing envelope. The voter's federal write-in absentee ballot is sealed in a secrecy envelope inside the mailing envelope. The mailing envelope shall not be opened until the County Election Board is prepared to count the ballot.~~ After opening the outer envelope, attach the Voter's Declaration/Affirmation form to the secrecy envelope with a paper clip.

(2) ~~Indicate on the front of the mailing envelope the date on which the federal write-in absentee ballot was received by the County Election Board.~~ Determine whether the voter is a uniformed services voter or an overseas voter by examining item 1a on the Voter's Declaration/Affirmation form.

(A) If the ballot is from an overseas voter, verify that the voter is located outside the United States by examining the information in item 4a "My Current Address (Where I live now)." This address should be located outside the United States. If this address is located within the United States and the voter is an overseas voter, the federal write-in absentee ballot cannot be counted.

(B) If the ballot is from a uniformed services voter, the ballot can be counted even if it was submitted from an address located within the United States.

(3) ~~Verify that the federal write-in absentee ballot was submitted from a location outside the United States. Check item 2, "Current Complete Military or Overseas Address," on the Voter's Declaration/Affirmation located on the back of the mailing envelope. (An APO or FPO address is an address outside the United States.) A federal write-in absentee ballot submitted from a location within the United States cannot be counted. If the ballot cannot be counted, note the reason on the front of the mailing envelope and set it aside in a secure place.~~ Examine item 3 "My Voting Residence Address" to determine the voter's correct precinct. Note the precinct number on the Voter's Declaration/Affirmation.

(4) ~~Verify the voter's address of residence in the county by checking item 3, "Voting Residence," on the Voter's Declaration/Affirmation. Use this information to determine the voter's correct precinct.~~ Check the absentee information in OEMS to determine whether the voter submitted an application for regular mail absentee ballots.

(A) If the voter submitted an application for regular mail absentee ballots, determine whether those ballots have been received.

(i) If the voter's regular absentee ballots have been received, the federal write-in absentee ballot shall not be counted. Note the reason the ballot cannot be counted on the Voter's Declaration/Affirmation and set it and the unopened secrecy envelope aside in a secure place.

(ii) If the voter's regular absentee ballots have not been received by 7 p.m. on election day, the federal write-in absentee ballot shall be counted.

(B) If the voter did not submit an application for regular mail absentee ballots, the federal write-in absentee ballot shall be counted.

(5) ~~Check the absentee records in OEMS to see whether an application for regular absentee ballots was received from the voter.~~

~~(A) If an application was received, verify that regular absentee ballots have not yet been received from the voter and write the absentee voter identification number from the OEMS screen on the front of the mailing envelope. If regular absentee ballots have been received from the voter, the federal ballot cannot be counted. If the federal ballot cannot be counted, note the reason on the front of the mailing envelope and set it aside in a secure place.~~

~~(B) If an application for regular absentee ballots was not received, make a list showing the voter's name and the date the federal write-in absentee ballot was received. Make space on this list to show the rejection date in the event that the ballot cannot be counted.~~ In

the event that a voter's federal write-in absentee ballot cannot be counted, the Secretary shall notify the voter in writing of the reason the ballot was rejected.

(6) ~~Place the federal write-in absentee ballot mailing envelope, unopened, in the absentee ballot box.~~ If a federal write-in absentee ballot is counted for a voter who had previously applied for regular absentee ballots, enter the date the federal write-in absentee ballot was received in the voter's absentee information in OEMS.

(7) ~~When counting absentee ballots, check the voter's application information in OEMS if an application for regular absentee ballots was received from the voter to determine whether the voter's regular ballots have been received since the federal ballot was placed in the ballot box. If the voter's regular absentee ballots are received prior to 7 p.m. on election day, the federal write-in absentee ballot will not be counted. Note the reason on the front of the mailing envelope and set it aside with the other uncounted absentee ballots. If an application for regular absentee ballots was not received from the voter, open the mailing envelope and count the ballot.~~

~~(8) In the event a voter's federal write-in absentee ballot cannot be counted for the reasons outlined in items 3 and 5 of this section, the Secretary immediately shall notify the voter in writing of the rejection and the reason for the rejection.~~

~~(9) If a federal write-in absentee ballot is counted for a voter who had applied for regular absentee ballots, enter the date on which the federal ballot was received by the County Election Board, as noted on the front of the mailing envelope, in the voter's application information in OEMS.~~ Follow the instructions in 230:30-19-6 to count a federal write-in absentee ballot.

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TITLE 230. STATE ELECTION BOARD CHAPTER 35. ELECTION CONDUCT

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230:35-3-3. Assembling precinct supplies [AMENDED]
Part 9. Distributing Supplies and Ballots
230:35-3-71. Voting device not issued to precinct polling place [AMENDED]
Part 13. After the Polls Close
230:35-3-84. Assembly line required for receiving returns and materials from Inspectors [AMENDED]
230:35-3-84.1. Determining number of signatures on Provisional Ballot Rosters [AMENDED]
230:35-3-85.1. Election night recounts [AMENDED]
Part 19. Verifying and Counting Provisional Ballots
230:35-3-131. Opening provisional ballot affidavit envelopes and counting provisional ballots [AMENDED]
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230:35-5-31.1. Location and materials for provisional voting [AMENDED]
Part 15. After the Polls Close
230:35-5-75.3. Completing election night tasks [AMENDED]
Part 21. Voters Listed in Precinct Registry Who Have Problems With Eligibility
230:35-5-113.3. Identification Required voter [AMENDED]
Part 29. Violations of the Law
230:35-5-146. Action when laws are violated [AMENDED]
Part 34. Provisional Voting Procedures
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Part 9. Distributing Supplies and Ballots
230:35-3-71. Voting device not issued to precinct polling place [AMENDED]
Part 13. After the Polls Close
230:35-3-84. Assembly line required for receiving returns and materials from Inspectors [AMENDED]
230:35-3-84.1. Determining number of signatures on Provisional Ballot Rosters [AMENDED]
230:35-3-85.1. Election night recounts [AMENDED]
Part 19. Verifying and Counting Provisional Ballots
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ANALYSIS:

These amendments change certain procedures followed by County Election Board personnel and by Precinct Officials on election day. Some items that in the past have been bound in the FORMS FOR USE BY PRECINCT ELECTION OFFICIALS booklet have been removed from that booklet. A separate FORMS FOR USE BY PROVISIONAL VOTING OFFICER booklet has been eliminated. Because of the elimination of the provisional voting FORMS booklet, the Provisional Ballot Voucher form has been redesigned and the instructions for completing it have been changed.

A new item, referred to in these amendments as the "short turquoise State Election Board seal" has been created for use by the County Election Board on election night. This new seal is intended to be applied to the ballot transfer box in several situations. First, if the long white State Election Board seal is broken or missing from a ballot transfer box when the box is received from the Inspector on election night, the County Election Board members place the turquoise seal on the box immediately. Second, if a ballot transfer box must be opened by the County Election Board on election night to conduct an election night recount, the box is resealed with the turquoise seal at the conclusion of the recount. Third, if the County Election Board must open a ballot transfer box to retrieve an item, such as a Ballot Accounting Form or a Totals Printout sealed inside the box in error, the box is resealed with the turquoise seal. Finally, on Friday following the election, the ballot transfer box containing counted provisional and/or telephone system ballots is sealed with the turquoise seal. The purpose of the new seal is to provide additional documentation of the chain of custody of voted ballots from election night through 5 p.m Friday following the election or until the ballots are delivered to the courtroom for a recount.

An amended Section concerns the procedures observed by the County Election Board Secretary and by Precinct Officials when a voting device is not issued to a precinct polling place on election day. (This is a rare circumstance.) The amendment increases to a total of three the number of copies of the Totals Printout produced from the memory pack assigned to the precinct. This is done in the County Election Board office on election night.

An amended Section concerns the procedures for determining the number of voters who signed the Provisional Ballot Roster. The amendment requires an affected county of a multi-county school district or municipality to fax or email a copy of the Provisional Ballot Precinct Log to the entity's parent county on election night.

An amended Section corrects a reference to the location of certain procedures in Precinct Official materials. The Section originally referred to the PRECINCT PROBLEM SOLVER, but the information is now located in THE MANUAL FOR PRECICNT ELECTION OFFICIALS.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 3. COUNTY ELECTION BOARD RESPONSIBILITIES

PART 1. BEFORE THE FILING PERIOD

230:35-3-3. Assembling precinct supplies

(a) Well in advance of any election, the Secretary shall assemble supplies for every precinct and shall pack them in an envelope, a box, a bag, a binder, or another container. The Secretary may use the Supply Envelope and the Supply Box provided by the State Election Board or any other adequate container. Each election supply container shall be labeled for the appropriate precinct. (Some materials cannot be included in the supplies until after ballots are printed.) The Secretary shall prepare and use a Precinct Check List for each precinct to verify that all necessary supplies are included.

(b) The following items shall be included in the election supplies for each precinct. The quantities listed are recommended minimum quantities.

(1) **Publications.** One each of the following publications shall be included in the election supplies for each precinct.

(A) THE MANUAL FOR PRECINCT ELECTION OFFICIALS

(B) PRECINCT PROBLEM SOLVER

(C) VOTING DEVICE HANDBOOK FOR PRECINCT OFFICIALS

(2) **Forms and handouts.** The following forms and handouts shall be included in the election supplies for each precinct.

(A) Address Information Requested handouts

(B) Ballot Accounting Form

(C) FORMS FOR USE BY PRECINCT ELECTION OFFICIALS booklet

(D) Oklahoma Voter Registration Application forms

(E) Procedure for Watchers

(F) Secrecy folders

(G) Voting Device Report

(H) List of ballot codes

(I) Opening the Polls checklist

(J) Closing the Polls checklist

(K) Packing Supplies checklist

(L) Voter Registration Application checklist

(3) **Envelopes.** One of each of the following envelopes shall be included in the election supplies for each precinct.

(A) Envelope for Totals Printout

(B) Green envelope for mailing Totals Printout to State Election Board (statewide elections only)

(C) Precinct Expense Claim Envelope

(D) Voting Device Key Envelope (and key chain with keys)

(4) **Signs and Maps.** The following signs and maps shall be included in the election supplies for each precinct.

(A) One Attention Voter poster for each voting booth in the precinct

(B) One Oklahoma Election Procedures - Important Voter Information sign (English)

(C) One Oklahoma Election Procedures - Important Voter Information sign (Spanish)

(D) One Election Law Violations sign

(E) One Vote Here sign

(F) One Voter Eligibility - Municipal Elections

(G) One Voter Eligibility - School Elections

(H) Precinct Map - municipality

(I) Precinct Map - school districts

(J) Precinct Map - other entity

(5) **Other Supplies.** The following additional supplies shall be included in the election supplies for each precinct.

(A) American flag

(B) Twenty ballot marking pens

(C) Twenty ink pens

(D) One long white State Election Board seal for each ballot transfer box required for the precinct

(E) Official Exit Poll stickers, as needed

(F) Two plastic seals for ballot box sides

(G) Paper clips

(H) Magnifier

(I) Memory pack bag

(J) Rubber bands

(K) Scissors

(L) Tape

(M) Thumbtacks

(6) **Provisional voting supplies.** The following provisional voting supplies shall be included in the election supplies for each precinct.

(A) ~~FORMS FOR USE BY PROVISIONAL VOTING OFFICER booklet~~

~~(i) Absentee Voter Affidavit~~

~~(ii) Voter Assistance Form~~ Checklist for Provisional Voting Officer

(B) Provisional Voting Information handouts

(C) Identification Required information sheet

(D) Provisional Ballot Voucher forms

(E) Oklahoma Provisional Ballot Affidavit envelopes

(F) Provisional Ballot Rosters

(G) Orange Provisional Ballot Bag

(H) Blue plastic seal for provisional ballot bag

(7) **Precinct Registry, Voting Device, and ballots.** The Precinct Registry, voting device, and ballots are issued to the Inspector along with the election supplies for each precinct. See 230:35-3-6, 230:35-3-7, 230:35-3-57, and 230:35-3-68.1.

PART 9. DISTRIBUTING SUPPLIES AND BALLOTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Although the polling place must be open for today's election, County Election Board records indicate that there are no voters in this precinct eligible to participate in the election. Therefore, a voting device has not been issued for this polling place.

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

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

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

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

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

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

PART 13. AFTER THE POLLS CLOSE

230:35-3-84. Assembly line required for receiving returns and materials from Inspectors

Before the first Inspector arrives, an assembly line shall be established for receiving the returns. The Chairman and Vice Chairman of the County Election Board, the Secretary or clerical employees of the Board may be involved in reception. When receiving returns, the following procedure shall be observed:

(1) Representatives of the news media shall be assigned to a separate office or area. If the County Election Board has more than one OEMS terminal, one terminal may be placed in a public area to display precinct results as they are accumulated.

(2) Appropriate receptacles shall be prepared and arranged for receiving items from Inspectors.

(3) Inspectors shall form a line as they arrive, and shall be processed one at a time.

(4) The Envelope for Totals Printout shall be received first. The envelope shall be opened and its contents examined in the following order.

(A) The Totals Printout shall be examined. If it appears to be in order, it shall be set aside in a secure place. If, however, the Totals Printout appears to be incorrect in any way, the Secretary and the County Election Board members shall confer to determine whether an election night recount of the ballots cast in the precinct, as outlined in 230:35-3-85.1, is warranted.

(B) The Ballot Accounting Form shall be examined.

(C) The memory pack shall be given to the person responsible for reading it into the computer.

(D) The voting device key envelope shall be examined to be certain that the precinct number is written on it. The key envelope shall be set aside in a secure place.

(5) The voting device, if returned by the Inspector, shall be received and immediately transferred to secure storage.

(6) The sealed ballot transfer boxes shall be received and ~~immediately~~ transferred to secure storage.

(A) Examine the ballot transfer boxes to ensure that they have been properly sealed. If the long white State Election Board seal is missing or broken, immediately affix a short turquoise State Election Board seal to the ballot transfer box. The new seal shall be signed by the County Election Board members and the box for "Other" shall be checked. Write the reason the seal is being applied in the space provided.

(B) In the event that the County Election Board must open a ballot transfer box on election night to retrieve an item enclosed in error inside the box by Precinct Officials, the Board members shall affix a short turquoise State Election Board seal to the box. The new seal shall be signed by the County Election Board members and the box for "Other" shall be checked. Write the reason the seal is being applied in the space provided.

(7) The sealed orange provisional ballot bag shall be received.

(A) Remove the Provisional Ballot Roster from the clear plastic pocket on the bag. Make certain that the precinct number is indicated on the Provisional Ballot Roster before separating it from the bag.

(B) Place the provisional ballot bag in a secure receptacle. Access to the provisional ballot bags shall be restricted to authorized County Election Board personnel.

(C) Paperclip or staple the Provisional Ballot Roster pages together and set aside in a secure location. Access to these forms shall be restricted to authorized County Election Board personnel.

~~(D) Set the Provisional Voting Forms booklet aside in a secure location. Make certain that the precinct number is indicated on the booklet.~~

(8) The Precinct Registries shall be received and examined.

(9) The Precinct Expense Claim Envelope and any unclaimed vouchers shall be received and examined.

(10) The Inspector shall sign the Precinct Expense Claim Envelope and receive his voucher for compensation and mileage if all other vouchers are accounted for.

(11) The election supply container shall be received and placed in an appropriate receptacle.

(12) The American flag shall be received and stored.

230:35-3-84.1. Determining number of signatures on Provisional Ballot Rosters

The number of signatures on the Provisional Ballot Rosters from each precinct in the county shall be determined by the Secretary of the County Election Board on election night. The total number of signatures on Provisional Ballot Rosters may be made public, but no additional information concerning provisional ballots shall be released prior to 1 p.m. on Friday following the election.

(1) Count the signatures on each page of the Provisional Ballot Roster for a precinct and record the total number of signatures for the precinct on the Provisional Ballot Precinct Log. If there were no provisional ballots cast in a precinct, enter a zero on the Log.

(2) When all precinct returns have been received, determine the total number of provisional ballots cast in the county by adding the precinct totals together. Enter

the total in the space provided on the Provisional Ballot Precinct Log.

(3) If this is a state election, fax or e-mail a copy of the Provisional Ballot Precinct Log to the State Election Board.

(4) If this is a multi-county school or municipal election and yours is an affected county, fax or e-mail a copy of the Provisional Ballot Precinct Log to the parent County Election Board.

(~~4~~5) Make a copy of the Provisional Ballot Precinct Log available for public inspection in the County Election Board office. Copies may be distributed to any interested party.

230:35-3-85.1. Election night recounts

(a) **Precinct ballots.** The ballots from a precinct may be recounted at the County Election Board office on election night if Precinct Officials are unable to obtain a Totals Printout at the polling place or if an examination of the Totals Printout from the precinct reveals an abnormality that may indicate that the voting device has malfunctioned. Election night recounts are allowed only under the following circumstances.

(1) The Ballot Statistics information on the Totals Printout indicates that the number of ballots not counted exceeds 2% of the total ballots cast. [26:7-134.1]

(2) The voting device has malfunctioned in such a way that there are no totals on the Totals Printout or the Totals Printout is illegible. [26:7-134.1]

(3) Uncounted ballots from the emergency compartment were mixed with counted ballots before the uncounted ballots could be processed through the voting device.

(4) Precinct Officials failed to remove and count ballots from the emergency compartment before obtaining the Totals Printout.

(5) An insufficient amount of voting device tape remains on the paper roll to print the first Totals Printout.

(6) The State Election Board staff instructs the County Election Board to conduct an election night recount to resolve a problem not anticipated in this Section.

(b) **Absentee ballots.** Absentee ballots may be recounted on election night only under the circumstances described in (a) of this section.

(c) **Procedure for election night recount.** An election night recount shall be conducted on a voting device especially designated for election night recounts. The recount shall be conducted in public view and in the presence of the County Election Board members and a representative of the County Sheriff. [26:7-134.1] If possible, members of the news media also shall be present. The recount shall be conducted according to the following procedure.

(1) The memory pack from the precinct in question shall be inserted into the designated voting device.

(2) The memory pack shall be initialized and a new Zero Printout shall be printed. Do not tear off the Zero Printout tape.

(3) The ballot transfer case from the precinct shall be opened and the ballots removed.

(4) The Secretary shall designate one person to feed the ballots, one at a time, into the voting device.

(5) After all the ballots have been inserted into the device, a new Totals Printout shall be generated.

(6) When the Totals Printout has finished printing, it shall be torn off and signed by the County Election Board members and also by the person who fed the ballots into the voting device. At least three more copies of the Totals Printout shall be printed.

(7) After the required number of Totals Printouts has been printed, the memory pack shall be removed from the voting device.

(8) The ballots shall be replaced in the ballot transfer case. One copy of the new Totals Printout shall be placed inside the ballot transfer case. The Totals Printout from the polling place also shall be placed in the case.

(9) The ballot transfer case shall be resealed ~~with~~ and a ~~new long white seal~~ short turquoise State Election Board seal shall be affixed to the box. [26:7-134.1] The new seal shall be positioned so that it can be distinguished from the broken precinct seal. The members of the County Election Board and the person who fed the ballots into the voting device all shall sign the ~~new long white~~ short turquoise seal. The Secretary shall ~~note the date and time that the transfer case was resealed~~ check the "Election Night Recount" box on the seal.

PART 19. VERIFYING AND COUNTING PROVISIONAL BALLOTS

230:35-3-131. Opening provisional ballot affidavit envelopes and counting provisional ballots

(a) The County Election Board members shall meet on Friday next following the election at such time as the Secretary may prescribe to open the verified provisional ballot affidavit envelopes and to count the provisional ballots. The Board members shall follow these steps to remove the provisional ballots from the envelopes.

(1) The Board members shall receive the verified provisional ballot affidavit envelopes, sorted by precinct, from the Secretary or a designated County Election Board employee.

(2) The Board members shall open the affidavit envelopes and remove the ballot secrecy envelopes. If an affidavit envelope indicates that the voter received two or more ballots, but that not all the ballots enclosed are to be counted, see (c) of this Section.

(A) Set the affidavit envelope aside.

(B) Place the ballot secrecy envelope in an appropriate container.

(3) When all the affidavit envelopes from a single provisional ballot precinct have been opened, the secrecy envelopes shall be mixed together.

(4) The Board members shall open the ballot secrecy envelopes and remove the ballots.

(A) Set the secrecy envelope aside.

(B) Unfold the ballot and place it in the designated container for the precinct.

(b) When all the verified provisional ballot envelopes for a precinct have been opened, the ballots shall be counted. The following procedure shall be observed.

(1) The Secretary shall assign a County Election Board employee to count the provisional ballots. The members of the County Election Board shall observe the counting process.

(2) The employee assigned to count the ballots shall take the following steps.

(A) The memory pack for the precinct shall be inserted in the voting device.

(B) Press the Print Totals key to obtain a Totals Printout. Verify that the totals match exactly the Totals Printout from election night.

(C) The polls shall be reopened so that the memory pack can read additional ballots.

(D) Insert the ballots, one at a time, into the device. If the device returns a ballot, do not remove the ballot. Use the override key to accept the ballot, then continue inserting ballots.

(E) After all the ballots have been counted, generate at least three Totals Printouts.

(3) The employee who counted the ballots and the members of the County Election Board each shall sign all the copies of the Totals Printout.

(4) The employee shall remove the counted provisional ballots and place them in a ballot transfer case. One signed copy of the Totals Printout shall also be placed in the ballot transfer case. The ballot transfer case shall be sealed with a ~~long white~~ short turquoise State Election Board seal signed by the County Election Board members and the employee who counted the ballots. ~~The seal shall be clearly marked to indicate the box contains counted provisional ballots.~~The Secretary shall check the "Counted Provisional Ballots" box on the seal.

(5) The sealed ballot transfer case shall be given to the Sheriff, who shall provide security for the counted ballots until 5 p.m. on Friday following the election or until the ballots are delivered to the district courtroom for a recount.

(6) One copy of the provisional ballots Totals Printout shall be made available for inspection in the County Election Board office after 1 p.m. on Friday following the election.

(c) If a provisional voter was issued two or more ballots and, upon verification of the voter's information, it is determined that one or more of the ballots cannot be counted, the County Election Board members shall follow these steps when opening the affidavit envelope.

(1) Open the affidavit envelope and remove the secrecy envelope.

(2) Write "Count (~~TYPE BALLOT CODE OF BALLOT~~ BALLOT TYPE OR CODE) ballot only" on the secrecy envelope in red ink.

(3) Place secrecy envelope in the container with other secrecy envelopes.

(4) When opening the secrecy envelopes, remove from the marked envelopes only the specific ballot or ballots to be counted. Put the ballots that cannot be counted back in the secrecy envelope and set it aside with the other uncounted provisional ballot materials.

SUBCHAPTER 5. INSTRUCTIONS FOR PRECINCT ELECTION OFFICIALS

PART 5. PREPARATIONS ON ELECTION DAY

230:35-5-31.1. Location and materials for provisional voting

Place the provisional voting supplies and materials on a table separate from the table for the Judge, Clerk, and Inspector. Put these items on the provisional voting table.

(1) ~~FORMS FOR USE BY PROVISIONAL VOTING OFFICER booklet~~ Checklist for Provisional Voting Officer

(2) Provisional Voting Information handouts

(3) Oklahoma Provisional Ballot Affidavit envelopes and secrecy envelopes

(4) Provisional Ballot Rosters

(5) Oklahoma Voter Registration Application forms

(6) Orange Provisional Ballot Bag

PART 15. AFTER THE POLLS CLOSE

230:35-5-75.3. Completing election night tasks

(a) **Distribution of Totals Printout.** Distribute the Totals Printouts as follows.

(1) Put the original Totals Printout, which includes the Zero Printout, all messages, and the first Totals Printout, inside the Envelope for Totals Printout.

(2) Put one copy on the polling place door.

(3) Put one copy inside a ballot transfer case.

(4) If this is a statewide election, put one copy in the green envelope to mail to the State Election Board.

(b) **Voting Device Report.** The Inspector fills out the Voting Device Report and signs it. The Judge and Clerk also sign it. Put the finished Voting Device Report in the Envelope for Totals Printout.

(c) **Ballot Accounting Form.** The Clerk fills out the Ballot Accounting Form and signs it. The Inspector and Judge also sign it. Put the finished Ballot Accounting Form in the Envelope for Totals Printout.

(d) **Packing unused ballots and sealing ballot transfer cases.** Pack all used and unused ballots in ballot transfer cases. If possible, pack unused ballots in a ballot transfer case separate from the voted ballots. Seal each ballot transfer case with a long white State Election Board seal. Indicate on the seal if the case contains voted ballots, unused ballots, or a combination of voted and unused ballots. The Inspector, Judge, and Clerk all sign the long white State Election Board seal on each ballot transfer case.

(e) **Sealing the Envelope for Totals Printout.** The Inspector verifies that the following items are inside the Envelope for Totals Printout and then seals the envelope. The Inspector, Judge, and Clerk all sign the envelope flap.

(1) Original Totals Printout, which includes the Zero Printout, all messages printed during the election, the first Totals Printout, and the signatures of the Inspector, Judge, and Clerk.

(2) Memory pack in the padded bag.

(3) Voting device key envelope.

(4) Ballot Accounting Form.

(5) Voting Device Report.

(f) **Precinct Expense Claim Envelope.** The Judge and Clerk sign the Precinct Expense Claim Envelope and receive their vouchers from the Inspector. Vouchers may not be distributed under any circumstance until after the polls close. [26:3-105.1(c)]

(g) **Provisional Ballot Bag.** The Inspector or the Provisional Voting Officer shall complete the following steps.

(1) Put the Provisional Ballot Roster ~~and the Provisional Voting Forms booklet~~ in the large, clear plastic pocket on the orange Provisional Ballot Bag.

(2) Make certain that all completed Provisional Ballot Affidavit Envelopes are inside the Provisional Ballot Bag.

(3) Zip the bag and seal it with the blue plastic seal.

(4) Pack any unused provisional ballot materials and supplies as instructed by the County Election Board Secretary.

(5) Place the sealed Provisional Ballot Bag, the packed supplies, and any Oklahoma Voter Registration Application forms completed by provisional voters with the other materials that the Inspector returns to the County Election Board office.

PART 21. VOTERS LISTED IN PRECINCT REGISTRY WHO HAVE PROBLEMS WITH ELIGIBILITY

230:35-5-113.3. Identification Required voter

Voters who applied for voter registration by mail on or after January 1, 2003, are required by federal law to present identification the first time they vote in a federal election. If a voter is required to present identification, the words "ID Required" appear in the Precinct Registry in the signature space beside the voter's name. The Judge shall follow these steps.

(1) Tell the voter:

(A) You are required by federal law to present identification the first time you vote in a federal election because you applied by mail for voter registration in this county on or after January 1, 2003. However, you may be asked for identification in more than one federal election this year.

(B) The form of identification you present must show your name and address.

(C) You may present any one of the following items as identification:

(i) a current and valid photo identification;

(ii) the voter identification card that you received by mail from the County Election Board when your application for voter registration was approved; or

(iii) a copy of a current utility bill, bank statement, government check, paycheck, or any other government document that shows your name and address.

(D) If you do not have identification with you, you may vote a provisional ballot.

(2) Ask to see the voter's identification.

(3) Tell the voter to sign the Precinct Registry, and continue processing the voter routinely.

(4) If the voter does not have identification, fill out a provisional ballot voucher and tell the voter to take it to the Inspector or Provisional Voting Officer. If the voter requested an absentee ballot, ~~mark the box labeled "Absentee Ballot Requested" on the voucher~~ see 230:35-5-113.

PART 29. VIOLATIONS OF THE LAW

230:35-5-146. Action when laws are violated

If a Precinct Official sees or suspects an election law violation, the Inspector takes only the following steps. The Inspector never attempts to enforce the law under any circumstances.

(1) If ~~the PRECINCT PROBLEM SOLVER~~ THE MANUAL FOR PRECINCT ELECTION OFFICIALS describes the violation, ~~takes~~ take only these steps.

(A) Tell the person involved that the action is against the law.

(B) Read what ~~the PRECINCT PROBLEM SOLVER~~ THE MANUAL FOR PRECINCT ELECTION OFFICIALS says about the violation, if necessary. Tell the person that this is the law.

(C) Call the Secretary of the County Election Board immediately if the person continues the action that violates the law.

(2) If ~~the PRECINCT PROBLEM SOLVER~~ THE MANUAL FOR PRECINCT ELECTION OFFICIALS does not describe the possible violation, the Inspector calls the Secretary of the County Election Board immediately.

PART 34. PROVISIONAL VOTING PROCEDURES

230:35-5-176. Filling out a Provisional Ballot Voucher

The Judge shall fill out a Provisional Ballot Voucher for every voter who will cast a provisional ballot. Do not send a voter to the Inspector or Provisional Voting Officer without a voucher. Write ~~the following information on the voucher in the spaces provided: the voter's name; the appropriate ballot codes; the school district code, if the voter is eligible to receive a school district ballot; the municipal code, if the voter is eligible to receive a municipal election ballot; and~~

~~any other necessary information. If the Precinct Registry indicates that the voter has requested absentee ballots, mark the "Absentee Ballot Requested" box. If the voter disputes the political affiliation, school district, or municipality as indicated in the Precinct Registry, write the voter's preferred political affiliation, school district, or municipality on the voucher~~ the ballots to be issued to the voter on the voucher in the spaces provided.

230:35-5-177. Provisional voting procedure

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

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

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

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

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

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

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

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

(i) name

(ii) residence address

(iii) date of birth

(iv) Oklahoma driver license number, if available

(v) last four digits of Social Security number

(vi) political affiliation

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

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

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

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

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

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

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

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

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

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

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

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

(~~11~~ 10) Tell the voter to go to the provisional ballot voting booth to mark the ballot. Tell the voter to follow these steps to secure the ballot.

(A) Fold the ballot in half.

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

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

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

(~~12~~ 11) If necessary, follow the procedures for spoiled ballots (230:35-5-127) or voter assistance (230:35-5-120.1), using the PRECINCT PROBLEM SOLVER.

(~~13~~ 12) When the voter returns the sealed affidavit envelope, put it in the orange Provisional Ballot Bag immediately.

(~~14~~ 13) Tell the voter that information concerning disposition of the provisional ballot may be obtained from the County Election Board after 5 p.m. on Friday. Make sure the voter takes a copy of the Provisional Voting Information handout.

[OAR Docket #08-880; filed 5-12-08]

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

[OAR Docket #08-881]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Municipal Elections
Part 9. Procedures
230:40-5-34. Conduct of municipal elections [AMENDED]
Part 17. Special Elections
230:40-5-77. Special elections for municipal offices [AMENDED]
Subchapter 7. School Elections
Part 5. Filing Period
230:40-7-16. Filing period
Part 9. Procedures
230:40-7-35. Precincts in school elections [AMENDED]
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Part 9. Procedures
230:40-5-34. Conduct of municipal elections [AMENDED]
Part 17. Special Elections
230:40-5-77. Special elections for municipal offices [AMENDED]
Subchapter 7. School Elections
Part 5. Filing Period
230:40-7-16. Filing period
Part 9. Procedures
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Gubernatorial approval:
November 5, 2007
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25 Ok Reg 357
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07-1519
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n/a
ANALYSIS:
In 2005, Title 26, Section 13-101.1 was amended to change the number of days which must be provided between partisan municipal primary and general elections from 45 to 35 days. When we amended our rules to reflect the statutory change, we made an error. We changed every reference to 45 days in 230:40-5-77 to 35 days. However, only the reference in (a)(4) should have been changed. This emergency amendment corrects the error.

In 2004, Title 26, Section 13A-105 was amended to permit candidates for the Board of Education in multi-county school districts to file their Declarations of Candidacy in the county of their residence instead of in the parent county. We recently discovered that we have failed to include this change in our rules. The amendment corrects this oversight.

Two Sections are amended to clarify that school districts and municipalities are not permitted to close split precincts at any regular or special elections held in conjunction with a regular or special state election.
CONTACT PERSON:
Suzanne Cox, Publications Editor, State Election Board. Telephone: (405) 521-2391. E-mail: **scox@elections.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 JULY 1, 2008:

SUBCHAPTER 5. MUNICIPAL ELECTIONS

PART 9. PROCEDURES

230:40-5-34. Conduct of municipal elections

(a) *All municipal elections shall be held at the same place and in the same manner prescribed for conduct of state and county elections unless otherwise provided by law.* [26:13-103(A)] All precincts located either totally or partially within the boundaries of a municipality shall be open for all elections held by the municipality. ~~However, if a precinct lies partly within the limits of a municipality, and that municipality certifies to the County Election Board in the resolution calling the election that no one resides within that portion of the precinct located in the municipality, then the precinct does not have to be open for the municipality's election. [26:13-103(C)]~~ *Polling places shall be open from 7 a.m. until 7 p.m.* [26:13-103(C)] Each Precinct Election Board shall be the same as for state and county elections; however, if substitutions are necessary, such substitutions shall be made by the County Election Board. [26:13-103(C)] All municipal elections conducted by the County Election Board shall be held only on dates identified as election dates in state law. [26:13-101.1]

(b) If a precinct lies partly within the limits of a municipality, and that municipality certifies to the County Election Board in the resolution calling the election that no one resides within that portion of the precinct located in the municipality, then the precinct does not have to be open for the municipality's election. [26:13-103(C)] Except, however, a municipality shall not be permitted to close a precinct in a regular or special election held on the date of the state Primary Election, Runoff Primary Election, General Election, Presidential Preferential Primary Election, or a special state election.

PART 17. SPECIAL ELECTIONS

230:40-5-77. Special elections for municipal offices

(a) **Special partisan elections.** When a special partisan election must be held to fill a vacancy in an elected municipal office, the resolution of the municipality's governing body shall contain the following information. [11:16-114]

(1) The dates ~~for~~ of a three-day filing period which shall begin on a Monday and end on the following Wednesday. [11:16-114] The filing period shall begin not less than 15 days from the date of the resolution. [11:16-114]

(2) The date of the special primary election, which shall be not less than ~~35~~ 45 days after the close of the filing period. [11:16-114]

(3) The date of the special general election, which shall be not less than ~~35~~ 45 days after the date of the special primary. [11:16-114]

(4) A home rule charter municipality may schedule primary and general elections on the identified election dates in the months of March and April when there are fewer than 35 days between the election dates. [26:13-101.1]

(b) **Special nonpartisan elections.** When a special nonpartisan election must be held to fill a vacancy in an elected municipal office, the resolution of the municipality's governing body shall contain the following information. [11:16-114]

(1) The dates ~~or~~ of a three-day filing period which shall begin on a Monday and end on the following Wednesday. [11:16-114] The filing period shall begin not less than 15 days from the date of the resolution. [11:16-114]

(2) The date of the special general election, which shall be not less than ~~35~~ 45 days after the close of the filing period. [11:16-114]

(c) **Time for special election resolution.** A copy of the resolution or order shall be filed with the Secretary of the County Election Board not less than 60 days preceding the date of the special general election. [11:16-114; 26:13-102]

(d) **Dates for special elections.** Special municipal elections may be called only on election dates established by state law. [26:13-101.1]

SUBCHAPTER 7. SCHOOL ELECTIONS

PART 5. FILING PERIOD

230:40-7-16. Filing period

(a) **Filing period.** The filing period for member of the Board of Education shall begin at 8 a.m. on the first Monday in December and shall end at 5 p.m. on the following Wednesday. [26:13A-105]

(b) **Filing with the County Election Board.** ~~A person must file a Declaration of Candidacy with the County Election Board of the county wherein supervision of the school district is located in order to become a candidate for Board of Education.~~ Candidates for member of the Board of Education of every school district or technology center school district shall file Declarations of Candidacy with the Secretary of the County Election Board. [26:13A-105] For multi-county school and technology center school districts, filing may occur either with the parent County Election Board or with the affected County Election Board in the county where the candidate resides. [26:13A-105]

(c) **Candidates nonpartisan.** Candidates for member of the Board of Education shall not indicate a party affiliation on their Declarations of Candidacy.

PART 9. PROCEDURES

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

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

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

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

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

230:40-7-35.1 and shall notify both the district officials and the parent County Election Board Secretary of the approval or denial of the request.

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

[OAR Docket #08-881; filed 5-12-08]

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

[OAR Docket #08-882]

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RULES:
Subchapter 3. Recounts
Part 7. Recounts for Question Elections
230:45-3-40. Certification of question election [AMENDED]
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ANALYSIS:
The amendment in Subchapter 3 concerns certification of question elections. Prior to 2004, the results of question elections were certified by the County Election Board on election night. With the introduction of provisional voting in 2004, no election results can be certified on election night. Question election results now are certified by the County Election Board at 5 p.m. on Friday following the election.
CONTACT PERSON:
Suzanne Cox, Publications Editor, State Election Board. Telephone: (405) 521-2391. E-mail: **scox@elections.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 JULY 1, 2008:

SUBCHAPTER 3. RECOUNTS

PART 7. RECOUNTS FOR QUESTION ELECTIONS

230:45-3-40. Certification of question election

After the election results have been accumulated on election night as outlined in 230:35-3-87, the members of the County Election Board shall canvass the results of question elections ~~to determine whether the margin between votes for and votes against the question when a majority is required for approval or that the margin between the votes for the issue and the number required for approval when more than a majority is required for approval is narrow enough to allow a recount. See 230:45-3-33. If the margin is narrow enough to allow a recount, the County Election Board shall not certify the results of the question election until after the close of the contest period at 5 p.m. on the Friday following the election. [26:8-109] If the margin is not close enough to allow a recount, the County Election Board may certify the results of the question on election night as outlined in 230:35-3-91~~. The County Election Board shall certify the final question results after 5 p.m. on Friday following the election as outlined in 230:35-3-91 unless a recount is requested.

[OAR Docket #08-882; filed 5-12-08]

TITLE 230. STATE ELECTION BOARD CHAPTER 50. AUTOMATED SYSTEMS

[OAR Docket #08-883]

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Subchapter 9. Telephone Voting System
230:50-9-9. Counting telephone voting system ballots [AMENDED]
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07-1520
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n/a
ANALYSIS:
The State Election Board has created a new seal, called the short turquoise State Election Board seal, for the County Election Board to use on election night to affix to a ballot transfer case that has been opened and to use on Friday following the election to seal the ballot transfer case containing counted telephone and/or provisional ballots. The purpose of the new seal is to provide additional documentation of the chain of custody of voted ballots from election night until 5 p.m. on Friday following the election or until the ballots are delivered to the courtroom for a recount.
CONTACT PERSON:
Suzanne Cox, Publications Editor, State Election Board. Telephone: (405) 521-2391. E-mail: **scox@elections.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 JULY 1, 2008:

SUBCHAPTER 9. TELEPHONE VOTING SYSTEM

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

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

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

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

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

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

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

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

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

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

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

(8) Seal the ballot transfer case ~~with a long white~~ and affix to the box a short turquoise State Election Board seal signed by the County Election Board members and the employee who fed the ballots into the voting device. The ~~seal shall be clearly marked to indicate that it contains both counted provisional and telephone voting system ballots~~ Secretary shall check the "Counted Telephone Ballots" box on the seal.

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

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

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

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

[OAR Docket #08-883; filed 5-12-08]

TITLE 245. STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
CHAPTER 2. ADMINISTRATION OPERATIONS

[OAR Docket #08-988]

RULEMAKING ACTION:
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245:2-1-18 [AMENDED]
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July 1, 2008
ANALYSIS:
Fee increase to ensure that the Board is able to fulfill its mission to protect the health, safety and welfare of the public. This increase will not affect anyone except licensees of this Board.
CONTACT PERSON:
Kathy Hart, Executive Director, (405) 521-2874

PURSUANT TO THE ACTIONS DESCRIBED 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, 2008:

245:2-1-18. Fees and penalties

(a) Schedule of fees and penalties, effective July 1, 2008, are as follows:

(1) Application:
(A) Original
(i) Engineer/Surveyor - $100.00
(ii) Intern - $25.00
(iii) Firm - ~~$150.00~~ $200.00
(B) Re-license
(i) Engineer/Surveyor - $100.00
(ii) Intern - $25.00
(iii) Firm - ~~$150.00~~ $200.00
(C) Requalifications
(i) Engineer/Surveyor - $100.00
(ii) Intern - $25.00

(2) Biennial renewals:
(A) Individuals (Renewal fees are waived for Oklahoma licensed engineers and surveyors at 70 years old. Individuals must be 70 years old prior to their biennial renewal date and return the renewal form sent by the Board to qualify.)
(i) Engineer/Surveyor - ~~$100.00~~ $150.00
(ii) Intern - WAIVED
(B) Firm - ~~$100.00~~ $200.00

(3) Reinstatement penalty (in addition to the renewal fee): The following reinstatement penalty schedule refers to payments received by the Board within the prescribed number of days following the expiration date of the renewal:
(A) 1 – ~~90~~ 60 days:
(i) Engineer/Surveyor - ~~$50.00~~ $100.00
(ii) Firm - ~~$50.00~~ $100.00
(B) ~~91~~ 61 - 120 days:
(i) Engineer/Surveyor - ~~$100.00~~ $150.00
(ii) Firm - ~~$100.00~~ $150.00
(C) 121 - 180 days:
(i) Engineer/Surveyor - ~~$150.00~~ $250.00
(ii) Firm - ~~$150.00~~ $250.00

(4) Re-examination application:
(A) Engineer/Surveyor - $50.00
(B) Intern - $10.00

(5) Temporary permit (Engineering) - ~~$500.00~~ $750.00

(6) Administrative fee for returned checks:
(A) Engineer/Surveyor - $25.00
(B) Intern - $25.00
(C) Firm - $25.00
(D) Public - $25.00

(7) Duplicate certificate:
(A) Engineer/Surveyor - $15.00
(B) Intern - $15.00
(C) Firm - $15.00

(8) Roster:
(A) Intern - $10.00
(B) Firm - $10.00
(C) Public - $10.00

(9) Transcript of hearing - Actual cost

(10) Copy of public records (per page):
(A) Engineer/Surveyor - $.25
(B) Intern - $.25
(C) Firm - $.25
(D) Public - $.25

(b) The Board shall make no refunds of any fees or penalties to any applicant or licensee.

(c) These fees and penalties apply to the Rules in this Chapter and Chapter 15 of this Title.

(1) The administrative fee for returned checks shall be applied to any check returned to the Board for insufficient funds.

(2) Any such check returned to the Board shall be replaced with a cashier's check or money order within ten (10) days following notification from the Board of the returned check.

[OAR Docket #08-988; filed 5-21-08]

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

[OAR Docket #08-964]

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PERMANENT final adoption
RULES:
Subchapter 1. Human Resources Management Division (HRMD)
Part 3. Internal Human Resources
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Part 7. Recruitment, Selection, and Placement
340:2-1-89 [AMENDED]
(Reference APA WF 08-02)

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ANALYSIS:
Subchapter 1 of Chapter 2 rules are amended to: (1) change to the form numbers to reflect changes created by the Oklahoma Department of Human Services (OKDHS) forms system; (2) incorporate terminology changes related to technological advances; (3) remove unnecessary language; and (4) improve wording.
CONTACT PERSON:
Dena Thayer, Programs Administrator, 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, 2008:

SUBCHAPTER 1. HUMAN RESOURCES MANAGEMENT DIVISION (HRMD)

PART 3. INTERNAL HUMAN RESOURCES

340:2-1-34. Employment verifications and references

(a) **Responses to employment verification inquiries.** Oklahoma Department of Human Services (OKDHS) responses to employment verification inquiries, such as credit references, work status inquiries, and employment references on employees or former employees are made either by the OKDHS Finance Division or the Human Resources Management Division (HRMD) except as noted in (b) of this Section.

(1) Finance Division or HRMD provides only the employee's or former employee's correct name, dates of employment, and the current or last job family descriptor (JFD) and level held.

(2) An employee's or former employee's address, Social Security number, or other information is not provided.

(3) Only salary confirmation information is provided.

(4) Additional information may be released only upon receipt of a written authorization from the employee or former employee.

(b) **References.** Professional references must be void of opinion, defamation, retaliation, and information that is discriminatory in nature and must not violate confidentiality.

(1) **Internal requests.** Supervisors and managers must respond to reference requests initiated within OKDHS. The response is in writing either by memo or e-mail.

(2) **External requests.** Managers and supervisors do not respond to verbal requests for references. Form ~~P-15~~ 11PE015E, Professional Reference Release, is used to provide references.

(c) **Individual or personal references.** Employees or former employees frequently ask administrators, managers, supervisors, or co-workers for personal references. Such references do not express OKDHS official position. Individuals providing references are cautioned that they may be liable and subject to discipline for providing incorrect, inappropriate, or exaggerated references or information that could place OKDHS at risk.

PART 7. RECRUITMENT, SELECTION, AND PLACEMENT

340:2-1-89. Office of Personnel Management (OPM) ~~Certificate of Eligibles (certificate)~~ E-List - classified service

(a) **General provisions.** This Section provides basic information regarding Office of Personnel Management (OPM) ~~certificates~~ E-Lists. For assistance, consult Merit System of Personnel Administration Rules (Merit Rules) OAC 530:10-9 or contact the Human Resources Management Division (HRMD).

(b) **Required procedures and forms to be completed by OPM ~~certificate~~ E-List applicants.**

(1) Applicants for competitive and non-competitive positions apply using the Internet On-line Application for Employment through the Office of Personnel Management (OPM), http://www.state.ok.us/opm/.

(~~1~~2) All applicants interviewed from an OPM ~~certificate~~ E-List for a competitive classification or non-competitive classification, complete Form ~~P-1~~ 11PE001E, Application for Employment~~, for a competitive or noncompetitive classification~~.

(~~2~~3) The individual selected for appointment completes Form ~~P-1-D~~ 11PE201E, Application Supplement.

~~(3) For placement of their names on the OPM certificate, individuals complete Form OPM-4, State of Oklahoma Employment Application, and submit the completed forms to OPM.~~

~~(4) Selecting officials return Form OPM-4, State of Oklahoma Employment Application, for direct hire~~

~~individuals selected for appointment to HRMD with the OPM certificate.~~

(c) **Submission of OPM ~~certificate~~ E-List and support documentation to personnel.**

(1) The selecting official returns Form ~~P-1-D~~ 11PE201E, ~~Form OPM-4 for noncompetitive appointment only~~ Application Supplement, and ~~one copy of~~ the properly coded OPM ~~certificate must be returned~~ E-List to HRMD for finalization of the personnel transaction.

(2) Interview notification letters sent to candidates on the OPM ~~certificate~~ E-List must be postmarked no later than seven calendar days before the void date of the OPM ~~certificate~~ E-List; or, if sent by e-mail, the notification is sent to candidates at least three calendar days prior to the void date.

(3) If an applicant is not selected from the OPM ~~certificate~~ E-List, the OPM ~~certificate~~ E-List must be returned to HRMD ~~before another OPM certificate is issued~~.

(d) **Review of returned OPM ~~certificate~~ E-List.**

(1) HRMD retains the OKDHS file copy of the OPM ~~certificate~~ E-List.

(2) OPM audits ~~certificates~~ E-Lists for compliance with Merit Rules after the selected candidate enters on duty. OPM has the authority to void any appointment that does not comply with Merit Rules.

[OAR Docket #08-964; filed 5-20-08]

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

[OAR Docket #08-962]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Office of Client Advocacy
Part 1. Administration
340:2-3-2 [AMENDED]
Part 3. Investigations
340:2-3-36 [AMENDED]
Part 5. Grievances
340:2-3-45 through 340:2-3-46 [AMENDED]
340:2-3-50 [AMENDED]
(Reference APA WF 08-03)
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Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Section 10-102 et seq. of Title 43A of the Oklahoma Statues.
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SUPERSEDED EMERGENCY ACTIONS:
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ANALYSIS:
Subchapter 3 of Chapter 2 rules are amended to: (1) reflect an additional category of maltreatment included in the Protective Services for Vulnerable Adults Act enacted by the Legislature last session; (2) rectify an oversight with respect to the dissemination of investigative reports to guardianship courts; (3) increase efficiency in processing grievances; and (4) clarify timeliness requirements when mediation available under state law is requested.
CONTACT PERSON:
Dena Thayer, Programs Administrator, 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, 2008:

SUBCHAPTER 3. OFFICE OF CLIENT ADVOCACY

PART 1. ADMINISTRATION

340:2-3-2. Definitions

The following words and terms when used in this Subchapter shall have the following meanings, unless the context clearly indicates otherwise.

"Abuse" means, with regard to:

(A) minors and youth, the causing or permitting harm or threatened harm to the health, safety, or welfare of the minor or youth by a caretaker responsible for the minor's or youth's health, safety, or welfare, including but not limited to sexual abuse, sexual exploitation, and the intentional use of excessive or unauthorized force aimed at hurting or injuring the minor or youth; or

(B) vulnerable adults, abuse as defined by Section 10-103(8) of Title 43A of the Oklahoma Statutes.

"Administrator," including the person designated by an administrator to act on the administrator's behalf, means, with regard to:

(A) minors in Oklahoma Department of Human Services (OKDHS) custody living in a private residential facility, the chief administrative officer of the facility;

(B) minors in OKDHS custody in an OKDHS operated shelter or group home, the director of the shelter or group home;

(C) minors in OKDHS custody and youth in voluntary care of OKDHS who live in any other setting, including any type of out-of-home placement, the applicable OKDHS county director;

(D) foster parents, the applicable OKDHS county director or area director, as appropriate;

(E) minors and youth in residential care facilities operated by Office of Juvenile Affairs (OJA) or Department of Rehabilitation Services (DRS), facilities which contract with or are licensed by OJA, Department of Mental Health and Substance Abuse Services (DMHSAS), the J.D. McCarty Center, or OKDHS, and other residential care facilities, the superintendent, director, chief administrative officer, or head of the facility regardless of the person's working title;

(F) day treatment programs, the person charged with responsibility for administering the program;

(G) adults and minors who are in Developmental Disabilities Services Division (DDSD) specialized foster care and DDSD specialized foster parents, the applicable DDSD area manager;

(H) residents of Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer), the facility director;

(I) providers of residential services, vocational services, or in-home paraprofessional supports to individuals with developmental disabilities living in the community, the chief executive officer of the provider; and

(J) residents of group homes for persons with developmental disabilities, the director of the group home.

"Adult Protective Services" or **"APS"** means the Adult Protective Services Unit of OKDHS.

"Advocate," also known as "ombudsman" or "ombuds," means an Office of Client Advocacy (OCA) employee who provides assistance to OCA clients in exercising their rights, listening to their concerns, encouraging them to speak for themselves, seeking to resolve problems, helping protect their rights, and seeking to improve the quality of their life and care.

"Advocate general" means the chief administrative officer of the OCA designated in Section 7004-3.4(B)(1) of Title 10 of the Oklahoma Statutes. The e-mail address for the advocate general is *OCA.advocategeneral@okdhs.org.

"Authorized use of physical force" by a caretaker of minors and youths residing outside their homes, other than minors and youth in foster care means:

(A) the use of physical contact to control or contain a person when the caretaker reasonably considers that person to:

(i) pose a risk of inflicting harm to self or others; or

(ii) be in the process of leaving a facility without authorization; and

(B) when the use of physical force is authorized, the least force necessary under the circumstances is employed. In determining whether excessive force has been used, all of the circumstances surrounding the incident are taken into consideration, including:

(i) the grounds for belief that force was necessary;

(ii) the age, gender, and strength of the parties involved;

(iii) the nature of the force employed;

(iv) the availability of alternative means of force or control; and

(v) the extent of the harm inflicted.

"Caretaker" means, with regard to:

(A) minors and youth, an agent or employee of:

(i) a public or private residential home, institution, or facility above the level of foster family care; or

(ii) a day treatment program as defined in Section 175.20 of Title 10 of the Oklahoma Statutes; and

(B) vulnerable adults, caretaker as defined in Section 10-103(6) of Title 43A of the Oklahoma Statutes.

"Caretaker misconduct":

(A) means an act or omission that:

(i) violates a statute, regulation, written rule, procedure, directive, or accepted professional standards and practices;

(ii) is not found to be abuse or neglect; and

(iii) results in or creates the risk of harm to a minor or vulnerable adult.

(B) includes, but is not limited to:

(i) acts or omissions that contribute to the delinquency of a minor;

(ii) unintentional excessive or unauthorized use of force not rising to abuse or neglect;

(iii) unintentionally causing mental anguish;

(iv) other acts exposing a client to harm or threatened harm to the health, safety or welfare of the client; or

(v) use of abusive or professionally inappropriate language not rising to the level of verbal abuse.

"Case manager" means the person assigned by DDSD who has the responsibility for ensuring that services to an individual are planned and provided in a coordinated fashion.

"Child placing agency" means an agency that provides social services to children and their families that supplement, support, or substitute parental care and supervision for the purpose of safeguarding and promoting the welfare of children. The agency may provide full time placement services for children away from their own homes, such as adoptive homes, foster family homes, group homes, and transitional or independent living programs.

"Client" means, with regard to:

(A) OCA's investigation services, those individuals listed in OAC 340:2-3-32(a)(2);

(B) OCA's grievance services, those individuals listed in OAC 340:2-3-45(a)(2); and

(C) OCA's ombudsman program, those individuals listed in OAC 340:2-3-71(b).

"Community services worker" or **"CSW"** means any person not a licensed health professional who is employed by or under contract with a community services provider to provide, for compensation or as a volunteer, health-related services, training, or supportive assistance as those terms are defined in Section 1025.1 of Title 56 of the Oklahoma Statutes.

"Community Services Worker Registry" or **"CSW Registry"** means the Community Services Worker Registry established by OKDHS in accordance with Section 1025.3 of Title 56 of the Oklahoma Statutes.

"Day treatment program" means a non-residential, partial hospitalization program, day treatment program, or day hospital program in which minors are provided intensive services, psychiatric, or psychological treatment.

"DDSD" means the Developmental Disabilities Services Division of OKDHS.

"DHS" or **"Department"** or **"OKDHS"** means the Oklahoma Department of Human Services.

"Disposition," with regard to OCA's intake processes, means the action taken by OCA intake in response to a referral received, pursuant to OAC 340:2-3-35.

"DMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"DRS" means the Oklahoma Department of Rehabilitation Services.

"E-mail" means:

(A) with regard to the advocate general, an e-mail sent to *oca.advocategeneral@okdhs.org;

(B) with regard to OCA grievance matters, an e-mail sent to *oca.grievances@okdhs.org;

(C) with regard to OCA investigation matters, an e-mail sent to *oca.investigations@okdhs.org; and

(D) with regard to OCA intake matters, *oca.intake@okdhs.org.

"Emergency" means a situation in which a person is likely to suffer death or serious physical harm without immediate intervention.

"Excessive use of force" by a caretaker, with regard to minors and youths residing outside their homes, other than minors and youth in foster care, means the failure to employ the least amount of physical force necessary under the circumstances, taking into consideration all of the circumstances surrounding the incident, including:

(A) the grounds for belief that force was necessary;

(B) the age, gender, and strength of the parties involved;

(C) the nature of the force employed;

(D) the availability of alternative means of force or control;

(E) the extent of the harm inflicted; and

(F) the method(s) of restraint and intervention approved for use with the person against whom the force was used.

"Exploitation" or **"exploit"** with regard to vulnerable adults, means exploitation or exploit as defined in Section 10-103(9) of Title 43A of the Oklahoma Statutes.

"Facility" means:

(A) a public or private agency, corporation, partnership, or other entity which:

(i) operates a residential child care center; or

(ii) contracts with or is licensed or funded by OKDHS, OJA, or DMHSAS for the physical custody, detention, or treatment of minors;

(B) an OKDHS operated shelter;

(C) an OKDHS, OJA, DMHSAS, or DRS operated residential child care center;

(D) a community-based youth services shelter or community intervention center;

(E) the J.D. McCarty Center;

(F) a day treatment program;

(G) a private psychiatric facility for minors;

(H) sanctions programs certified by OJA to provide programming for minors who are court ordered to participate in that program; or

(I) SORC, NORCE, and Greer.

"Financial neglect" with regard to vulnerable adults, means financial neglect as defined in Section 10-103(10) of Title 43A of the Oklahoma Statutes.

"Foster care" or **"foster care services"** means continuous 24-hour care and supportive services provided for an individual in a foster placement, including but not limited to the care, supervision, guidance, and rearing of a foster child by the foster parent.

"Foster child" means a child placed in a foster family placement.

"Foster parent" means an individual maintaining a foster family home who is responsible for the care, supervision, guidance, rearing, and other foster care services provided to another individual.

"GARC" means the Grievance and Abuse Review Committee described in OAC 340:2-3-61.

"Guardian" means a person appointed by a court to ensure that the essential requirements for the health and safety of an incapacitated or partially incapacitated person, the ward, are met, to manage the estate or financial resources of the ward, or both. As used in this Subchapter, guardian includes: a general or limited guardian of the person; a general or limited guardian of the estate; a special guardian; and a temporary guardian. The term does not include a person appointed as guardian ad litem.

"Guardian ad litem" or **"GAL"** means a person appointed by a court, pursuant to Section 1415 of Title 10 of the Oklahoma Statutes, to represent the interests of an individual as specified in the court order.

"Harm or threatened harm to the health, safety, or welfare" includes but is not limited to:

(A) non-accidental physical injury or mental anguish;

(B) sexual abuse;

(C) sexual exploitation;

(D) failure to provide protection from harm or threatened harm;

(E) the unauthorized use of force; or

(F) the use of excessive force.

"Hissom class member" means an individual certified by the United States District Court for the Northern District of Oklahoma as a member of the plaintiff class in Homeward Bound, et al. vs. The Hissom Memorial Center, et al., Case No. 85-C-437-E.

"Hotline" means the statewide, toll free hotline, 1-800-522-3511, maintained by OKDHS for the purpose of receiving reports of abuse, neglect, or exploitation of children and adults. The hotline is in operation 24 hours a day, 7 days a week.

"ICF/MR" or **"Intermediate Care Facility for the Mentally Retarded,"** also known as a "specialized facility for the mentally retarded," means a private or public residential facility, licensed in accordance with state law and certified by the federal government as a provider of Medicaid services, for mentally retarded persons as that term is defined in Title XIX rules and regulations of the Social Security Act.

"Incapacitated person" means:

(A) any person 18 years of age or older who is impaired by reason of mental or physical illness or disability, dementia, or related disease, mental retardation, developmental disability, or other cause, and whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that the person lacks the capacity to manage financial resources or to meet essential requirements for mental or physical health or safety without assistance from others; or

(B) a person for whom a guardian, limited guardian, or conservator has been appointed pursuant to the Oklahoma Guardianship and Conservatorship Act, Title 30 of the Oklahoma Statutes.

"Indecent exposure" means indecent exposure as defined by Section 10-103(12) of Title 43A of the Oklahoma Statutes.

"In-home supports" and **"IHS"** means services funded through Medicaid Home and Community-Based Waivers (HCBW) as defined in Section 1915(c) of the Social Security Act and administered by OKDHS DDSD, which are provided in the service recipient's home and are not residential services as defined in OAC 340:100-5-22.1 or group home services as defined in Title 10, Section 1430.2 of the Oklahoma Statutes.

"Injury" means any hurt, harm, appreciable physical pain, or mental anguish.

"Maltreatment" is used collectively in this Subchapter to refer to abuse, neglect, verbal abuse, exploitation, caretaker misconduct, sexual abuse, and sexual exploitation as defined in this Section.

"Medicaid personal care assistant" or **"MPCA"** means a person who provides Medicaid services funded under Oklahoma's personal care program who is not a certified nurse aide or a licensed professional.

"Mental anguish" means mental damage evidenced by distress, depression, withdrawal, severe anxiety, or unusually aggressive behavior toward self or others.

"Minor" means any person under the age of 18 years except any person convicted of a crime specified in Section 7306-1.1 of Title 10 of the Oklahoma Statutes or any person certified as an adult pursuant to Section 7303-4.3 of Title 10 and convicted of a felony.

"Minor physical injury" means a demonstrable injury reasonably expected to be treated with the administration of first aid, over the counter remedies, or both. A demonstrable injury includes damage to bodily tissue caused by non-therapeutic conduct, illness, new or an increased impairment of physical or cognitive functioning, evidence of a physical injury (for example, a laceration, bruise, or burn), and an injury which is confirmed by a physician, dentist, nurse, or other health care professional.

"Neglect" means, with regard to:

(A) minors and youth, the failure of a caretaker to provide:

(i) adequate food, clothing, shelter, medical care, or supervision which includes, but is not limited to, lack of appropriate supervision which results in sexual activity between minors; or

(ii) special care made necessary by the physical or mental condition of the minor or youth; or

(B) vulnerable adults, neglect as defined in Section 10-103(10) of Title 43A of the Oklahoma Statutes.

"OCA" means the Office of Client Advocacy of OKDHS.

"OCA intake" means the centralized intake system maintained by OCA in its Oklahoma City office that receives referrals of alleged abuse, neglect, verbal abuse, and financial exploitation.

"OJA" means the Oklahoma Office of Juvenile Affairs.

"Ombudsman" or **"ombuds,"** means "advocate" as defined in this subsection.

"Personal support team" or **"team,"** formerly known as the "interdisciplinary team," means the decision-making body for service planning, implementation, and monitoring of the individual plan, as more fully described in OAC 340:100-5-52.

"Preponderance of the evidence" means information or evidence that is of a greater weight or more convincing than the information or evidence offered in opposition. It is that degree of proof which is more probable than not.

"Problem resolution" means verbal or written communications which seek to resolve concerns, complaints, service inadequacies, or issues identified by the client or members of the client's team, including the client's guardian, the OCA advocate for the client, a volunteer advocate for the client, or other persons interested in the welfare of the client.

"Provider" means a program, corporation, partnership, association, individual, or other entity that contracts with, or is licensed or funded by, OKDHS to provide community-based residential or vocational services to persons with mental retardation or developmental disabilities, or which contracts with the Oklahoma Health Care Authority to provide residential or vocational services or in-home supports to individuals with mental retardation through the Home and Community-Based Waiver.

"Referring party" means the individual who informs OCA verbally or in writing that an incident occurred.

"Reporting party" means the individual who initially tells someone verbally or in writing that an incident occurred.

"**Residential child care center**" means a 24-hour-a-day residential group care facility at which a specified number of minors, normally unrelated, reside with adults other than their parents.

"**Self-neglect**" means self-neglect as defined in Section 10-103(13) of Title 43A of the Oklahoma Statutes.

"**Serious physical injury**" means a physical injury to a person's body determined to be serious by a physician, dentist, or nurse. It includes, but is not limited to, death, suicide attempt, fracture, dislocation of any major joint, internal injury, concussion, head injury with loss of consciousness, ingestion of foreign substances and objects that are harmful; near drowning, lacerations involving injuries to tendons or organs and those for which complications are present, lacerations requiring four or more stitches or staples to close, heat exhaustion or heatstroke, injury to an eyeball, irreversible loss of mobility, permanent damage to or loss of a tooth, skin deterioration, and a second or third degree burn and other burns for which complications are present. It also includes multiple abrasions, bruises, and minor physical injuries on the body of a person, identified around the same time or over a period of several weeks, that have no clear, known explanation.

"**Sexual abuse**" means, with regard to:

(A) minors and youth, rape, incest, and lewd or indecent acts or proposals, as defined by state law, by a caretaker responsible for the health, safety, or welfare of the minor or youth; or

(B) vulnerable adults, sexual abuse as defined by Section 10-103(11) of Title 43A of the Oklahoma Statutes.

"**Sexual exploitation**" means, with regard to:

(A) minors and youth:

(i) allowing, permitting, or encouraging a minor or youth to engage in sexual acts with others or prostitution, as defined by state law, by a caretaker responsible for the minor's or youth's health, safety, or welfare; or

(ii) allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or depicting of a minor or youth in those acts as defined by the state law, by a caretaker responsible for the minor's health, safety, or welfare; or

(B) vulnerable adults, sexual exploitation as defined by Section 10-103(14) of Title 43A of the Oklahoma Statutes.

"**Specialized foster care**" means foster care provided to a minor or adult in a specialized foster home or agency-contracted home which has been certified by DDSD, is monitored by DDSD, and is funded through the Home and Community-Based Waiver Services Program administered by DDSD.

"**State office**" means the administrative offices of OKDHS in Oklahoma City.

"**State office administrator,**" including the person designated by a state office administrator to act on the state office administrator's behalf, means, with regard to:

(A) grievances of minors, youths, and foster parents regarding the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS or an OKDHS operated shelter or residential facility, or of an agent or contractor of OKDHS, or a child placement agency, the director of OKDHS Children and Family Services Division (CFSD);

(B) grievances regarding a decision, behavior, or action by an OKDHS employee, agent, contractor, foster parent, or by any person residing in the same placement setting, the director of the OKDHS Field Operations Division;

(C) DDSD clients, the director of DDSD; and

(D) other OKDHS clients, the appropriate chief officer or division director.

"**Subpoena**" means a command to appear at a certain time and place to give testimony. A "subpoena duces tecum" is a command requiring the person subpoenaed to bring records with them.

"**Suspicious injury**" means an injury for which there is no credible explanation that makes it unlikely to be the result of client maltreatment.

(A) It includes but is not limited to an injury that:

(i) appears inconsistent with the offered explanation(s) for the injury;

(ii) is unusual;

(iii) cannot be explained as the result of an accident, self-injurious behavior or normal activities of daily living;

(iv) is a minor injury located on or near a private part of the body or on a part of the body that makes it unlikely to have been the result of self-injury or an accident during the course of daily living activities; and

(v) involves multiple abrasions, bruises, and minor injuries on the body of a person, identified around the same time or over a period of several weeks, but have no clear, known explanation.

(B) The determination whether an injury is suspicious is made from the point of view of an independent skeptical reviewer. An injury is suspicious if there is no credible explanation for it consistent with the injury not being the result of maltreatment.

"**Unauthorized use of force**" means, with regard to minors and youths residing outside their homes, other than minors and youth in foster care, a use of force that is not an authorized use of physical force as defined in this subsection. It includes unacceptable physical handling of and contact with clients including, but not limited to, slapping, kicking, punching, poking, pulling hair or an ear, pinching, using a choke hold, smothering, spitting, head butting, and tugging.

"**Unexplained injury**" means an injury for which there is no known credible origin or cause, even though a possible explanation for the injury may be offered.

"**Verbal abuse**" means verbal abuse as defined in Section 10-103(15) of Title 43A of the Oklahoma Statutes.

"**Vulnerable adult**" means vulnerable adult as defined by Section 10-103(5) of Title 43A of the Oklahoma Statutes.

"**Ward**" means a person over whom a guardianship has been given by the court.

"Youth" means, with regard to:

(A) OCA's investigation programs, a person over the age of 18 in OJA custody and residing in an OJA operated facility or a facility which contracts with OJA; or

(B) OCA's grievance programs, a person over the age of 18 in OJA custody or voluntary care of OKDHS.

PART 3. INVESTIGATIONS

340:2-3-36. Investigation procedures

(a) **Initiation of Office of Client Advocacy (OCA) investigation.** The assigned OCA investigator conducts a prompt investigation of the referral. The investigator contacts the applicable administrator or designee to arrange for document production, site visits, and interviews.

(1) The administrator for the facility or provider who employed an accused caretaker at the time of the alleged incident informs that employee of:

(A) the name and telephone number of the OCA investigator;

(B) the investigative process described in this Section;

(C) except as stated in paragraph (2) of this subsection, the employee's rights and responsibilities relating to the investigation described in subsection (d) of this Section, using Form 15IV005E, Investigations of Client Maltreatment - Rights and Responsibilities of Accused ~~OKDHS Employees~~ Caretakers, Form 15IV006E, Investigations of Foster Parent Retaliation Complaints - Rights and Responsibilities of Accused ~~Caretakers~~ OKDHS Employees, or a substantially similar provider or agency form, a copy of which is provided to the OCA investigator except as stated in paragraph (2) of this subsection; and

(D) the allegation made against the accused caretaker without divulging the identity of the reporting party or the substance of the evidence.

(2) In cases involving caretakers subject to the Community Services Worker (CSW) Registry, the rights and responsibilities of accused community services workers are found in OAC 340:100-3-39. The administrator or designee promptly completes Form 06PE059E, Rights and Responsibilities of ~~Accused~~ Community Services Worker in an Investigation of Abuse, Neglect, or Exploitation, in accordance with OAC 340:100-3-39(d)(2)(C). The administrator or designee mails Form 06PE059E, to the worker when it is not possible to personally give it to a worker who is no longer employed by the provider.

(3) On request and for good cause shown, OCA expedites the time frames contained in this subsection for conducting an investigation.

(b) **Access.** The applicable administrator arranges for the OCA investigator to have immediate and direct access to any alleged victim in the referral who is still a client of the facility or provider. During an OCA investigation, Oklahoma Department of Human Services (OKDHS), Office of Juvenile Affairs (OJA), Department of Rehabilitation Services (DRS), Department of Mental Health and Substance Abuse Services (DMHSAS), the J.D. McCarty Center, providers, and facilities, and persons who contract with them, provide OCA access to all employees, clients, facilities, locations, files, and records of any nature that may pertain to the investigation. Denial of access may be grounds for termination of a contract between OKDHS and a contractor.

(c) **Interference prohibition.**

(1) Section 7103 of Title 10 of the Oklahoma Statutes prohibits discrimination or retaliation against a person who in good faith provides information about a reportable incident or testifies in a proceeding.

(2) Section 455 of Title 21 of the Oklahoma Statutes makes it a felony to interfere with a child abuse investigation or a vulnerable adult investigation under Title 43A. An OKDHS employee who interferes with an OCA investigation also may be subject to administrative action. Interference includes but is not limited to:

(A) intimidating, harassing, or threatening a party to the investigation;

(B) retaliation against an employee for reporting an allegation; or

(C) denial of access to clients, employees, facilities, witnesses, records, or evidence.

(3) Section 10-104(G) of Title 43A of the Oklahoma Statutes states that an employer shall not terminate the employment, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that the employee made or caused to be made a report or cooperated with an investigation pursuant to the Vulnerable Adults Act, Section 10-101 et seq. of Title 43A of the Oklahoma Statutes.

(d) **Rights and responsibilities of accused caretakers.** The rights and responsibilities of an accused caretaker during an OCA investigation are outlined in this subsection. The rights and responsibilities of a community services worker are found at OAC 340:100-3-39.

(1) **Rights.** During the investigation process, an accused caretaker has the right to:

(A) be advised by the administrator of the nature of the allegation(s) made against him or her in the referral;

(B) be advised by OCA of the investigative process involving caretaker maltreatment;

(C) be interviewed by the investigator and allowed to give his or her position regarding the referral;

(D) be advised by the investigator of the substance of the evidence against him or her, but not the identity of the person reporting the allegation;

(E) submit or supplement a written statement relating to the allegations;

(F) seek advice from other parties concerning a caretaker's rights and responsibilities in OCA investigations;

(G) decline to answer any question when he or she reasonably believes the answer to the question may incriminate him or her in a criminal prosecution; and

(H) be notified in writing by his or her employer of the outcome of the investigation.

(2) **Responsibilities.** During the investigative process, an accused caretaker has the responsibility to:

(A) prepare written statements and reports relevant to the investigation upon request;

(B) be available for interviews and accommodate the investigator in scheduling of interviews;

(C) refrain from any action that interferes with the investigation, including any action that intimidates, threatens, or harasses any person who has or may provide information relating to the allegation; and

(D) provide pertinent information and respond fully and truthfully to questions asked.

(e) **Educational employees.** This subsection applies to an employee of a school district providing contract educational services on-site at a facility, as defined in OAC 340:2-3-2, who is either a witness or an accused caretaker in an investigation opened by OCA.

(1) The administrator of the facility where the incident took place notifies the principal of the school of the nature of the allegation and the name of the assigned OCA investigator.

(2) The principal of the school is responsible for notifying the school employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for purposes of notification and coordination of the investigative process and does not extend to ensuring the protection of the alleged victim(s) or other clients at the facility where the educational services are provided. The administrator of the facility where the alleged incident took place is responsible for protection of clients.

(3) OCA investigates educational employees who meet the definition of a caretaker in OAC 340:2-3-2.

(f) **Contractor's employees.** This subsection applies to an employee of a contractor of a provider or facility when the employee is an accused caretaker in an investigation opened by OCA.

(1) The administrator of the provider agency or facility where the incident took place notifies the chief administrative officer of the contractor of the nature of the allegation against the contractor's employee and the name of the assigned OCA investigator.

(2) The chief administrative officer of the contractor is responsible for notifying the contract employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for purposes of notification and coordination of the investigative process. The administrator of the provider agency or facility where the alleged incident took place is responsible for protection of clients.

(g) **Document collection and review.**

(1) The investigator gathers and reviews relevant documents including, but not limited to:

(A) incident reports and other written reports, accounts, and statements prepared during the preliminary assessment;

(B) medical records;

(C) photos; and

(D) facility or provider logs, activity and tracking documents.

(2) If the OCA investigator is denied access to records, documentation, or other information relevant to an investigation involving a vulnerable adult, OKDHS Adult Protective Services is contacted for assistance in petitioning the court for an order allowing access.

(h) **Investigative interviews.** The investigator interviews or attempts to interview persons known or identified to have information about the referral. If an injury is alleged, the investigator or other appropriate person observes, notes, and documents apparent injuries, and obtains pertinent medical documentation, including photographic evidence. Interviews are conducted in private. No person other than the investigator and the person being interviewed is allowed to attend an interview except a person necessary to facilitate communication. An attorney or other representative of the person being interviewed attends an interview only as a silent observer with prior permission of the advocate general or designee.

(i) **Interview protocols.** The OCA investigator conducts a separate private interview with each alleged victim, available witnesses to the alleged maltreatment, and persons who allegedly were directly or indirectly involved in the allegation, persons with knowledge of relevant information, and each caretaker accused of the maltreatment. When possible, all other witnesses are interviewed prior to interviewing the accused caretaker(s).

(1) **Tape recording of interviews.** OCA investigators tape record every interview. To maintain confidentiality of the information provided in an interview, no tape recording by the person being interviewed or by anyone else in attendance is permitted. Tape recordings of interviews remain with the OCA investigative file. OCA files and tape recordings are not public documents.

(2) **Explanation of the process.** The investigator informs persons interviewed of the investigative process.

(3) **Presentation of the allegation.** The OCA investigator verbally informs each accused caretaker of the substance of the allegation(s). In general, the investigator discloses only the nature of information learned during the investigation and does not identify the persons who provided information. The identity of the reporter of the allegation is never disclosed during the investigation. If during the course of an investigation a witness is identified as a potential accused caretaker, the investigator interviews the witness again to inform the witness that he or she is a potential accused caretaker. At that time, the witness is informed of the substance of the evidence and relevant

information learned during the investigation and provided an opportunity to respond.

(4) **Opportunity for accused caretakers to respond.** During the interview with an accused caretaker, the OCA investigator provides the caretaker an opportunity to respond to the allegation(s) and to supplement any information previously provided in written statements. Following the initial interview of the accused caretaker, if the investigator obtains information to which the accused caretaker did not have an opportunity to respond, the investigator conducts another interview with the caretaker. The investigator advises the accused caretaker of the substance of the new information and provides an opportunity to present a response.

(5) **Interpreter services for persons who are deaf or hard of hearing.** When the investigator needs to interview a person who is deaf or hard of hearing, the facility or provider agency who employed the person at the time of the alleged incident provides, at no cost to OCA, oral or sign language interpreter services by an independent and qualified interpreter. Interpreter services for OKDHS employees and clients are provided in accordance with OAC 340:1-11-10.

(6) **Scheduling interviews.** To schedule an interview with an accused caretaker, the investigator contacts by phone or regular mail the administrator of the facility or provider that employs the caretaker. If a reasonable time has passed without being able to schedule an interview, the investigator contacts the administrator of the facility or provider to request the administrator to compel the employee to participate. If unsuccessful, the investigator sends both a certified letter and a letter by regular mail to the caretaker's last known address notifying the caretaker of the investigation and offering an opportunity to be interviewed, setting a date and time for a response. The letter informs the caretaker that the consequence of failure to participate is for the OCA investigative report to be completed without the caretaker's statement and a finding is made based on available information. For other persons needing to be interviewed, the investigator follows the same sequence as for an accused caretaker, but the certified letter only requests their participation in an interview.

(7) **Failure to appear.** If a person fails to appear for a scheduled interview without good cause, as determined by the advocate general, the investigator completes the investigative report without interviewing that person. The investigative report includes an explanation of why the interview was not conducted, including documentation of efforts to interview the person.

(j) **Exit notice.** Within 30 calendar days of assignment of a referral to be investigated, the assigned OCA investigator contacts by e-mail the applicable administrator or designee, or OKDHS long-term care nurse, whichever is applicable, when the information gathering portion of the investigative process is completed. The investigator informs the administrator of any areas of concern identified and that a written report will be prepared with the final finding. Preliminary findings are not required.

(k) **The written investigative report.** After completing the information gathering portion of the investigative process the investigator prepares a written investigative report containing:

(1) the allegation(s) contained in the referral investigated including the date, time, and location of the alleged incident(s), the date the allegation was reported to OCA, and the assigned OCA case number;

(2) a statement of any physical injuries sustained by the alleged victim(s);

(3) information regarding any involved law enforcement entities;

(4) a recommendation for the district attorney whether to consider further investigation;

(5) the applicable definition(s) of the type of maltreatment at issue, such as abuse, neglect, verbal abuse, exploitation, or caretaker misconduct;

(6) the finding(s) in accordance with subsection (l) of this Section;

(7) a list of the involved parties, their titles and role in the matter, if they were interviewed and, if so, when, and whether interviewed face-to-face or by telephone;

(8) the name, address, and telephone numbers of any interpreter used during the investigation;

(9) an explanation of the basis for the finding(s);

(10) a summary of relevant information obtained during each interview conducted during the investigation;

(11) any areas of concern relating to the referral identified during the investigation regarding facility, provider, or OKDHS practices or procedures which have implications for the safety, health, or welfare of clients but which do not rise to the level of abuse or neglect;

(12) a list of relevant documents and records reviewed during the investigation;

(13) a list of attachments to the report that are provided upon request; and

(14) an explanation for any delays in meeting the time frames for completing the investigation report contained in this Section.

(l) **Investigative findings.** The OCA investigator determines the appropriate finding for each allegation contained in the referral investigated. Findings are made based on a greater weight of the evidence standard. The finding options are:

(1) **"confirmed"** means that the greater weight of the available evidence establishes that the alleged maltreatment occurred;

(2) **"not confirmed"** means the greater weight of the available evidence indicates that the alleged maltreatment did not occur; or

(3) **"ruled out"** means no evidence was discovered that indicates the alleged maltreatment occurred.

(4) **"defer"** means OCA will defer the completion of an investigation and the issuance of a finding upon reasonable request to do so by a law enforcement agency having investigative authority.

(m) **Identification of the responsible caretaker.** When a confirmed finding is made, the investigator determines the caretaker(s) responsible for the maltreatment. The administration can be named as responsible when the policies,

procedures, or practices adopted by the administration of a facility, provider, or day treatment program are the primary factor resulting in the maltreatment of individual clients.

(n) **Dissemination of the OCA investigative reports involving caretakers not subject to the Community Services Worker Registry.** Within 60 calendar days from the assignment of a referral to be investigated, the OCA written investigative report is completed.

(1) Except as provided in subsection (o) of this Section, a copy of the final OCA investigation report is sent to the administrator of an affected facility or provider agency. The administrator is responsible for notifying the client or the client's legal representative of the OCA finding.

(2) If the referral alleged abuse, verbal abuse, neglect, financial neglect, or exploitation, a copy also is sent to the applicable district attorney.

(3) A copy also is sent to the appropriate OKDHS state office administrator, executive director of OJA, the director of DRS, the director of DMHSAS, or the director of the J.D. McCarty Center, whichever is applicable.

(4) When an administrator is named as an accused caretaker in the allegation, OCA forwards the investigative report to the chair of the board of directors of the facility or provider agency, or to the director of the state agency operating the facility, whichever is applicable.

(5) A copy of OCA's report is sent to the Oklahoma State Department of Health (OSDH) if the investigation involved a day treatment program.

(6) The administrator of an OKDHS operated facility provides accused OKDHS employees who work at the facility a letter which summarizes the allegation and states the OCA finding. If an accused caretaker is an OKDHS employee, the applicable OKDHS division director or designee is responsible for providing the employee with a letter which summarizes the allegation and states the OCA finding.

(7) If client maltreatment by a licensed nurse is confirmed, a copy of OCA's report is submitted to the Oklahoma State Board of Nursing.

(8) When appropriate in cases involving a vulnerable adult, a copy of OCA's report is sent to any state agency with concurrent jurisdiction over persons or issues identified in the investigation, including but not limited to OSDH and any appropriate state licensure or certification board, agency, or registry. This includes sending OSDH a copy of any report in which at least one of the accused caretakers is a certified nurse aide (CNA).

(9) OCA distributes its investigation reports by United States mail, fax, or e-mail, whichever is appropriate.

(10) If maltreatment by a guardian is confirmed, a copy of OCA's investigation report is submitted to the applicable guardianship court.

(o) **Dissemination of reports involving Hissom class members and caretakers subject to the Community Services Worker (CSW) Registry.**

(1) All OCA investigations involving a confirmed finding against a community services worker, or a Medicaid personal care assistant employed by a Medicaid Personal Care Services Provider are processed in accordance with OAC 340:100-3-39 and OAC 317:35-15.

(2) After the OCA investigation report has been approved, an e-mail notice of the areas of concern in the report is sent to the administrator, the applicable DDSD area manager, and the OKDHS long-term care nurse, whichever are applicable.

(3) When the OCA finding does not confirm an allegation, OCA sends a copy of the report pursuant to Section 10-110(B) of Title 43A of the Oklahoma Statutes, to the administrator, the DDSD director or the APS programs manager, whichever is applicable, the assigned OKDHS long-term care nurse when applicable, and the applicable district attorney.

(4) When the OCA finding confirms an allegation against an accused caretaker who is not a community services worker, OCA sends a copy of the report to the administrator, the DDSD director, and the applicable district attorney.

(5) When the OCA finding confirms an allegation against a caretaker who is a community services worker or a Medicaid personal care assistant, OCA submits a copy of the report to the DDSD director or the APS programs manager, whichever is applicable, and the applicable district attorney and processes the report in accordance with OAC 340:100-3-39. When the due process procedures relating to the CSW Registry have been completed, OCA sends a copy of the report to the applicable administrator and the assigned OKDHS long-term care nurse if applicable.

(6) The Hissom class member's assigned OCA advocate notifies the class member and the class member's guardian or close family member of the result of the investigation when the investigative finding has become final.

(7) If maltreatment by a guardian is confirmed, a copy of OCA's investigation report is submitted to the applicable guardianship court.

(p) **Confidentiality of OCA investigative reports.** Persons receiving copies of OCA investigative reports are bound by the confidentiality provisions of Sections 7005-1.2 through 7005-1.4 and 7107 et seq. of Title 10, and Section 10-110 of Title 43A of the Oklahoma Statutes, whichever is applicable.

(q) **Confirmed findings involving OKDHS operated facilities.** The findings of an OCA investigation report involving client maltreatment at an OKDHS operated facility are considered final when the time for requesting review pursuant to OAC 340:2-3-62(b) has expired and review has not been requested, or that review was timely requested and has concluded.

(1) When the Children and Family Services Division (CFSD), the Field Operations Division, or DDSD receives a copy of a final OCA investigative report or notice that a review pursuant to OAC 340:2-3-62 has been concluded, within 60 working days, the applicable division director notifies the advocate general in writing of:

(A) any personnel action taken or to be taken with regard to each accused caretaker named in the report;

(B) any corrective action taken or to be taken regarding areas of concern noted in the report; and

(C) for each worker found to have engaged in maltreatment, whether there have been any prior confirmations by OCA or the facility for client maltreatment by the worker and, if so, the basis for each such finding, and the personnel action taken in response.

(2) If personnel action has or will be taken, the division director also notifies the OKDHS Human Resources Management Division director. If the final OCA finding does not confirm maltreatment, no information or material pertaining to the allegation or the investigation is placed in the personnel file of an accused caretaker.

(3) OCA reports information regarding confirmed findings to the Oklahoma Commission for Human Services (Commission) during executive session.

(r) **Findings involving a Hissom class member.** This subsection applies to the administrator of a provider that employed, or contracted with a contractor that employed, an accused caretaker named in an OCA investigation report.

(1) Within 60 calendar days of receipt of a final OCA investigation report, the DDSD director or designee notifies the advocate general in writing:

(A) if any personnel action has or will be taken with regard to each accused caretaker named in the report; and

(B) of any corrective action taken or to be taken regarding areas of concern noted in the report.

(2) OCA reports information regarding confirmed findings to the Commission during executive session.

(s) **Storage and retention of OCA investigative records.** OCA maintains the original report, supporting documents, and applicable recorded tapes in locked file cabinets in accordance with the applicable OKDHS records management and disposition plan. Access to investigative files and records is limited to OCA employees on a need to know basis. Requests by OKDHS employees for access to or copies of OCA investigative reports are made to the advocate general on a need to know basis.

PART 5. GRIEVANCES

340:2-3-45. Grievance system protocols

(a) **Legal authority, scope, and purpose.**

(1) **Legal authority.**

(A) Section 7004-3.4 of Title 10 of the Oklahoma Statutes confers on the Office of Client Advocacy (OCA) the responsibility to establish and maintain a fair, simple, and expeditious grievance system for complaints filed by or on behalf of children in the custody of the Oklahoma Department of Human Services (OKDHS).

(B) Section 1415.1(A)(2) of Title 10 of the Oklahoma Statutes requires OKDHS to establish an ombudsman program for each institution and residential facility for the mentally retarded operated by OKDHS, including an appeals procedure for the resolution of grievances and complaints of residents, their parents, and their court-appointed guardians. OKDHS has conferred this responsibility on OCA.

(C) OKDHS also has conferred on OCA the responsibility for grievance systems for other clients listed in paragraph (2) of this subsection.

(2) **Scope.** OCA administers and monitors grievance programs for the individuals listed in (A) through (H) of this paragraph, all of whom are collectively referred to as the "client" throughout this Section and OAC 340:2-3-46. Further detail about grievances for:

(A) minors who are in the custody of OKDHS regardless of placement, refer to OAC 340:2-3-47 through 340:2-3-49;

(B) youth in voluntary care of OKDHS, refer to OAC 340:2-3-49;

(C) foster parents approved by OKDHS, refer to OAC 340:2-3-50;

(D) residents of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), and the Greer Center Facility (Greer), refer to OAC 340:2-3-51;

(E) Hissom class members, refer to OAC 340:2-3-52;

(F) other clients receiving services in the community from the Developmental Disabilities Services Division (DDSD) of OKDHS, refer to OAC 340:2-3-53;

(G) residents of group homes for persons with developmental or physical disabilities due to a developmental disability that are subject to Section 1430.1 et seq. of Title 10 of the Oklahoma Statutes, refer to OAC 340:2-3-54; and

(H) clients receiving OKDHS services who want to file a grievance about a problem, concern, or complaint for which there does not exist another grievance system within OKDHS, refer to OAC 340:2-3-55.

(3) **Purpose.** The purpose of OCA's grievance policies and procedures is to provide clients a fair, simple, effective, and timely system of problem resolution with access to procedures through which clients can obtain a thorough review, fair consideration, and correction when appropriate. These policies also ensure that persons filing grievances are free from restraint, coercion, reprisal, or discrimination. To further this purpose, OCA independently reviews and monitors the implementation of grievance programs subject to this Section.

(4) **Informal problem resolution.** Clients have the right to file grievances. However, resolving problems and concerns informally before filing a grievance is encouraged. Not all client inquiries and requests for explanation are considered grievances. Most can be handled within the regular relationship between clients and OKDHS, provider, and facility staff. Efforts are made at the local level to resolve issues and reach a consensus with the client on a plan of action to resolve the problem informally unless the client desires to proceed with the grievance process.

(b) **Definitions.** In addition to the definitions in OAC 340:2-3-2, the following words and terms when used in this

Part shall have the following meanings, unless the context clearly indicates otherwise:

(1) **"Area director"** means a director of one of the six service delivery areas designated by OKDHS Field Operations Division (FOD).

(2) **"Area manager"** means a manager of one of the three service delivery areas designated by OKDHS DDSD.

(3) **"Business day" or "working day"** means Monday through Friday, not including federal or state holidays.

(4) **"CFSD"** means the Children and Family Services Division of OKDHS.

(5) **"Client"** means any of the individuals listed in subsection (a) of this Section on whose behalf OCA maintains a grievance system.

(6) **"Contested grievance"** means a grievance that has not been resolved at the local level (first and second levels) and, at the request of the grievant or decisionmaker, is submitted to a higher authority for response.

(7) **"Decisionmaker"** means the person who has authority to decide whether to accept any resolution proposed at each level of the grievance process. It typically is the client who filed the grievance or on whose behalf a grievance was filed. For clients unable to advocate for themselves (for example, young children and persons with severe cognitive limitations), it is a person who speaks on the client's behalf, depending on the circumstances and the nature of the decision to be made.

(A) With regard to minors, it might be a parent, guardian, guardian ad litem, foster parent, or a legal custodian appointed by a court.

(B) With regard to DDSD clients who are adults, it might be a guardian or the individual support team for the client.

(8) **"Due date"** means the date by which some response or action is required, for example, the date by when a respondent must respond to a grievance. In calculating the due date, the first day of the period computed is not included and only business days are included. If the last day of the period computed is a Saturday, Sunday, or legal holiday, the period runs until the end of the next business day.

(9) **"E-mail"** communication with OCA or with the advocate general means an e-mail sent to the e-mail address: *oca.grievances@okdhs.org.

(10) **"Facility grievance"** means a grievance that involves:

(A) the substance or application of any policy, rule, or regulation, written or unwritten, of a facility as defined in OAC 340:2-3-2; or

(B) a decision, act, or omission of an employee, agent, or contractor of a facility.

(11) **"FOD"** means the Field Operations Division of OKDHS.

(12) **"Grievance"** is defined in subsection (c) of this Section.

(13) **"Grievant"** means a client or the person who files a grievance on behalf of a client.

(14) **"Local grievance coordinator"** or **"LGC"** means, with regard to:

(A) minors in OKDHS custody who live in a residential facility, the individual designated by the facility as its grievance coordinator;

(B) minors in OKDHS custody who do not live in a residential facility, including minors in foster care and foster parents, the individual designated as grievance coordinator in the OKDHS county office where the grievant resides;

(C) DDSD clients who are residents of Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer), the OCA advocate staff assigned to each facility;

(D) foster parents approved by OKDHS, the county director in the OKDHS county office where the grievant resides;

(E) DDSD clients who are pursuing a grievance with a provider of residential, vocational, or in-home supports, the individual designated by the provider as its grievance coordinator; and

(F) all other DDSD clients, the applicable DDSD area manager or designee.

(15) **"OCA grievance liaison"** means the individual(s) designated by the advocate general to coordinate and monitor contested grievances, and local grievance programs.

(16) **"OKDHS grievance"** means a grievance that involves:

(A) the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS (other than policies, rules, and regulations of OKDHS operated shelters and residential facilities for minors); or

(B) a decision, act, or omission of an employee of OKDHS, including but not limited to a Child Welfare (CW) specialist, a case manager, and OKDHS county directors, but not including an employee of an OKDHS operated facility.

(17) **"Placement grievance"** means a complaint about a present or proposed placement of a minor in OKDHS custody.

(18) **"Respondent"** means the person at each level in the grievance process who has the responsibility for reviewing the grievance and proposing a resolution to resolve the grievance.

(c) **Grievance defined.**

(1) **"Grievance"** means a problem or concern that an individual needs assistance resolving, including a complaint of unfair treatment. At the request of a client, an unresolved problem, concern, complaint, or dispute is processed as a grievance. When a client verbally communicates a complaint to an OKDHS employee or a facility or provider employee that is not resolved, the client is informed of the right to have the problem or concern processed as a grievance. At the request of the client, the employee prepares a written statement of the client's complaint or refers the client to the local grievance coordinator to assist in doing that.

(A) **Facility or provider grievances.** The subject of a facility grievance or a provider grievance includes:

(i) the substance or application of any policy, rule, or regulation, written or unwritten, of an OKDHS operated shelter or residential facility for minors, or a facility, agency, or provider which contracts with OKDHS, or a child placing agency; or

(ii) a decision, act, or omission of an employee, agent, or contractor of such a facility, or any client residing in the same placement setting.

(B) **OKDHS grievances.** The subject of an OKDHS grievance includes:

(i) the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS, but this does not include policies, rules and regulations of OKDHS operated shelters and residential facilities for minors;

(ii) a decision, act, or omission of an employee in an OKDHS operated facility; this includes a case manager, a CW specialist, and county office employees; or

(iii) a facility grievance filed by a resident of SORC, NORCE, or Greer.

(C) **Placement grievances.** A placement grievance is defined in subsection (b) of this Section.

(2) **Summary dispositions.** If a grievance is submitted and it falls into one of the categories listed in (A) through (K) of this paragraph, when appropriate, the LGC contacts the client to provide assistance to the client in rewriting the grievance to state the problem(s) or concern(s) the client wants to grieve. If it is determined the client is asking to grieve a problem or concern covered by any of the categories below, the LGC informs the client why the grievance is not being processed, using Form 15GR012E, Notice of Summary Disposition of Grievance - OKDHS County Offices, 15GR013E, Notice of Summary Disposition of Facility Grievance, 15GR014E, Notice of Summary Disposition of Grievance - Developmental Disabilities Services Division (DDSD) Clients, 15GR015E, Notice of Summary Disposition of Developmental Disabilities Services Division (DDSD) Provider Grievance, or 15GR016E, Notice of Summary Disposition of Foster Parent Grievance, whichever is applicable. The LGC also writes the reason on the bottom of Form ~~15GR001E~~ 15GR001P, Grievance Form, and then dates and signs the form. The grievance is logged on Form 15GR009E, Grievance Tracking Log. The form used to notify the grievant along with a copy of the grievance form is sent within three business days to the advocate general for review, and the original is filed in the appropriate grievance file. Within three business days of receipt, the OCA grievance coordinator reviews the grievance. If the OCA grievance liaison determines the grievance was improperly given a summary disposition, the OCA grievance liaison informs the LGC who immediately processes the grievance. If the OCA grievance liaison concurs with the summary disposition, the OCA grievance liaison informs the LGC in writing.

(A) **Untimely grievances.** A grievance which is not timely filed in accordance with OAC 340:2-3-45(g) can be accepted and processed when good cause exists for the delay in filing the grievance. There are no time limits for filing grievances on behalf of individuals served by the OKDHS DDSD.

(B) **Discrimination based on race, color, national origin, sex, age, religion, or disability.** If a grievance alleges discrimination or other civil rights matters, the client is referred to the OKDHS Office for Civil Rights and the LGC immediately forwards the grievance to the OKDHS civil rights administrator and so informs the grievant.

(C) **A problem that is moot.** A moot problem is one that already has been decided or settled or one that has no practical resolution. For example, a placement grievance with regard to a child who is no longer in OKDHS custody; or a grievance with regard to an event that was in future but is now in the past, when the dispute about the event is unlikely to occur again with regard to this client.

(D) **Duplicative grievances.** This is a grievance which duplicates another pending grievance in the same grievance system by or on behalf of the client involving the same incident or problem.

(E) **Requests to violate laws.** This is a grievance which requests an action that violates state or federal law.

(F) **Collateral complaint.** A collateral complaint does not involve a problem concerning the client who filed or on whose behalf the grievance was filed.

(G) **Remote grievances.** The grievance requires action by a private or public individual or entity over which OKDHS does not have authority or control, such as a grievance about the action of a public school teacher, a guardian, or a physician in private practice. In these situations, the LGC assists the grievant in using any grievance or complaint system which may be available regarding the subject of the grievance.

(H) **Pending proceedings.** The grievance involves a matter which is the subject of a pending civil, criminal, or administrative proceeding, or a decision of a court or administrative hearing, or the subject of a pending OCA, Office of Inspector General (OIG), or Child Welfare investigation.

(I) **Investigative findings.** The results of an investigation regarding abuse, neglect, verbal abuse, caretaker misconduct, or exploitation cannot be grieved.

(J) **Fair hearing decisions.** The results of a fair hearing cannot be grieved pursuant to OAC 340:2-5-50.

(K) **Frivolous grievances.** A frivolous grievance does not state a complaint or problem of any substance. Before declining to process a grievance of this

nature, the LGC contacts the grievant to inquire if the grievant needs assistance in submitting a substantive grievance.

(3) **Documenting exclusions.** If a grievance is submitted and it falls into an excluded category listed in the preceding paragraph, the LGC dates and signs Form ~~15GR001E~~ 15GR001P as received, and notes on the form the reason the LGC does not process it. The grievant is informed of this decision and the reason. The grievance is logged in the grievance tracking log and the form is filed in the client's grievance file. The LGC sends a copy of the Form ~~15GR001E~~ 15GR001P and a copy of the applicable Notice of Summary Disposition to the advocate general, or designee, for review.

(4) **Who may file a grievance.** A grievance may be filed by any client listed in subsection (a) of this Section. A grievance may also be filed by or on behalf of a client by any person who knows the client and is interested in the client's welfare, including, but not limited to, a parent, guardian, relative, foster parent, court appointed special advocate, guardian ad litem, case manager, personal support team member, job coach, and others. This includes OKDHS employees and employees of residential, in-home supports, and vocational providers.

(5) **Group grievances.** Grievants whose complaints address the same issue(s) may together file a group grievance. At any time during the processing of a group grievance, an individual grievant can withdraw from the group grievance. If separate grievances are filed by two or more grievants regarding an identical issue, the interests of each grievant is identical, and the grievants do not object, a LGC can combine them for processing as a group, provided this does not unduly delay the processing of any particular grievance. When multiple grievances are grouped for processing, the LGC informs each grievant of that action. When a group grievance is filed, the LGC can ask the grievants to designate in writing a spokesperson for the group.

(6) **Grievances involving reportable incidents.** When a grievance alleges a reportable incident, including but not limited to, facts which constitute abuse, neglect, exploitation, or caretaker misconduct, as defined in OAC 340:2-3-2, the LGC immediately reports it to OCA intake pursuant to OAC 340:2-3-33. A grievance involving a reportable incident may be processed during a pending investigation provided the grievance does not interfere with the investigation and as needed is held in abeyance pending the conclusion of the investigation. If the grievance alleges additional facts which do not constitute abuse, neglect, exploitation, or caretaker misconduct, the grievance is processed as to those facts. The LGC contacts OCA and any other law enforcement agency investigating the matter to coordinate processing the grievance.

(d) **Grievance policies required.** Every provider and facility providing services to a client listed in OAC 340:2-3-45(a)(2) who is living in Oklahoma is required to operate a system for resolution of grievances by clients using policies and procedures meeting the requirements of this Part.

(1) **Designation of LGC.**

(A) Every public and private facility and provider subject to this Part, OKDHS county office, and DDSD area office designates an employee to serve as LGC to carry out the responsibilities described in this Section. Facilities and providers inform the advocate general of the name, phone number, mailing address, and e-mail address of their LGC, and inform the advocate general of any changes within 30 calendar days of the effective date of a change by completing Form 15GR021E, Designation of Local Grievance ~~Coordinators~~ Coordinator, ~~Facility~~ Facilities and Provider Agencies, and submitting it to the Office of Client Advocacy. OCA's advocates assigned to SORC, NORCE, and Greer serve as the LGC at those facilities. The LGC is an individual who:

(i) implements grievance policies and procedures;

(ii) has experience with the programs and functions of the facility, provider, county office, or DDSD area office;

(iii) functions impartially and independently in the processing of grievances;

(iv) reports directly to the administrator with regard to the LGC's grievance duties and functions;

(v) within 60 calendar days of being designated LGC, completes the online OCA Grievance Course; and

(vi) ensures that client requests regarding how to file a grievance are responded to within two business days.

(B) Each facility and provider subject to this Part, each OKDHS county office, and each DDSD area office displays in a place conspicuous to its clients a poster notifying clients of its grievance system and the name of its local grievance coordinator, using Form 15GR017E, Grievance Poster - Child Welfare Contracted Facilities, Form 15GR018E, Grievance Poster- Oklahoma Department of Human Services (OKDHS) County Offices, Form 15GR019E, Grievance Poster - Developmental Disabilities Services Division Providers, or 15GR020E, Grievance Poster - Oklahoma Department of Human Services (OKDHS) Developmental Division Services Division (DDSD) Offices, whichever is applicable.

(2) **Advocate general review of grievance programs.** The grievance system operated by each facility and provider subject to this Part is subject to the approval of the advocate general. Each provider and facility other than an OKDHS operated facility is required to submit to the advocate general for approval its grievance policies, procedures, forms, and any revisions which are adopted, along with proof that the policies or revisions have been approved by the applicable approving authority. Revised policies are submitted to the advocate general for approval within 30 days of the provider or facility adopting the revised policy.

(3) **Notifying clients of their grievance rights.** Each client covered by these grievance policies is notified of his or her right to and how to access the grievance resolution procedures using Form 15GR004E, Notice of Grievance Rights - Minors in OKDHS Custody, Form 15GR005E, Notice of Grievance Rights - Minors in OKDHS Custody - Youth in Voluntary OKDHS Care, Form 15GR006E, Notice of Grievance Rights - DDSD ~~Clients~~ Service Recipients (General), Form 15GR007E, Notice of Grievance Rights - Hissom Class Members, or Form 15GR008E, Notice of Grievance Rights - Foster Parents, whichever is applicable. Hissom class members are provided notice in accordance with OAC 340:2-3-52. In addition, providers are encouraged to provide a simplified version of their grievance policies using language appropriate to the age level and cognitive functioning of its clients.

(4) **Monitoring and evaluation.** OCA ensures the quality of grievance systems by establishing minimum standards and through an ongoing monitoring program. The advocate general and OCA staff have immediate and unlimited access to clients, staff, and facility files, records, and documents relating to grievance procedures and practices.

(5) **Reporting deficiencies.** An LGC who becomes aware of a deficiency in a grievance system, including a failure to follow or implement the grievance policy, must report it to the advocate general by phone at 1-405-525-4850 or 1-800-522-8014, fax at 1-405-525-4855, or e-mail.

(6) **Advocate general deficiency report.** If the advocate general determines a deficiency exists in the grievance system of a facility or provider, the advocate general sends a report of deficiency to the administrator and, where applicable, to the state office administrator.

(7) **Advocate general grievance.** The advocate general may, on behalf of any or all clients served by the grievance policy in this Section, originate a grievance. An advocate general grievance is filed with the administrator or the state office administrator and processed as a contested grievance.

(8) **Advocate general report.**

(A) The advocate general may initiate an inquiry on behalf of any client as defined in subsection (a) of this Section regarding:

(i) any aspect of the care of a client that affects the quality of the client's life;

(ii) the substance, application, or interpretation of any policy, rule, or regulation, written or unwritten, of OKDHS operated shelter or residential facility, or a facility or agency that contracts with OKDHS, or a placement provider; or

(iii) any decision, behavior, or action of an employee, agent, or contractor of OKDHS, or of any client residing in the same placement setting.

(B) The person to whom the advocate general inquiry is addressed has seven business days to respond in writing to the advocate general.

(C) The advocate general issues a report which sets forth the subject matter of the inquiry, the pertinent facts, and recommendations. An advocate general report is submitted to the administrator, when applicable, and the state office administrator. A copy is submitted to the OKDHS Director.

(e) **The grievance form.** A grievant files a grievance by obtaining from the LGC Form ~~15GR001E~~ 15GR001P, filling it out, and turning it in to the LGC or to any facility or OKDHS staff, who immediately transmits it to the LGC.

(1) LGCs for OKDHS order this form from the OKDHS Warehouse. Private provider and facility LGCs obtain copies of this form from the OCA in Oklahoma City, 1-405-525-4850 or 1-800-522-8014.

(2) Any person who needs assistance in completing the grievance form is given assistance by the LGC or any other staff member.

(3) A grievance received on paper other than Form ~~15GR001E~~ 15GR001P is attached to a Form ~~15GR001E~~ 15GR001P filled out by the LGC on behalf of the grievant.

(f) **Retaliation prohibited.** No person filing a grievance shall be retaliated or discriminated against or harassed, solely or in part, for having asserted a grievance, or sought advice or inquired about filing a grievance. Clients are encouraged to use available grievance systems. Clients are not discouraged from filing a grievance.

(g) **Grievance time limits.** Except for DDSD clients, in order to be processed for action and resolution, a grievance must be filed within 15 business days of the date of the incident, decision, act, or omission complained about in the grievance, or within 15 business days of the date the grievant becomes aware of or, with reasonable effort, should have become aware of a grievable issue. The time limit for filing a grievance may be extended by the LGC. When a foster parent requests an extension in order to pursue mediation through the Oklahoma Commission on Children and Youth (OCCY) Foster Parent Mediation Program as provided in Section 601.6 of Title 10 of the Oklahoma Statutes, an LGC must grant the requested extension. The grievance is then not processed until the mediation has been completed, and grievance timeframes are suspended for the duration of the mediation. When mediation resolves the original grievance, the foster parent(s) may withdraw the grievance, or the LGC may declare the grievance "administratively resolved" consistent with OAC 340:2-3-45(h). When a foster parent grieves, but has requested mediation of the dispute through OCCY's mediation program before filing a grievance that alleges retaliation, the LGC counts from the date of the mediation when computing timeliness.

(1) The filing time and all other time periods contained in this Section are counted in business days unless otherwise specified. In computing any period of time, the day of the incident, decision, act, or omission at issue is not included. The next calendar day is the first day of the time period.

(2) If the LGC or any respondent fails to meet any time limit for processing a grievance without obtaining an extension, the LGC processes the grievance to the next step within three business days of the grievant's request.

(3) Responses, notices, and other documents issued during the processing of a grievance are delivered to the grievant in person or by mail at the last known address of the grievant. A grievance is considered administratively resolved when a correctly addressed letter sent to the last known address of the grievant with proper postage is returned undeliverable with no forwarding address.

(4) There is no time limit on allegations of abuse, neglect, verbal abuse, exploitation, or caretaker misconduct. If a grievance, timely or untimely, consists of such an allegation, OCA intake is immediately notified in accordance with OAC 340:2-3-33.

(h) **Grievance records, logs, and quarterly reports.** The LGC maintains an accurate and complete record of each grievance filed as well as summary information about the number, nature, and outcome of all grievances filed. Records of grievances are kept separate and apart from other client records and files. Grievance records relating to DDSD clients are retained in accordance with OAC 340:100-3-40. OKDHS grievance records and files are retained in accordance with state and federal laws governing retention and destruction of records.

(1) Each LGC tracks grievances as they progress through the system and keeps a log of every numbered grievance form issued by OCA. Form 15GR009E, Grievance Tracking Log, can be used for this purpose. For grievances submitted by a client, the tracking log includes: the grievance number; the name of the grievant given the form; the date the form was submitted by the grievant; the nature and outcome of the grievance; the date of final resolution; and the level where it was resolved. If a grievance form is provided to a client and not turned in, the facility tracks only the number on the form, the name of the client to whom the form was given, and the date it was given to the client.

(2) Each LGC submits to the advocate general a quarterly grievance report, Form 15GR010E, Quarterly Grievance Report. The quarterly report is transmitted to the advocate general no later than the 21st day following the end of each calendar quarter. Quarterly reports are submitted by mail, fax, or e-mail. The e-mail address is: *oca.grievances@okdhs.org. When no grievance activity occurred or was pending during a particular fiscal year quarter, the LGC so indicates on Form 15GR010E.

(3) If a grievance becomes moot at any point during the local processing of the grievance, the LGC can stop the grievance process and declare the grievance "administratively resolved." The LGC informs the grievant, notes it on the applicable Form ~~15GR001E~~ 15GR001P and Form 15GR009E, and sends a copy of Form ~~15GR001E~~ 15GR001P to OCA with the next quarterly grievance report.

(i) **Processing the grievance form.** After completing Form ~~15GR001E~~ 15GR001P, the grievant submits the form directly to the LGC or any other employee of the facility or OKDHS. Form ~~15GR001E~~ 15GR001P is printed in duplicate sets with a carbonless yellow copy. The grievant submits the white copy and keeps the yellow copy. If someone other than the LGC receives a grievance, that person submits it directly to the LGC within one business day of receipt.

(j) **Informal resolution of grievance.** If the LGC is able to promptly resolve the grievance to the grievant's satisfaction without further processing, the LGC fills out the bottom of Form ~~15GR001E~~ 15GR001P, signs it, and files it in the appropriate grievance file.

(k) **First level problem resolution.** Within three business days of receipt of Form ~~15GR001E~~ 15GR001P, if the grievance has not been resolved to the grievant's satisfaction, the LGC fills out Form 15GR002E, Local Grievance Coordinator (LGC) Worksheet.

(1) The LGC identifies who has the authority to provide the quickest and surest resolution to the problem at the lowest level in the organizational structure.

(A) For OKDHS grievances of minors in OKDHS custody and youths in voluntary OKDHS care, the first level respondent may be the supervisor of the grievant's Child Welfare specialist.

(B) For grievances regarding placements above the therapeutic foster care level made by Children and Family Services Division (CFSD) placement services, the respondent is the applicable CFSD programs manager.

(C) For placement grievances regarding a specific foster child, the respondent is the applicable county director.

(D) If the minor also is a DDSD client, this may be the DDSD case manager supervisor.

(E) For adults receiving services from DDSD, the first level respondent may be the DDSD case manager supervisor.

(2) The LGC completes the first box in the first level section on Form 15GR002E, attaches the corresponding Form ~~15GR001E~~ 15GR001P, and other relevant documentation and information, and submits it to the first level respondent, by the most efficient means practicable, within three business days of receipt of the grievance from the grievant.

(3) The first level respondent responds to the grievance within five business days of receipt of Form 15GR002E by completing the second box in the first level section on Form 15GR002E. If the proposed resolution contains a promise of some future action, a target date is specified for full implementation of that future action. The grievant can contest the target date by taking the grievance to the next level of problem resolution.

(4) The LGC monitors the timely response by the first level respondent. If a complete response is not timely received by the LGC, the LGC notes this on Form 15GR002E, and the grievance immediately proceeds to the second level of problem resolution.

(5) Within three business days of receipt of the first level response, the LGC or designee contacts the grievant to inform the grievant of the proposed resolution and the right to take the grievance to the second level of problem resolution, and determines if the grievant is satisfied with the proposed resolution. The first level respondent

may meet with the grievant with or without the LGC. If the grievant needs time to decide whether to accept the proposed resolution, the grievant has three business days within which to make a decision. If no decision is communicated to the LGC within three business days, the grievant is deemed to have accepted the proposed resolution. The LGC is responsible for informing grievants that they have three business days in which to accept or to appeal the respondent's proposed resolution.

(6) If the grievant is satisfied with the proposed resolution, the LGC indicates the grievant's acceptance on Form 15GR002E, notifies the individuals responsible for resolution of the grievance, and places the form in the appropriate grievance file.

(7) If the proposed resolution has been accepted by the grievant but involves a target date in the future, the LGC monitors compliance with the target date. If the LGC determines that the resolution has not been achieved by the target date, the LGC immediately reopens the grievance and processes it for second level of problem resolution.

(8) If the grievant does not accept the proposed resolution and desires to take the grievance to the second level of problem resolution, the LGC processes the grievance for the second level of problem resolution in accordance with subsection (l) of this Section.

(l) **Second level problem resolution.**

(1) If the grievance is not resolved at the first level of problem resolution, the LGC processes it in accordance with this subsection within three business days of the grievant requesting the second level of problem resolution pursuant to subsection (k) of this Section.

(2) The LGC fills out the first box in the second level section on Form 15GR002E, ensures the corresponding Form ~~15GR001E~~ 15GR001P and other relevant documents are attached, and submits it immediately to the second level respondent. For facilities and providers subject to these rules, the administrator or designee is the second level respondent. For OKDHS grievances, the OKDHS county director or the DDSD area manager, whichever is applicable, is the second level respondent. If the administrator, county director, or DDSD area manager was the first level respondent, then the second level of problem resolution is skipped and the grievance ~~is~~ may be processed as a contested grievance pursuant to ~~subsection (m) of this Section~~ OAC 340:2-3-46.

(3) The administrator or designee responds to the grievance within seven business days of receipt of Form 15GR002E by completing the applicable box in the second level section on Form ~~OCA-GR-1-A~~ 15GR002E. If the proposed resolution contains a promise of some future action, a target date is specified for full implementation of that future action.

(4) The second level respondent for a placement grievance regarding a specific foster child is the applicable area director.

(5) The LGC monitors the timely response by the respondent. If a complete response is not timely received by the LGC, the LGC notes this on Form 15GR002E and the grievance immediately is processed as a contested grievance. A contested OKDHS grievance is processed in accordance with OAC 340:2-3-46. Contested facility grievances are processed in accordance with subsection (m) of this Section.

(6) Within three business days of receipt of the second level response, the LGC contacts the grievant to inform the grievant of the proposed resolution and the right to contest the response to the grievance, and determines if the grievant is satisfied with the proposed resolution. If the grievant needs time to decide whether to accept the proposed resolution, the grievant has three business days within which to make a decision. If no decision is communicated to the LGC within two business days, the grievant is deemed to have accepted the proposed resolution.

(7) If the grievant is satisfied with the proposed resolution, the LGC indicates the grievant's acceptance on Form 15GR002E, notifies the individuals responsible for resolution of the grievance, and places the form in the appropriate grievance file.

(8) If the proposed resolution has been accepted by the grievant but involves a target date in the future, the LGC monitors compliance with the target date. If the LGC determines that the resolution has not been completed by the target date, the LGC immediately reopens the grievance and processes it as a contested grievance.

(9) If the grievant does not accept the proposed resolution and indicates a desire to contest the response, a contested OKDHS grievance is processed in accordance with OAC 340:2-3-46. Contested facility grievances are processed in accordance with subsection (m) of this Section.

(m) **Contested facility or provider grievances.** If the grievant does not accept the proposed resolution or the target date of the second level proposed resolution, or both, a facility or provider grievance is appealed to the chair of the board of directors of the facility or provider or an appeals committee designated by the board. This section does not apply to grievances of Hissom class members. Grievances at OKDHS operated facilities are appealed as a contested grievance in accordance with OAC 340:2-3-46.

(1) The LGC transmits a contested facility or provider grievance to the chair of the board of directors of the facility or provider, or an appeals committee designated by the board, within three business days of learning that the grievant does not accept the proposed resolution and is contesting the proposed resolution.

(2) In reviewing the contested grievance, the board of directors, or appeals committee if applicable, is not required to hold a hearing to hear evidence or arguments. In the event the board determines that hearing evidence would assist it in resolving the grievance, the board has the option of holding a hearing. If it does so, the hearing does not require the formalities of a fair hearing.

(3) Within ten business days of receiving a contested grievance, the chair of the board of directors or the appeals committee responds to the grievant by submitting a written decision to the LGC.

(4) Within three business days of receiving the written decision of the chair of the board of directors or the appeals committee, the LGC informs the grievant of that decision and provides the grievant with a copy of the board's written decision. This concludes the grievance process and the grievant's administrative remedies have been exhausted.

(n) **Fast track grievances.** When the subject of an OKDHS grievance is such that time is of the essence, with the approval of the advocate general or designee a grievance can be submitted directly to the OCA grievance liaison for processing as a contested grievance in accordance with OAC 340:2-3-46. When a grievance involves a time sensitive problem, the OCA grievance liaison can shorten the time for responding as warranted by the circumstances.

(o) **Communications with OCA.** Any notices, forms or other information that facilities, providers, or OKDHS county offices are required to submit to OCA or the advocate general can be submitted by e-mail, using the e-mail address *oca.grievances@okdhs.org.

(p) **Grievance training required.** LGCs are required to take the OCA online grievance training within 60 days of their appointments, and annually thereafter.

340:2-3-46. Contested grievances appealed to the state office

(a) **Application.** This Section describes the processes for contesting the second level response to Oklahoma Department of Human Services (OKDHS) grievances, facility grievances at OKDHS operated facilities, and provider grievances of Hissom class members.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Initiating the contested grievance.** When a grievant asks to appeal a grievance to the state office administrator, within three business days of being informed of that request, the local grievance coordinator (LGC) transmits to the Office of Client Advocacy (OCA), Attn. OCA grievance liaison, Form 15GR002E, Local Grievance Coordinator (LGC) Worksheet, attaching the corresponding Form ~~15GR001E~~ 15GR001P, Grievance Form, and other documents and information relevant to the subject matter of the grievance.

(d) **Documentation requirements.** When Form 15GR002E is submitted to OCA, it has attached:

(1) the corresponding Form ~~15GR001E~~ 15GR001P;

(2) supporting facts relating to the proposed resolution by the second level respondent, including documentation relating to the first level and second level of problem resolution processes; and

(3) any written rule, policy, procedure, regulation, and other information relevant to the subject matter of the grievance.

(e) **OCA processing of grievance.** Within three business days of OCA's receipt of a contested grievance, OCA reviews the contested grievance and accompanying documentation and determines if any additional information is necessary for disposition of the appeal. When any information appears to be missing, OCA contacts the person(s) in possession of the needed information and sets deadlines for submission of the information by the most efficient means to avoid delays in processing the contested grievance.

(f) **Rejected grievances.** If OCA determines the subject matter of a grievance falls in one of the categories listed in OAC 340:2-3-45(c)(2), OCA returns the grievance to the LGC with a cover letter indicating the reason the grievance was not accepted for processing as a contested grievance. Within three business days of receipt of OCA's letter, the LGC contacts the grievant to inform the grievant of the status of the grievance.

(g) **OCA transmittal to state office administrator.** Within three business days of OCA's receipt of a contested grievance and all documents required by subsection (d) of this Section, the advocate general or designee prepares and sends Form 15GR011E, Contested Grievance Transmittal, to the state office administrator with decision-making authority to respond to the subject of the grievance.

(h) **State office administrator's response.** The state office administrator who receives a contested grievance responds to the grievant within ten business days or by the due date on Form 15GR011E. The advocate general or designee may grant an extension when good cause is shown, such as the complexity of the issues. The state office administrator sends his or her response directly to the LGC after completing the middle portion of Form 15GR011E~~, Contested Grievance Transmittal~~. A copy is sent to the advocate general, or designee. The state office administrator attaches his or her response to Form 15GR011E and includes:

(1) the proposed resolution and how it is to be implemented;

(2) the person(s) responsible for implementing the proposed resolution;

(3) the target date for the proposed resolution;

(4) facts which support the appropriateness of the proposed resolution by the facility, including relevant documentation; and

(5) any written rule, policy, procedure, regulation, and other information relevant to the subject matter of the grievance and the proposed resolution.

(i) **Timely response required.** The OCA grievance liaison monitors the timely response by the state office administrator. If a complete response is not timely received by the OCA grievance coordinator and an extension has not been granted, the OCA grievance liaison immediately processes the grievance for review by the Grievance and Review Committee (GARC) in accordance with OAC 340:2-3-64(b). In that event, OCA notifies the grievant and affected state office administrator that the grievance is being processed for GARC.

(j) **Presentation of proposed resolution.** The LGC or designee contacts the grievant within three business days of receipt by the LGC of the state office administrator's response. If the grievant accepts the proposed resolution, the LGC notes this on the OCA transmittal memo and files it in the client's grievance file.

(k) **Request for GARC review.** If the grievant does not accept the response of the state office administrator, the LGC completes the bottom portion of Form 15GR011E and returns it to the OCA grievance liaison within three business days.

Upon receipt by OCA of Form 15GR011E, the grievance is processed for review by GARC in accordance with OAC 340:2-3-64.

340:2-3-50. Grievances of foster parents

(a) **Application.** This Section describes processes relating to grievances of foster parents approved by the Oklahoma Department of Human Services (OKDHS). Section 7213 of Title 10 of the Oklahoma Statutes confers on OKDHS the responsibility to establish grievance procedures for foster parents with whom state agencies or child placing agencies contract.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** Form 15GR008E, Notice of Grievance Rights - Foster Parents, is given to each foster parent when approved as an OKDHS foster parent and at reassessment. It is given to the foster parent by the Child Welfare (CW) worker assigned to the foster home within two business days of the approval or the reassessment. This form is used to identify the local grievance coordinator (LGC) and to explain the foster parent's right to grieve. After the foster parent signs the form, a copy is given to the foster parent and the original is maintained in the permanent record for the foster parent.

(d) **Grievance defined.** Foster parents may file grievances with respect to the provision or receipt of services.

(1) **Grievable issues.** Except for the limitations listed in subsection (d)(2) of this Section, matters which can be the subject of a grievance include:

(A) the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS; or

(B) a decision, act, or omission of an employee of OKDHS.

(2) **Summary dispositions.** If it is determined that the foster parent is asking to grieve a problem or concern covered by any of the categories in Section OAC 340:2-3-45(c)(2) or by any of the categories listed in (A) through (~~F~~G), the LGC informs the foster parent why the grievance is not being processed, using Form 15GR016E, Notice of Summary Disposition of Foster Parent Grievance. In addition to the categories in Section OAC 340:2-3-45(c)(2), situations that are not grievable by foster parents under this grievance system are:

(A) a decision of a court;

(B) findings of a child abuse and neglect investigation or assessment in a foster home. The process for appealing these findings is found at OAC 340:75-1-12.2;

(C) disposition of a fair hearing regarding closure of a foster home. The fair hearing process regarding closure of a foster home is found at OAC 340:75-7-94;

(D) disputes with other foster parents;

(E) written plans of compliance. The foster parents provide their written input on the compliance documentation; ~~and~~

(F) replacement of a child in a foster home after removal due to a child abuse or neglect investigation. The fair hearing process regarding replacement in foster care is found at OAC 340:75-1-12.6~~.~~; and

(G) complaint alleges retaliation by an employee of OKDHS, the complaint is forwarded to the OCA Investigations Unit for review and disposition.

(3) **~~Grievances alleging~~ Allegations of retaliation.** ~~Grievances alleging~~ Allegations of retaliation or discrimination, as those terms are defined in OAC 340:2-3-38(b), are processed in accordance with that Section.

(4) **~~Grievances alleging~~ Allegations of discrimination.** ~~If a grievance alleges~~ Allegations of discrimination based on sex, age, national origin, religion, color or disability, ~~the grievant is~~ are referred to the OKDHS Office for Civil Rights and the LGC immediately forwards the ~~grievance~~ complaint to the OKDHS civil rights administrator, and so informs the ~~grievant~~ foster parent using Form 15GR016E.

(e) **Filing and processing of grievance.** A grievance filed by a foster parent is processed as an OKDHS grievance in accordance with OAC 340:2-3-45 unless otherwise provided in this Section.

(1) The county director serves as the LGC for grievances filed by foster parents. For grievances involving specialized foster care, the applicable Developmental Disabilities Services Division (DDSD) area manager or designee serves as the LGC.

(2) Foster parent grievances must be filed within 45 calendar days of the occurrence.

(3) After the grievance procedure has been completed, a foster parent or former foster parent has a right of access to the grievance record of grievances the foster parent filed.

(f) **Contested grievances.** Contested grievances are processed in accordance with OAC 340:2-3-46 unless otherwise provided in this Section.

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

[OAR Docket #08-966]

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DATES:
Comment period:
February 15, 2008 through March 17, 2008
Public hearing:
None requested

Adoption:
March 25, 2008
Submitted to Governor:
March 26, 2008
Submitted to House:
March 26, 2008
Submitted to Senate:
March 26, 2008
Gubernatorial approval:
May 8, 2008
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 20, 2008.
Final adoption:
May 20, 2008
Effective:
July 1, 2008
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Chapter 50 permanent rule amendments revoke rules regarding eligibility for emergency food assistance in disasters not declared by Food and Nutrition Service (FNS) due to personal hardship as it is no longer addressed in the Federal Regulations.
CONTACT PERSON:
Dena Thayer, Programs Administrator, 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, 2008:

SUBCHAPTER 11. SPECIAL PROCEDURES

PART 9. DISASTER PROCEDURES AND REPORTING REQUIREMENTS

340:50-11-87. Emergency food assistance in disasters not declared by FNS - "Personal Hardship" [REVOKED]

~~Households affected by natural or other disasters not determined by FNS who are in need of food stamp assistance may be determined eligible for temporary periods, usually for a 30-day period.~~

[OAR Docket #08-966; filed 5-20-08]

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

[OAR Docket #08-1019]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 6. Permanency Planning
Part 1. General Provisions
340:75-6-4 [AMENDED]
Part 5. Permanency Planning Services
340:75-6-31 [AMENDED]
340:75-6-31.5 [AMENDED]
Subchapter 8. Therapeutic Foster Care and Developmental Disabilities Services
Part 1. Therapeutic Foster Care
340:75-8-8 [AMENDED]
Subchapter 15. Adoptions
Part 2. Legal Base and Scope of the Adoption Program
340:75-15-5 [AMENDED]
340:75-15-7 [AMENDED]
Part 10. Adoptive Family Assessment and Preparation Process
340:75-15-93 [AMENDED]
(Reference APA WF 08-04)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; and Uniform Parentage Act (UPA) 10 O.S. §§ 7700-101 through 7700-902, effective November 1, 2006.
DATES:
Comment period:
February 15, 2007 through March 17, 2008
Public hearing:
None requested
Adoption:
March 25, 2008
Submitted to Governor:
March 26, 2008
Submitted to House:
March 26, 2008
Submitted to Senate:
March 26, 2008
Gubernatorial approval:
May 8, 2008
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 20, 2008.
Final adoption:
May 20, 2008
Effective:
July 1, 2008
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed revisions to Subchapters 1, 6, 13, and 15 of Chapter 75 amend the rules to bring the foster and adoptive home approval process into compliance with Senate Bill 553 (SB 553) and Senate Bill 469 (SB 469) as well as update agency procedures to comply with federal guidelines. Rules are amended to: (1) comply with HB1927 in repealing the Oklahoma Department of Human Services (OKDHS) authority to enter an objection to the release of a child from state custody; (2) ensure a face-to-face contact with the child in an Interstate Compact on the Placement of Children (ICPC) placement no less frequently than every six months with a report submitted regarding the content of the contact; (3) update the procedure for obtaining Oklahoma birth certificates for children in OKDHS custody; (4) update language to include the term constructive removal; (5) clarify that to qualify for IV-E, a child must be a citizen of the United States or have an alien status that qualifies for IV-E; (6) clarifies that Title IV-E, Section 472 of the Social Security Act allows a resource value of $10,000 for Title IV-E eligibility; (7) clarify that within 15 working days of receipt of the initial court order, the custody specialist makes an initial eligibility determination for Title IV-E and reports the IV-E eligibility determination to the referring Child Welfare worker; (8) clarify that during the adoption criteria staffing process, every effort is made to place children with family; (9) clarify that in-person or telephone contact is made with each personal reference; (10) delete information that is contained in another section of policy; and (11) correct spelling, grammatical errors and update sentence structure.
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, 2008:

SUBCHAPTER 6. PERMANENCY PLANNING

PART 1. GENERAL PROVISIONS

340:75-6-4. Definitions

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

"Alleged father" means *a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined.* The term does not include a presumed father. [10 O.S. § 7700-102]

"Alternate permanent plan" means a permanent living arrangement for a child in Oklahoma Department of Human Services (OKDHS) custody, other than reunification with the parent(s), and requires an assessment of the child's needs and a treatment and service plan that addresses the child's permanent plan, per OAC 340:75-6-31.

"Case plan" means the overall plan for the placement of the child and treatment needs of the child and the child's family, per OAC 340:75-6-40.

"Child Advocacy Center" means an entity that is an associate or full member in good standing of the National Children's Alliance.

"Close proximity" means placement of a child in OKDHS custody in the nearest geographical location to the child's own home that will meet the child's needs.

"Concurrent planning" means the provision of reunification services while simultaneously developing an alternative plan, in case reunification efforts fail or are no longer feasible.

"Independent Living program" means a program specifically designed to assist a child in the custody of OKDHS or an Indian tribe in developing and enhancing the skills and abilities necessary for successful adult living, per Part 13 of OAC 340:75-6.

"Kinship care" means full-time care of a child by a kinship relation.

"Kinship guardian" means a judicially created relationship between a child and a kinship relation of the child.

"Kinship relation" means relatives, stepparents, or other adults who have a bond or tie with the child and to whom have been ascribed a family relationship role with the child's parent(s) and the child.

"Least restrictive" means the placement of a child in OKDHS custody in the most home-like situation that meets the child's needs, per OAC 340:75-6-85.

"Movement" means changing a child in OKDHS custody from one living arrangement to another.

"Multidisciplinary team" means any team of three or more persons involved in the provision of services, treatment, or both, to a child and the child's family and who meet to assess the progress on the treatment and service plan.

"Out-of-home placement" means a living arrangement for a child other than the home of the child's parent(s), legal guardian, or legal custodian from whose custody the court has removed the child.

"Presumed father" means a man who, by operation of law under Section 7700-204 of Title 10 of the Oklahoma Statutes, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding. A man is presumed the father of a child if:

(A) he and the mother of the child are married to each other and the child is born during the marriage;

(B) he and the mother of the child were married to each other and the child is born within three hundred (300) days after the marriage is terminated by death, annulment, declaration of invalidity, dissolution of marriage, or after decree of separation;

(C) before the birth of the child, he and the mother of the child married each other in apparent compliance with law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within three hundred (300) days after its termination by death, annulment, declaration of invalidity, a decree of separation, or dissolution of marriage;

(D) after the birth of the child, he and the mother of the child married each other in apparent compliance with law, whether the marriage is or could be declared invalid, and he voluntarily asserted his paternity of the child; and:

(i) the assertion is in a record with the Oklahoma State Department of Health, Division of Vital Records or OKDHS;

(ii) he agreed to be and is named as the child's father on the child's birth certificate; or

(iii) he promised in a record to support the child as his own; or

(E) for the first two years of the child's life, he resided in the same household with the child and openly held out the child as his own.

~~**"Putative father"** means the father of a child born out of wedlock or a child whose mother was married to another person at the time of the child's birth, or within the ten months prior to the birth of the child and includes, but is not limited to:~~

~~(A) a man who has acknowledged or claims paternity of a child;~~

~~(B) a man named by the child's mother as the father of the child; or~~

~~(C) any man who is alleged to have engaged in sexual intercourse with a woman during a possible time of conception.~~

"Reasonable efforts" means the reasonable exercise of diligence and care, with regard to a child who is in out-of-home placement or who is at imminent risk of harm, to:

(A) refer to, arrange for, or develop reasonable supportive and rehabilitative services for the child's family that are required both to prevent unnecessary placement of the child outside of the home and to foster, whenever appropriate, the safe reunification of the child with the child's own family; or

(B) place a child who cannot return home into a permanent placement.

"Residual parental rights" means those rights and responsibilities that remain with a parent after a transfer of legal custody of the child to another, other than in connection with an action for termination of parental rights, a relinquishment of parental rights, a consent to termination of parental rights, or an adoption. Residual parental rights:

(A) include, but are not limited to, the:

(i) right of visitation with the child;

(ii) right to determine the child's religious faith;

(iii) right to consent to the child's adoption;

(iv) duty to support the child and pay for the child's medical care;

(v) right to consent to termination of parental rights; and

(vi) right to permanently relinquish parental rights; and

(B) do not include the right to consent to the marriage of any child who is in OKDHS custody.

"Reunification" means a permanent plan for the child that involves the return of the child to any person who retains parental or legal rights to the child after removal for child abuse, neglect, or both, regardless of the custody arrangement prior to the child entering out-of-home care, per OAC 340:75-6-31.

"Risk" means the conditions in the child's home that put the child in danger of abuse, neglect, or both.

PART 5. PERMANENCY PLANNING SERVICES

340:75-6-31. Permanency planning for children in custody

(a) **Permanency planning.** Permanency planning begins immediately after a child is placed in Oklahoma Department of Human Services (OKDHS) custody and continues until the child is living in a permanent home and the Child Welfare (CW) case is closed. Once a child is removed from the custody of the child's parent(s), OKDHS immediately begins concurrent permanency planning so that permanency occurs at the earliest opportunity. Careful planning and consideration of the initial placement is given so that if reunification fails or is delayed, the placement made is the best available placement to provide permanency for the child. The first permanency hearing is held as required by Section 7003-5.6d of Title 10 of the Oklahoma Statutes, and in accordance with OAC 340:75-1-18.1.

(1) The permanency plan preferences are:

(A) reunite the child with the child's family;

(B) terminate parental rights and place the child for adoption;

(C) establish guardianship; or

(D) provide a planned alternative permanency placement.

(2) The purpose of permanency planning is to ensure the child has a plan that addresses the child's immediate and long-term needs for safety, well-being, and permanency.

(3) The CW worker informs the parent(s) of all of the alternatives from the outset to assist in choosing what is best for the child and parent(s).

(b) **Sources for determining the child's permanency plan.** Sources that assist the CW worker and supervisor in determining the best permanency plan for the child are:

(1) Form 04KI008E, Treatment Plan, or Form 04KI014E, Individualized Service Plan (ISP) Progress Report, containing current documentation of the parent(s)' progress, correspondence, consultations, or conferences with service and placement providers and professionals who interact with the child and parent(s);

(2) KIDS Contacts and Visits screens, containing pertinent information gained from visits and CW worker contacts with the child, parent(s), placement provider, and service providers;

(3) statements by the parent(s) that indicate the parent(s)' perceptions of:

(A) the child;

(B) parenting the child; and

(C) abuse and neglect issues that required corrections;

(4) statements by the child, obtained from the CW worker's monthly visitation with the child, placement provider, and service providers, regarding the parent(s)' and child's desire to reunite;

(5) staffing with the CW supervisor;

(6) recommendations by the post adjudication review board (PARB);

(7) conclusions or recommendations by a multidisciplinary staffing;

(8) consultation with Children and Family Services Division (CFSD) Adoption Section;

(9) the permanency planning review process, per OAC 340:75-6-31.1;

(10) coordination with tribal officials, for a child who falls under the Indian Child Welfare Act, to explore the tribe's interest and ability in providing for the child's permanency placement; and

(11) Form 04KI024E, Ongoing Safety Assessment, which reflects whether the level of risk has increased or decreased compared to the risk identified on Form 04KI023E, Safety Assessment, completed at the time of the investigation resulting in the child's removal.

(c) **Reunification.** In most situations, the initial permanency plan is to reunite the child with the family. These services are implemented until:

(1) the child is returned home, the family home has stabilized, and the court case is dismissed; or

(2) it is determined ~~that~~ the conditions that necessitated intervention have not been corrected even though sufficient time and services have been provided.

(d) **Exceptions to reunification as the initial permanency plan.** Situations that require an alternative permanency plan to reunification as the initial permanency plan include:

(1) voluntary relinquishment of parental rights by all parents, natural, legal, ~~putative,~~ presumed, and alleged;

(2) a Petition for Termination of parental rights is filed; or

(3) the court finds that reasonable efforts to reunite are not required, per OAC 340:75-1-18.4.

(e) **Reunification services.** Prior to reunification with a parent(s) who has contributed to the abuse, neglect, or both, of the child, a court order granting approval is required. In preparation for reunification and to provide to the court for consideration, the CW worker ensures the activities in (1) through (7) occur.

(1) Visitation is increased in frequency and duration with reduced supervision as described in OAC 340:75-6-30.

(2) The age appropriate child is made aware that the parent(s) has progressed in treatment to the point that reunification may occur, with the court's approval.

(3) Any issues involving the child's apprehensions, indecisiveness, or reluctance to return home are managed through family consultation, counseling, or both.

(4) Support services are utilized, including, but not limited to:

(A) temporary child care;

(B) community service providers;

(C) in-home services; and

(D) continued Temporary Assistance for Needy Families (TANF) eligibility, if applicable, per OAC 340:75-6-31.2.

(5) The CW worker informs the placement provider of the possibility of the child's reunification, provides information to the placement provider regarding the child, and includes the placement provider in permanency planning.

(6) The CW worker obtains supporting information from service providers about the degree of safety in the family home.

(7) The case is staffed with the CW supervisor and the requirements for the permanency planning review process are met, per OAC 340:75-6-31.1.

(f) **Criteria for reunification.** Indications for reunification are listed in (1) through (6).

(1) The risk that necessitated the intervention is minimized, a plan is in place to address the child's safety, and the plan is documented on Form 04KI024E~~, Ongoing Safety Assessment~~.

(2) The parent(s) has complied with the treatment and service plan in such a manner that those conditions the court determines essential and fundamental to the child's health, safety, and welfare are met.

(3) Visitation is successful and has increased in length and frequency.

(4) The child has dealt with the feelings about the separation through counseling or some other effective means.

(5) The child is prepared for the reunion and received support in handling his or her feelings about returning home and separating from the current placement.

(6) The court gives prior approval of the return of the child to the parent(s)' home in accordance with OAC 340:75-6-31(e).

(g) **Reunification with the custodial parent.** When the child's parents do not live together, the priority for reunification relates primarily to the custodial parent; however, the noncustodial parent is assessed for the possibility of placement or custody, if appropriate, per OAC 340:75-1-13. Prior to dismissal of the court case, modification of a divorce decree or other custody order may be required if the noncustodial parent is granted placement or custody of the child during the deprived case and the plan is for custody with the noncustodial parent after dismissal.

(h) **Indicators to proceed with concurrent permanency plan.** The conditions in (1) through (8) may be indicators of the need to expedite the concurrent permanency plan for the child.

(1) Completion of the treatment and service plan is irregular or sporadic, and has not eliminated the risk to the child's safety in the home, which may indicate a lack of interest in or commitment to reunification.

(2) Family visitation indicates the parent(s):

(A) lacks a close and positive relationship with the child;

(B) visits irregularly;

(C) frequently misses scheduled visits; or

(D) arrives late and leaves early.

(3) Indications of maltreatment during unsupervised visitations are reported. Examples of maltreatment include, but are not limited to, referrals regarding the reoccurrence of abuse or failure of the parent(s) to comply with any recommended treatment for the child.

(4) The child was returned to the home and removed again for safety reasons.

(5) The parent(s) receives negative reports from service providers or other entities, such as permanency planning review members, PARB members, and court-appointed special advocate (CASA).

(6) The length of time reunification has been the permanency plan, per OAC 340:75-6-47.

(7) The finding of the permanency hearing.

(8) A judicial finding that reasonable efforts to reunite are not required.

(i) **Adoption.** When a child cannot return safely to his or her own home, adoption is the preferred permanency plan in most cases. Consultation about adoptive placement for the child is initiated with the adoption specialist to discuss permanency planning options when reunification appears no longer feasible. This consultation is held regardless whether termination of parental rights has been recommended to the court.

(j) **Legal guardianship or permanent custodian.** A guardianship or permanent care and custody transferred to

another person or kinship guardian may be the permanency plan for a child, per OAC 340:75-1-18.2 and 340:75-1-18.3, when a child is placed with a person who is reluctant to adopt due to extenuating circumstances.

(1) Guardianship or a permanent custodian is not preferred over adoption because this option does not provide the same level of family permanency.

(2) Subject to the availability of funds, financial assistance is available to the legal guardian or legal custodian, provided the eligibility requirements are met, per OAC 340:75-6-31.4.

(k) **Planned alternative permanency placement.** A plan for planned alternative permanency placement may be appropriate for a child when OKDHS documents a compelling reason for the court to determine that to return home, be placed for adoption, or guardianship is not in the child's best interests. Long-term out of home care is only an option when:

(1) all other permanency plans have been explored and are not feasible or in the child's best interests; or

(2) the child chooses not to be adopted after adoption has been thoroughly explored, explained, and the opportunities demonstrated.

(l) **Emancipation.** The federal definition of emancipation is the age at which the child reaches majority. In Oklahoma this age is 18.

340:75-6-31.5. Establishment of paternity

(a) In cases where paternity has not been legally established for a child in the custody of Oklahoma Department of Human Services (OKDHS), Child Welfare (CW):

(1) requests the court to establish paternity in the juvenile court action; or

(2) cooperates with OKDHS Child Support Enforcement Division (CSED) to establish paternity per OAC 340:25-5-176.

(b) CW does not pursue a paternity action or request genetic testing when:

(1) paternity is voluntarily acknowledged in Oklahoma or another state and not rescinded within ~~the allowable time~~ 60 days, per ~~Section 70~~ Sections 7700-301 through 7700-314 of Title 10 of the Oklahoma Statutes (10 O.S. §§ ~~70~~ 7700-301 through 7700-314);

(2) the child ~~is born during the course of the marriage and is reared by the husband and wife as a member of their family without disputing the child's legitimacy for a period of at least~~ has a presumed father and a party initiates a challenge more than two years after the child's birth, per 10 O.S. §§ ~~3~~ 7700-204 and 7700-607; or

(3) paternity is established by a district or administrative court order, per 10 O.S. §§ ~~70~~ 7700-636.

(c) If no other conclusive presumption of paternity or court determination of paternity exists for a child, the parent(s) may complete and sign Form ~~CSED 209~~ 03PA209E, ~~Affidavit Acknowledging~~ Acknowledgment of Paternity. The CW worker refers the parent(s) to CSED.

(1) CSED provides Form ~~CSED 209~~ 03PA209E, for voluntary acknowledgment of paternity, per 10 O.S. § ~~70~~ 7700-312 and 63 O.S. §§ 1-311 and 1-311.3.

(2) Signed and witnessed forms must be filed with Oklahoma State Department of Health, Division of Vital Records ~~Division~~.

SUBCHAPTER 8. THERAPEUTIC FOSTER CARE AND DEVELOPMENTAL DISABILITIES SERVICES

PART 1. THERAPEUTIC FOSTER CARE

340:75-8-8. Therapeutic foster care contractor requirements

(a) Therapeutic foster care (TFC) contractors:

(1) certify TFC homes according to rules established by ~~Division of Child Care (DCC)~~ Oklahoma Child Care Services (OCCS), Children and Family Services Division (CFSD), OAC 340:75-7-10 through 340:75-7-19, Oklahoma Health Care Authority (OHCA), and the requirements outlined in Oklahoma Department of Human Services (OKDHS) Placement Agreement for Residential Behavioral Management Services (RBMS) in TFC Settings;

(2) ensure the TFC home meets all certification requirements prior to the placement of a child in the home;

(3) engage in active recruitment of potential TFC parents who reflect the racial and ethnic diversity of children requiring placement, in compliance with the Multiethnic Placement Act of 1994 per OAC 340:75-7-10;

(4) continually evaluate the TFC parent's ability to provide TFC services and meet the needs of children receiving residential behavior management services in a foster care setting per OAC 340:75-7-94;

(5) ensure each TFC parent:

(A) is trained according to ~~DCC~~ OCCS rules, OHCA rules per OAC 317:30-5-740.1, and the requirements outlined in OKDHS Placement Agreement for RBMS in TFC Settings, prior to the placement of a child in the home;

(B) meets the requirements for in-service training as defined in the OKDHS contract; and

(C) has access to respite care per OAC 340:75-8-11;

(6) requests approval from the CFSD programs manager for TFC prior to accessing ~~day~~ child care for a child five years of age or younger. OKDHS does not reimburse for child care for a child in TFC placement. The written request includes the:

(A) therapeutic justification in the child's treatment plan of daily child care outside of the child's TFC placement home;

(B) ability of child care staff or child care provider to meet the child's emotional and behavioral needs and all problems;

(C) availability of the TFC parent and TFC contractor staff to respond to behavioral needs and all problems at the child care environment;

(D) verification of child care center's licensing status, ratings, and adult:child ratio;

(E) planned length of use of child care as a service component of the child's treatment plan; and

(F) verification of ~~child care licensing status or~~ TFC approval as a respite provider when an individual is providing ~~day~~ child care;

(7) completes ~~for children age six and older, any time an assessment is made that the child has the ability to have time away from their TFC parents' direct supervision, an~~ Form 04TF006E, Unsupervised Time Assessment, for children age six and older anytime an assessment is made that the child has the ability to have time away from the TFC parents' direct supervision. The assessment is documented ~~documenting the assessment and plan~~ as ~~a~~ part of the child's ongoing TFC treatment plan;

(~~7~~8) do not accept applications from any foster parent certified by any other agency, including all licensed child-placing agencies and OKDHS, without prior written approval of the current certifying TFC contractor and written approval of the CFSD programs manager for TFC;

(~~8~~9) do not certify the TFC home unless at least one TFC parent is available to provide care for the child any time the child is not in school;

(~~9~~10) do not certify an OKDHS employee as a TFC parent without prior written approval from the CFSD director or designee. The TFC contractor submits the written request to the CFSD programs manager for TFC. The review of the request is consistent with OAC 340:75-7-12;

(~~10~~11) do not certify a TFC agency employee assigned to the TFC program without prior written approval from the CFSD programs manager for TFC. The request includes a copy of TFC agency policy regarding certification of employees of the TFC agency; and

(~~11~~12) do not accept a foster parent application from a person licensed to provide child care services. Families are not approved as licensed family child care homes or TFC homes at their home or in any other location.

(b) TFC homes may be jointly approved per OAC 340:75-7-19.

(1) Joint approval of a TFC home occurs following written approval between the TFC contractor and the other certifying agency.

(2) A TFC home certified by more than one agency may not accept new placements from either certifying agency without prior written agreement of all certifying agencies.

SUBCHAPTER 15. ADOPTIONS

PART 2. LEGAL BASE AND SCOPE OF THE ADOPTION PROGRAM

340:75-15-5. Legal base

(a) **Legal base.**

(1) The Oklahoma Adoption Code, Chapter 75, Section 7501-1.1 et seq. of Title 10 of the Oklahoma Statutes, sets forth the provisions for the adoption of children and the legal actions necessary for adoptions. Adoption services are provided to birth parents, children, and adoptive families to establish and maintain suitable, stable, permanent homes for children ~~which~~ that maximally meet the child's developmental needs.

(2) Sections 7510-1.1 through 7510-3.3 and Public Law 96-272 require that the Oklahoma Department of Human Services (OKDHS) administer an adoption assistance program to assist with the adoptive placement and maintenance of children with special needs in adoptive homes.

(3) Section 7508-1.2 requires OKDHS to establish and administer a Mutual Consent Voluntary Registry whereby an eligible person who was separated from birth family members through adoption or termination of parental rights may indicate a willingness to have his or her identity and whereabouts disclosed to birth family members.

(4) Section 7508-1.3 requires OKDHS to establish and administer a Confidential Intermediary Search program whereby the services of a confidential intermediary who has been certified through OKDHS may be used by eligible persons to locate an eligible adult biological relative(s) with whom contact has been lost through adoption or termination of parental rights proceedings.

(5) Sections 7506-1.1 through 7506-1.2 require OKDHS to establish and administer a Centralized Paternity Registry (CPR) in order to protect the parental rights of a ~~putative~~ alleged or presumed father who may wish to affirmatively assume responsibility for a child(ren) he may have fathered. CPR also expedites adoptions of children whose biological fathers are unwilling to assume responsibility for their children by registering with the registry or otherwise acknowledging their children.

(6) The Adoption and Safe Families Act (ASFA) [Public Law 105-89] mandates that OKDHS place legally free children in adoptive homes when that is the case plan goal, provide for the interjurisdictional placement of children, and provide post adoption services as a component of the family preservation services.

(7) The Multiethnic Placement Act of 1994 (MEPA) as amended by the Interethnic Adoption Provisions of 1996 (IEP), is designed to eliminate discrimination on the basis of race, color, or national origin of the child or the prospective foster or adoptive parent(s); to decrease the length of time that children wait to be adopted; and to facilitate the identification, recruitment, and retention of foster and adoptive parents who can meet the distinctive needs of children awaiting placement. MEPA/IEP prohibits states or agencies that receive federal funds from delaying or denying the placement of any child on the basis of the race, color, or national origin of the child or the prospective foster or adoptive parent(s).

(A) **Placement considerations.** Any decision to consider the use of race as a necessary element of a placement decision must be based on concerns arising

out of the circumstances of the individual case and based on the best interests of the child. Only the most compelling reasons may serve to justify consideration of race and ethnicity as part of a placement decision. Such reasons are likely to emerge only in unique and individual circumstances. Accordingly, occasions where race or ethnicity lawfully may be considered in a placement decision are very rare. Children who meet the definition of an Indian child in accordance with the Indian Child ~~Welare~~ Welfare Act (ICWA) [25 U.S.C. Section 1903(4)] are placed according to the placement preferences found in ICWA. MEPA/IEP does not prohibit a preference for placing a child with relatives.

(B) **Recruitment efforts.** As part of MEPA/IEP, efforts to recruit resource families must reflect the ethnic and cultural diversity of children in Oklahoma who need foster and adoptive homes. A comprehensive recruitment plan is developed and updated annually by the area adoption supervisor.

(b) **Scope.** Each child with a case plan goal of adoption is referred for adoption services, which includes identification of an appropriate adoptive home, preparation of the child for adoptive placement, and supportive services to the child and adoptive family. OKDHS also provides services designed to recruit and develop adoptive homes. Due to the life experiences and backgrounds of the children available for adoption through OKDHS, services in all components of adoption are child focused.

340:75-15-7. Definitions

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

"Adoptee" means a person who is adopted or is to be adopted.

"Adoption" means a way of providing security for and meeting the developmental needs of a child by legally transferring ongoing parental responsibilities for that child from the parent(s) or legal guardian to the adoptive parent(s), and, in the process, creating a new kinship network that links the birth family and the adoptive family through the child.

"Adoption disruption" means the interruption of an adoption after placement of the child and before legal finalization of the adoption.

"Adoption specialist" means an Oklahoma Department of Human Services (OKDHS) Child Welfare (CW) worker whose primary responsibilities include:

(A) identification of children in OKDHS custody in need of adoption planning in consultation with OKDHS CW staff;

(B) recruitment and adoptive home development;

(C) full disclosure of all known history of the child to a prospective adoptive family;

(D) trial adoptive placement;

(E) post placement planning and supervision; and

(F) legal consummation of adoptive placements.

"Adoption transition specialist" means an OKDHS CW worker whose primary responsibilities include:

(A) identification of children in OKDHS custody in need of adoption planning in consultation with OKDHS CW staff;

(B) assessment and preparation of children for adoption;

(C) adoptive planning and recruitment for children;

(D) sibling visitation and reunification efforts; and

(E) transition of children into adoptive homes.

"Alleged father" means *a man who alleges himself to be, or is alledged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined.* The term does not include a presumed father. [10 O.S. § 7700-102]

"Approved adoptive family" means an adoptive family who has completed the required assessment process per OAC 340:75-15-88.

"Attachment" means a psychologically rooted tie between two persons that permits them to have affectual significance for each other.

"Authorized adoptive placement" means permission from OKDHS Children and Family Services Division to proceed with an offer of a child to an approved adoptive family.

"Blind showing" means an OKDHS sponsored arrangement for a prospective adoptive parent(s) to view a child without meeting or being introduced to the child as a prospective parent(s).

"Child with special needs" means a child who may be difficult to place for adoption due to a serious physical or mental disability, emotional disturbance, high risk to develop a physical or mental disability, age, sibling relationship, racial or cultural factors, or a combination of these conditions, per Public Law 96-272.

"Concurrent planning" means the provision of reunification services to a child in OKDHS custody and the child's parent(s) or legal guardian while simultaneously developing an alternative plan, in case reunification efforts fail or are no longer feasible.

"Culture" means shared values, norms, traditions, customs, arts, history, folklore, and institutions of persons who share historical or geographical proximity. Culture is not synonymous with race or ethnicity.

"Directive" means a form signed by the Director of OKDHS or designee authorizing an OKDHS employee to sign consent to the adoption of a child who is in OKDHS custody.

"Finalized adoption" means the legal consummation of an adoption.

"Indian Child Welfare Act" means legislation that mandates minimum standards for the removal and placement of Indian children from their families and tribes per Section 1901 of Title 25 of the United States Code and Section 40 et seq. of Title 10 of the Oklahoma Statutes.

"Interlocutory decree" means a temporary court order, after the filing of the adoption petition, that gives the petitioner temporary care and custody of the child until the final decree of adoption is entered.

"Licensed child-placing agency" means a private agency that is licensed by OKDHS. A licensed child-placing agency is authorized to approve families for adoptive placement, and to place children who are legally available for adoption.

"Life Book" means a compilation of photographs, documents, mementos, illustrations, and narrative accounts of important events in a child's and family's life. The child's Life Book is compiled with or for a child who is in OKDHS custody in an effort to prepare a child for placement. The adoptive family's Life Book is completed by the family as a part of the assessment process.

"Master adoptive parent" means an experienced adoptive parent who serves as a support person to adoptive families.

"Media recruitment" means the use of newspaper, radio, television, Internet, or other communication resources to provide general information about adoption or specific information about a child available for adoption.

"Notice of Plan for Adoption" means written notification to the ~~putative~~ alleged or presumed father of a child born out of wedlock that the birth mother is considering adoptive placement for the child. Notice of Plan for Adoption may be given by OKDHS, licensed child-placing agency, or an attorney representing prospective adoptive parent(s) of the child, either before or after the child's birth.

"Presumed father" means a man who, by operation of law under Section 7700-204 of Title 10 of the Oklahoma Statutes, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding. A man is presumed the father of a child if:

(A) he and the mother of the child are married to each other and the child is born during the marriage;

(B) he and the mother of the child were married to each other and the child is born within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, dissolution of marriage or after decree of separation;

(C) before the birth of the child, he and the mother of the child married each other in apparent compliance with law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within three hundred (300) days after its termination by death, annulment, declaration of invalidity, a decree of separation, or dissolution of marriage;

(D) after the birth of the child, he and the mother of the child married each other in apparent compliance with law, whether the marriage is or could be declared invalid, and he voluntarily asserted his paternity of the child; and:

(i) the assertion is in a record with the State Department of Health, Division of Vital Records or OKDHS;

(ii) he agreed to be and is named as the child's father on the child's birth certificate; or

(iii) he promised in a record to support the child as his own; or

(E) for the first two years of the child's life, he resided in the same household with the child and openly held out the child as his own.

~~**"Putative father"** means the father of a child born out of wedlock or a child whose mother was married to another person at the time of the child's birth, or within the ten months prior to the birth of the child and includes, but is not limited to:~~

~~(A) a man who has acknowledged or claims paternity of a child;~~

~~(B) a man named by the child's mother as the father of the child; or~~

~~(C) any man who is alleged to have engaged in sexual intercourse with a woman during a possible time of conception.~~

"Search" means the process of locating an adult birth relative of a child with whom contact has been lost through adoption or termination of parental rights.

"Swift adoption services" means processes completed by contracted agencies or OKDHS staff to gather history regarding a child in OKDHS custody, including the child's biological family background, medical, educational, and social history for purposes of full disclosure to a prospective adoptive family.

"Termination of parental rights" means a judicial proceeding that frees a child from all custody and control by a parent(s).

PART 10. ADOPTIVE FAMILY ASSESSMENT AND PREPARATION PROCESS

340:75-15-93. Centralized Paternity Registry

The Oklahoma Department of Human Services (OKDHS) is required by Section 7506-1.1 of Title 10 of the Oklahoma Statutes to maintain a Centralized Paternity Registry (CPR) to protect the parental rights of ~~a putative~~ an alleged or presumed father who may wish to affirmatively assume responsibility for a child(ren) he may have fathered. It is also maintained to expedite adoptions of children whose biological fathers are unwilling to assume responsibility for their children by registering with the CPR or otherwise acknowledging their children.

(1) **Notice of Plan for Adoption per Section 7503-3. 1 of Title 10 of the Oklahoma Statutes.** Form 04AN018E, Notice of Plan for Adoption, may be used by OKDHS, a licensed child-placing agency, or attorney to notify ~~a putative~~ an alleged or presumed father of a child born out of wedlock that the birth mother is considering adoptive placement for the child. The notice may be served personally or sent by certified mail, before or after the birth of the child. Whether personally served or sent by certified mail, the notice may not be delivered to, or signed for, by anyone other than the ~~putative~~ alleged or presumed father.

(A) The notice must include:

(i) the identity of the mother;

(ii) a statement that the mother is pregnant and the estimated date of birth;

(iii) that the notified person may be the father of the child; and

(iv) that a plan for the adoption of the child is being considered by the mother.

(B) The notice must include Form 04AN019E, Form Enclosed with Notice of Plan for Adoption, to be completed and signed by the ~~putative~~ alleged or presumed father indicating his acknowledgment or denial of paternity of the child.

(C) The notice must also inform the ~~putative~~ alleged or presumed father that failure to file Form 04AN019E within 30 calendar days of service constitutes waiver of right to receive further notice of adoption proceedings or proceedings to terminate parental rights and a denial of interest in the minor child can result in termination of parental rights and adoption without his consent. If Form 04AN019E is returned to OKDHS, the attorney, or child-placing agency within 30 calendar days, indicating the ~~putative~~ alleged or presumed father's interest in the child, he has a right to notice of any adoption or termination of parental rights proceedings regarding the child. The return of the form within 30 calendar days is the only action by which the ~~putative~~ alleged or presumed father retains the right to notice of any adoption or termination of parental rights proceedings regarding the child.

(i) Filing Form 04AN019E alone does not establish parental rights or constitute the bearing of parental responsibilities.

(ii) Filing or failing to file the form does not affect the duty of the ~~putative~~ alleged or presumed father to support the mother and child during the pregnancy or after the child's birth.

(iii) If a petition to adopt the child is not filed within 12 months of the placement of the child for adoption, failure to mail Form 04AN019E does not affect the ~~putative~~ alleged or presumed father's parental rights and responsibilities.

(iv) Failure to give such notice is not grounds available to the ~~putative~~ alleged or presumed father to establish that he was denied knowledge of the pregnancy.

(v) Receipt by the ~~putative~~ alleged or presumed father of Form 04AN018E, Notice of Plan for Adoption, or return by the ~~putative~~ alleged or presumed father of Form 04AN019E does not obligate the mother to place the child for adoption.

(D) If Form 04AN019E is not received by CPR within 30 calendar days from the date Form 04AN018E is served, it constitutes waiver of the ~~putative~~ alleged or presumed father's right to receive further notice of any adoption or termination of parental rights proceedings regarding the child, and further constitutes a denial of interest in the minor which shall result in a termination of parental rights and approval for adoption without his consent.

(2) **Notice of filing of paternity action by ~~putative~~ alleged or presumed father.** Per Section 7503-3.2 of Title 10 of the Oklahoma Statues, if ~~a putative~~ an alleged or presumed father files a paternity action after receiving notice of or having knowledge of a potential adoption from OKDHS, an attorney, or child-placing agency, he notifies the attorney for the petitioner for adoption, OKDHS, or the child-placing agency that the paternity action has been filed.

(A) This notice includes:

(i) the name of the court;

(ii) the case number; and

(iii) the date of filing.

(B) If the name or location of the attorney for the petitioner for adoption or the child-placing agency placing the child for adoption cannot be ascertained by the ~~putative~~ alleged or presumed father, the ~~putative~~ alleged or presumed father notifies the petitioner for adoption. If the petitioner for adoption is also unknown to the ~~putative~~ alleged or presumed father, the ~~putative~~ alleged or presumed father notifies CPR of OKDHS.

(C) Upon a motion of the prospective adoptive parent, the court having jurisdiction over the paternity action, if it is filed in Oklahoma, allows the prospective adoptive parent to intervene in the paternity action and have the opportunity to be heard and seek custody or visitation. If a proceeding for adoption or for termination of parental rights of the ~~putative~~ alleged or presumed father and a paternity action by the ~~putative~~ alleged or presumed father regarding the same minor are both pending in the courts of this state, upon motion of any party, the court having jurisdiction over the paternity action transfers the paternity proceeding to the court in which the adoption or termination proceeding is pending, whereupon the two proceedings may be considered.

(3) **~~Putative~~ Alleged or presumed father per Sections 7506-1. 1 through 7506-1.2 of Title 10 of the Oklahoma Statutes.** CPR protects the parental rights of ~~a putative~~ an alleged or presumed father who may wish to affirmatively assume responsibility for a child(ren) he may have fathered.

(A) The father or ~~putative~~ alleged or presumed father of a child born out of wedlock may file Form 04AN016E, Centralized Paternity Registry, indicating:

(i) a notice of desire to receive notification of an adoption proceeding concerning the child he has fathered;

(ii) a notice of intent to claim paternity of the child he has fathered;

(iii) an instrument acknowledging paternity of the child he has fathered;

(iv) a waiver of interest concerning the child he has fathered; or

(v) any other claim for acknowledging or denial of paternity as authorized by law.

(B) The CPR is also available to any person who:

(i) has been adjudicated by a court of another state or territory of the United States to be the father of a child by filing a certified copy of the court order with the CPR; or

(ii) has been adjudicated by a court of Oklahoma to be the father of a child born out of wedlock.

(C) A person filing a notice of desire to receive notification of an adoption proceeding concerning the child, a notice of intent to claim paternity of a child, or an acknowledgment of paternity provides his current address and notifies the CPR of any change of address. If the ~~putative~~ alleged or presumed father does not have an address where he is able to receive notice of an adoption, the ~~putative~~ alleged or presumed father may designate another person as an agent for the purpose of receiving notice of adoption. The ~~putative~~ alleged or presumed father must provide OKDHS with the agent's name and the address at which the agent may be served. Service of notice upon the agent constitutes service of notice upon the ~~putative~~ alleged or presumed father. If the agent cannot be served at the address provided by the ~~putative~~ alleged or presumed father, as provided in this subparagraph, and if the ~~putative~~ alleged or presumed father cannot be served because his whereabouts are unknown, the ~~putative~~ alleged or presumed father may be served by publication.

(D) An unrevoked notice of intent to claim paternity of a child or an instrument acknowledging paternity may be introduced in evidence in any proceeding in which it may be relevant.

(E) ~~A putative~~ An alleged or presumed father may waive his right to notice of termination of parental rights proceeding on Form 04AN019E filed with the CPR or by failing to register with the CPR after receiving a Notice of Plan for Adoption.

(F) ~~A putative~~ An alleged or presumed father may waive his right to notice of adoption proceedings by waiving notice on a form filed with the CPR or by failing to register with the Paternity Registry after receiving ~~a Notice of Plan for Adoption~~ Form 04AN018E.

(G) OKDHS, upon request, provides the names and addresses of persons listed with the CPR to any court, authorized agency, or other persons deemed necessary to receive such information by OKDHS. OKDHS provides CPR information to attorneys or licensed child-placing agencies upon request. The information is not divulged to any other person except upon order of a court for good cause shown.

[OAR Docket #08-1019; filed 5-22-08]

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

[OAR Docket #08-1021]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
Part 1. Licensing Services - Child Care
340:110-1-4 through 340:110-1-6 [AMENDED]
340:110-1-8 through 340:110-1-8.1 [AMENDED]
340:110-1-8.3 [AMENDED]
340:110-1-9 through 340:110-1-11 [AMENDED]
340:110-1-14 [AMENDED]
340:110-1-17 [AMENDED]
340:110-1-20 through 340:110-1-21 [AMENDED]
Part 3. Licensing Services - Residential Care and Agencies
340:110-1-40 [AMENDED]
340:110-1-42 through 340:110-1-43.1 [AMENDED]
340:110-1-45 through 340:110-1-47.2 [AMENDED]
340:110-1-51 through 340:110-1-53 [AMENDED]
340:110-1-55 [AMENDED]
Subchapter 3. Licensing Standards for Child Care Facilities
Part 1. Requirements for Child Care Centers
340:110-3-5 through 340:110-3-5.1 [AMENDED]
340:110-3-27 [AMENDED]
Part 2. Requirements for Part-Day Children's Programs
340:110-3-39 through OAC 340:110-3-40 [AMENDED]
340:110-3-49.3 [AMENDED]
Part 5. Requirements for Family Child Care Homes and Large Family Child Care Homes
340:110-3-81 through 340:110-3-82 [AMENDED]
340:110-3-84 through 340:110-3-88 [AMENDED]
340:110-3-89.1 through 340:110-3-91 [AMENDED]
340:110-3-91.1 [NEW]
340:110-3-92 through 340:110-3-94 [AMENDED]
340:110-3-97 through 340:110-3-97.1 [AMENDED]
Part 14. Requirements for School-Age Programs
340:110-3-223 through OAC 340:110-3-224 [AMENDED]
340:110-3-237 [AMENDED]
(Reference APA WF 07-16 and 08-05)
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, 2008 through March 17, 2008
Public hearing:
None requested
Adoption:
March 25, 2008
Submitted to Governor:
March 26, 2008
Submitted to House:
March 26, 2008
Submitted to Senate:
March 26, 2008
Gubernatorial approval:
May 8, 2008
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 20, 2008.
Final adoption:
May 20, 2008
Effective:
July 1, 2008
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 1. General Provisions
Part 1. Licensing Services - Child Care

340:110-1-9.4 [AMENDED]
Subchapter 3. Licensing Standards for Child Care Facilities
Part 1. Requirements for Child Care Centers
340:110-3-5 thru 340:100-3-5.1 [AMENDED]
340:110-3-27 [AMENDED]
Part 2. Requirements for Part-Day Children's Programs
340:110-3-39 thru 340:110-3-40 [AMENDED]
340:110-3-49.3 [AMENDED]
Part 5. Requirements for Family Child Care Homes and Large Family Child Care Homes
340:110-3-81 through 110-3-82 [AMENDED]
340:110-3-84 through 110-3-88 [AMENDED]
340:110-3-89.1 through 110-3-91 [AMENDED]
340:110-3-91.1 [NEW]
340:110-3-92 through 110-3-94 [AMENDED]
340:110-3-97 through 110-3-97.1 [AMENDED]
Part 14. Requirements for School-Age Programs
340:110-3-223 thru 340:110-3-224 [AMENDED]
340:110-3-237 [AMENDED]
(Reference APA WF 07-16)

Gubernatorial approval:
August 3, 2007
Register publication:
25 Ok Reg 22
Docket number:
07-1359
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed revisions improve the program and services provided by the Oklahoma Department of Human Services (OKDHS) licensing field staff to child care facilities. Revisions also clarify current policy and division practice and reflect change in division name. Revisions of language in licensing requirements were made to clarify language and reflect changes in agency forms. Most critical revisions occur in the area of fire safety and qualifications of the primary caregiver. These revisions impact the daily environment where children are in care therefore improving the quality of care received and further insuring children's safety. Revisions also allow for increased accessibility of licensing information for parents and the public.
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:
340:110-1-4.1 is amended to include the addition of new division forms.
340:110-1-6 is amended to reflect change in division name, requirements regarding a primary caregiver, and clarification of process for approval for family child care homes to provide foster care.
340:110-1-8 is amended to reflect change in division name, clarification of division procedure and addition of new forms for family child care homes.
340:110-1-8.1 is amended to reflect change in division name, clarify waiver procedures and the expansion of a waiver committee.
340:110-1-8.3 is amended to reflect change in division name, reordering of language, clarification of division practice and procedures, expansion of provider/master teacher qualifications, the compliance history time period was extended, and the frequency of the administering of the environmental rating scales were increased.
340:110-1-9 is amended to reflect change in division name and clarify procedures for limitations of inactive care.
340:110-1-9.2 is amended to reflect change in division name and clarify division procedure.
340:110-1-9.3 is amended to reflect change in division name and additions to non-compliances that are considered serious. 340:110-1-9.4 is revised to reflect change in division name and addition of a division form.
340:110-1-11 is amended to reflect change in division name and clarify procedures for case closure.
340:110-1-14 is amended to clarify language.
340:110-1-43.1 is amended to reflect change in division name and to include the additions of new division forms.
340:110-1-47.1 is amended to reflect change in division name and clarify language.
340:110-1-51 is amended to reflect change in division name and to revise waiver approval process.
340:110-1-52 is amended to clarify division policy.
340:110-1-4, 340:110-1-5, 340:110-1-9.1, 340:110-1-9.5, 340:110-1-10, 340:110-1-17, 340:110-1-20, 340:110-1-21, 340:110-1-40, 340:110-1-42 through 340:110-1-43, 340:110-1-45 through 340:110-1-47, 110-1-47.2, 340:110-1-53, and 340:110-1-55 are amended to reflect change in division name.
340:110-3-5, 340:110-3-39, 340:110-3-88, and 340:110-3-223 are revised to reflect change in the name of OKDHS forms and allow for language to be consistent with the findings indicated on the forms.

[OAR Docket #08-1021; filed 5-22-08]

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION
CHAPTER 1. ADMINISTRATION AND ORGANIZATION

[OAR Docket #08-1032]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
435:1-1-7. Fees [AMENDED]
AUTHORITY:
Title 59 O.S., Section 489, Board of Medical Licensure and Supervision
DATES:
Comment period:
February 1, 2008 - March 6, 2008
Adoption:
March 13, 2008
Submitted to Governor:
March 17, 2008
Submitted to House:
March 17, 2008
Submitted to Senate:
March 17, 2008
Gubernatorial approval:
April 22, 2008
Legislative approval:
Failure of the Legislature to disapprove the rule resulted in approval on May 9, 2008.
Final adoption:
May 9, 2008
Effective:
June 26, 2008
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
The orthotists and prosthetists renew every two years pursuant to rule 435:55-5-2. The language in the fee schedule was amended to reflect the biennial renewal period.
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 26, 2008:

435:1-1-7. Fees

(a) **Fee schedule.**

(1) **Licensure/registration.** The following fees shall be assessed for licensure and registration:

(A) Medical Doctor - Full license
(i) Application processing fee - $400.00
(ii) Reprocessing fee - 100.00
(iii) Temporary license - $200.00

(B) Medical Doctor - Special license
(i) Special training application processing fee - $200.00 (This fee may be applied toward the application processing fee in (a)(1)(A)(i) of this section when the special license was issued for first year post graduate training purposes.)
(ii) Special training reprocessing fee - $100.00

(C) Physician Assistants
(i) Initial application for licensure - $100.00
(ii) Application to practice fee - $50.00
(iii) Disciplinary hearing fee - actual cost of proceedings (including probation and other fees) as determined by the Board.

(D) Physical Therapist
(i) Application processing fee - 75.00
(ii) Reprocessing fee - 25.00
(iii) License - 50.00
(iv) Temporary permit - 25.00

(E) Physical Therapist Assistant
(i) Application processing fee - 75.00
(ii) Reprocessing fee - 25.00
(iii) License - 50.00
(iv) Temporary permit - 25.00

(F) Athletic Trainer
(i) Application processing fee - 100.00
(ii) Reprocessing fee - 25.00
(iii) License - 25.00

(G) Apprentice athletic trainer
(i) Application processing fee - 20.00
(ii) Transfer processing fee - 15.00
(iii) License - 5.00

(H) Licensed Dietitian
(i) Application processing fee - 50.00
(ii) Reprocessing fee - 25.00
(iii) License - 50.00

(I) Provisional licensed dietitian
(i) Application processing fee - 10.00
(ii) Reprocessing fee - 25.00
(iii) License - 10.00

(J) Occupational therapist
(i) Application processing fee - 50.00
(ii) Reprocessing fee - 25.00
(iii) License - 50.00

(K) Occupational therapy assistant
(i) Application processing fee - 50.00
(ii) Reprocessing fee - 25.00
(iii) License - 50.00

(L) Registered electrologists
(i) Application processing fee - 25.00
(ii) License - 25.00
(iii) Examination fee - 65.00

(M) Respiratory Care - Full license
(i) Application processing fee - 75.00
(ii) Reprocessing fee - 25.00

(N) Respiratory Care - Provisional license
(i) Application processing fee - 75.00
(ii) Reprocessing fee - 25.00

(O) Licensed Pedorthists application processing fee - 150.00

(P) Licensed Orthotist/Prosthetist application processing fee-250.00

(Q) Registered Orthotist/Prosthetist Assistant application processing fee-75.00

(R) Registered Orthotist/Prosthetist Technician application processing fee-50.00

(2) **Renewal/reregistration of license/registration.** The following fees shall be assessed for renewal/reregistration:

(A) Medical License - Full
(i) Application for annual reregistration fee - 150.00
(ii) Reactivation processing fee - 275.00
(iii) Reinstatement of license - 400.00

(B) Medical License-Special
(i) Application for annual reregistration fee for special training - $100.00
(ii) Application for annual reregistration fee for special limited - $125.00
(iii) Reactivation processing fee for special training - $150.00
(iv) Reactivation processing fee for special limited - $200.00
(v) Reinstatement processing fee for special training - $200.00

(C) Physical Therapist
(i) Annual renewal fee - 75.00
(ii) Late fee (After January 31) - 10.00

(D) Physical Therapist Assistant
(i) Annual renewal fee - 50.00
(ii) Late fee (After January 31) - 10.00

(E) Physician Assistants
(i) Annual renewal fee - $75.00
(ii) Late renewal fee - $125.00

(F) Athletic Trainer
(i) Application processing fee - 35.00
(ii) Annual renewal fee - 10.00
(iii) Late fee (After August 30) - 50.00

(G) Apprentice athletic trainer
(i) Application processing fee - 5.00
(ii) Annual renewal fee - 5.00
(iii) Late fee (After August 30) - 5.00

(H) Licensed Dietitian/provisional licensed dietitian
(i) Annual renewal fee - 75.00
(ii) Penalty (after October 31)-37.50

(iii) Penalty (after January 31) - 75.00

(I) Occupational therapist/occupational therapy assistant

(i) Application processing fee - 55.00

(ii) Annual renewal fee - 20.00

(iii) Late renewal (after October 31) - 20.00

(J) Registered electrologists

(i) Application processing fee - 20.00

(ii) Annual renewal fee - 20.00

(K) Respiratory Care - Full license

(i) Biennially renewal fee - 75.00

(ii) Reinstatement - renewal fee plus 100.00

(L) Respiratory Care - Provisional license - six month renewal fee - 75.00

(M) Licensed Pedorthist

(i) Annual renewal fee-50.00

(ii) Late fee (up to 30 days late)-25.00

(iii) Late fee (30 days to 1 year late)-50.00

(iv) Reinstatement fee - 150.00

(N) Licensed Orthotist/Prosthetist

(i) ~~Annual~~ Biennial renewal fee-125.00

(ii) Late fee (up to 30 days late)-50.00

(iii) Late fee (30 days to 1 year late)-100.00

(iv) Reinstatement fee-250.00

(O) Registered Orthotist/Prosthetist Assistant

(i) ~~Annual~~ Biennial renewal fee-75.00

(ii) Late fee (up to 30 days late)- 50.00

(iii) Late fee (30 days to 1 year late)-100.00

(iv) Reinstatement fee-75.00

(P) Registered Orthotist/Prosthetist Technician

(i) ~~Annual~~ Biennial renewal fee-50.00

(ii) Late fee (up to 30 days late)-50.00

(iii) Late fee (30 days to 1 year late)-100.00

(iv) Reinstatement fee-50.00

(3) **Duplication or modification of license/registration.** The following fees shall be assessed for duplication or modification of a license/registration:

(A) Medical License (Full) - 50.00

(B) Physician Assistant - 25.00

(C) Physical Therapist - 50.00

(D) Physical Therapy Assistant - 25.00

(E) Athletic Trainer - 25.00

(F) Apprentice Athletic Trainer - 15.00

(G) Licensed Dietitian - 25.00

(H) Provisional Licensed Dietitian - 25.00

(I) Occupational Therapist - 25.00

(J) Occupational Therapy Assistant - 25.00

(K) Special license - 25.00

(L) Respiratory Care - 25.00

(M) Licensed Pedorthist-25.00

(N) Licensed Orthotist/Prosthetist-25.00

(O) Registered Orthotist/Prosthetist Assistant-25.00

(P) Registered Orthotist/Prosthetist Technician-25.00

(4) **Miscellaneous fees.** The following miscellaneous fees shall be assessed by the Board:

(A) Certification of scores - 40.00

(B) Written verification of license/registration - 20.00

(C) Credentialing service-100.00 per licensee

(D) Web based services

(i) On-line monthly fee-50.00 (Three hundred (300) query returns included)

(ii) 301 to 350 queries per month-0.50 per return

(iii) 351 to 400 queries per month-0.25 per return

(iv) 401 and above queries per month-0.10 per return

(v) Database, statistical reports, mailing labels on floppy disks, CDs or by electronic mail-100.00/hour, minimum of one (1) hour. Fee is for one set of labels per order. Multiple labels may be printed for $50.00 each additional set.

(E) Duplicate renewal/registration card - 10.00

(F) Certification of public records (per page)- 1.00

(G) Duplication of public records (per page) - .25

(H) Unofficial transcript of public Board/Committee meetings (per page) - 1.50

(I) Issuance of subpoena - 5.00

(J) Returned check processing fee - 25.00

(K) Rate for Investigations for other agencies or bodies - at cost with deposit of $100.00 required to initiate investigation

(L) Premedical or Medical Education Qualifications Review - at cost with deposit of $100.00 required to initiate action

(M) Monitoring fees for Agreements: Actual costs of any testing or monitoring provided for in the Agreement.

(N) Disciplinary action fees:

(i) Probation fees - 100.00 per month.

(ii) Investigation/Prosecution fees - actual cost incurred.

(O) Filing of motions:

(i) Rehearing or reconsideration of any disciplinary case - 100.00

(ii) Rehearing or reconsideration of any licensing case-100.00

(iii) Terminate or modify probation/agreement - 100.00

(iv) Request for Specialty Board Certification under 435:10-7-2 - 100.00

(v) Priority issuance of subpoena or duces tecum subpoena within seven (7) days of hearing - 10.00

(vi) Request for exception as allowed by law/rules-100.00

(P) Reproduction of Board meeting video tape (per tape) - 15.00

(Q) Reproduction of Board meeting audio tape (per tape) - 15.00

(R) Administrative fine for practicing after revocation of license pursuant to 59 O.S. 491B-5,000/day

(b) **Submission of fees.**

(1) All fees assessed by the Board as set out in the fee schedule in (a) of this section shall be received prior to processing an application for licensure or certification.
(2) All fees are non-refundable.

[OAR Docket #08-1032; filed 5-23-08]

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

[OAR Docket #08-1033]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
Subchapter 7. Regulation of Physician and Surgeon Practice
435:10-7-6. Retired physicians and surgeons
AUTHORITY:
Title 59 O.S., Section 489, Board of Medical Licensure and Supervision
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Failure of the Legislature to disapprove the rule resulted in approval on May 9, 2008.
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
The amendment removes the fee associated with applying for Physician Emeritus (fully retired) status for medical doctors.
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 26, 2008:

SUBCHAPTER 7. REGULATION OF PHYSICIAN AND SURGEON PRACTICE

435:10-7-6. Retired physicians and surgeons

(a) Holders of full and unrestricted licenses may choose at any time to apply for Physician Emeritus (fully retired) status by notifying this office ~~and paying a $50.00 processing fee~~. There will be no ~~renewal~~ fee associated with obtaining or maintaining this licensure status.
(b) Physicians in this status may continue to use the title or append to their name the letters, M.D., Doctor, Professor, Specialist, Physician or any other title, letters or designation which represents that such person is a physician. Service on boards, committees or other such groups which require that a member be a physician shall be allowed.
(c) Once this status is acquired the physician shall not practice medicine in any form, prescribe, dispense or administer drugs.
(d) When a physician has retired from practice and subsequently chooses to return to active practice from retired status within six (6) months of the date of retirement, the physician shall:
(1) Pay required fees and
(2) Complete required forms
(e) When a physician has retired from practice and chooses to return to active practice from retired status more than six (6) months after date of retirement, in addition to the requirements of payment of fees and completion of forms, the physician may be required by the Board to:
(1) Make a personal appearance before the Board or Secretary of the Board;
(2) submit to a physical examination, psychological and/or psychiatric examination;
(3) provide evidence of successful completion of continuing medical education;
(4) Successfully take a competency and/or jurisprudence examination as directed by the Board or the Secretary of the Board.

[OAR Docket #08-1033; filed 5-23-08]

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

[OAR Docket #08-1034]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
Subchapter 5. Regulation of Practice
435:20-5-8. Unprofessional conduct - Grounds for disciplinary action [AMENDED]
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
The section regarding unprofessional conduct is being amended to include "failure to complete documentation" of patient records under unprofessional conduct.
CONTACT PERSON:
Jan Ewing, Deputy Director, 405-848-6841, #104

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2008:

SUBCHAPTER 5. REGULATION OF PRACTICE

435:20-5-8. Unprofessional conduct - Grounds for disciplinary action

(a) The Physical Therapy Advisory Committee may recommend to the Board to revoke or take other disciplinary action against a licensee or deny a license to an applicant for unprofessional conduct.

(b) Acts that constitute unprofessional conduct include, but are not limited to:

(1) Procuring aiding or abetting a criminal operation.

(2) Habitual intemperance or the habitual use of habit-forming drugs.

(3) Conviction of a felony or of any offense involving moral turpitude.

(4) Conviction or confession of a crime involving violation of the laws of this state.

(5) Dishonorable or immoral conduct that is likely to deceive, defraud, or harm the public.

(6) Aiding or abetting, directly or indirectly, the practice of physical therapy by any person not duly authorized under the laws of this state.

(7) Engaging in physical conduct with a patient that is sexual in nature, or in any verbal behavior that is seductive or sexually demeaning to a patient.

(8) Participation in fraud, abuse and/or violation of state or federal laws.

(9) Any conduct which potentially or actually jeopardizes a patient's life, health or safety.

(10) Verbally or physically abusing patients.

(11) Discriminating in the rendering of patient care.

(12) Negligence while in practice of physical therapy or violating the "Standards of Ethics and Professional Conduct" adopted by the Board.

(13) Habitual intemperance or addicted use of any drug, chemical or substance that could result in behavior that interferes with the practice of physical therapy and the responsibilities of the licensee.

(14) Unauthorized possession or use of illegal or controlled substances or pharmacological agents without lawful authority or prescription by an authorized and licensed independent practitioner of the State of Oklahoma.

(15) Fraudulent billing practices and/or violation of Medicare and Medicaid laws or abusive billing practices.

(16) Improper management of medical records, inaccurate recording, falsifying or altering <u>or failing to complete documentation</u> of patient records.

(17) Falsely manipulating patient's records or forging a prescription for medication/drugs, or presenting a forged prescription.

(18) Aiding, abetting or assisting any other person to violate or circumvent any law, rule or regulation intended to guide the conduct of a physical therapist or physical therapist assistant.

(19) Being judged mentally incompetent by a court of competent jurisdiction.

(20) Failing to timely make application for license renewal.

(21) Falsifying documents submitted to the Physical Therapy Committee or the Oklahoma State Board of Medical Licensure and Supervision.

(22) Obtaining or attempting to obtain a license, certificate or documents of any form as a physical therapist or physical therapist assistant by fraud or deception.

(23) Cheating on or attempting to subvert the national physical therapy examination or skills assessment tests.

(24) Leaving a patient care assignment without properly advising the appropriate personnel.

(25) Violating the confidentiality of information or knowledge concerning a patient.

(26) Conviction of, or confession of or plea of no contest to a felony or misdemeanor.

(27) While engaged in the care of a patient, engaging in conduct with a patient, patient family member, or significant other that is seductive or sexually demeaning/exploitive in nature.

(28) Failure to report through proper channels the unsafe, unethical or illegal practice of any person who is providing care.

(29) Failure to furnish to the Board, its investigators or representatives, information lawfully requested by the Board.

(30) Failure to cooperate with a lawful investigation conducted by the Board.

(31) Violation of any provision(s) of the Physical Therapy Practice Act or the rules and regulations of the board or of an action, stipulation, agreement or order of the Board.

(32) Failure to report to the Board any adverse action taken against him or her by another licensing jurisdiction (United States or foreign), by any governmental agency, by any law enforcement agency, or by an court for acts or

conduct similar to acts or conduct that would constitute grounds for action as defined in this section.

(c) A physical therapist or physical therapist assistant who knowingly allows or participates with individual(s) who are in violation of the above will be prohibited from supervising other physical therapy practitioners for so long as the Board deems appropriate, and may themselves be subject to disciplinary action pursuant to their conduct.

[OAR Docket #08-1034; filed 5-23-08]

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

[OAR Docket #08-1016]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Affirmative Action and Equal Employment Opportunity
Part 2. Discrimination Complaints Investigations
530:10-3-22 [AMENDED]
Subchapter 7. Salary and Payroll
Part 1. Salary and Rates of Pay
530:10-7-1.2
Subchapter 15. Time and Leave
Part 5. Miscellaneous Types of Leave
530:10-15-45 [AMENDED]
Subchapter 17. Performance Evaluation and Career Enhancement Programs
Part 17. State Work Incentive Program
530:10-17-177 [AMENDED]
Subchapter 21. Employee Assistance Programs
Part 1. General Provisions
530:10-21-5 [AMENDED]
Subchapter 23. Employee Recognition
Part 1. General Provisions
530:10-23-3 [AMENDED]
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, 840.2.10, 840-2.17, 840-2.22, 840-4.6, 840-5.16, and 4121.
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Superseded Rules:
Appendix A. Pay Band Schedule [REVOKED]
Appendix A. Pay Band Schedule [NEW]
Gubernatorial Approval:
September 1, 2007
Register publication:
25 Ok Reg 88
Docket number:
07-1389
INCORPORATIONS BY REFERENCE:
None.
ANALYSIS:
The proposed amendments to 530:10-3-22 are to clarify the training obligations for discrimination complaint investigators; the proposed amendments to 530:10-7-1.2 are due to statutory changes as a result of SB 626; the proposed amendments to 530:10-15-45 is for clarification of the rule to be consistent with FMLA provisions; the proposed amendments to 530:10-17-177 are due to statutory changes as a result of SB 626; the proposed amendments to 530:10-21-5 are due to statutory language changes and correction of legal citations; the proposed amendment to 530:10-23-3 are due to statutory changes as a result of SB 626; and proposed amendment to Appendix A of Title 530, Chapter 10 are to make current emergency amendments permanent, which were necessary to assure that the pay band within the Merit Rules is in compliance with the provisions of House Bill 1114, which amended the State Employee Minimum Wage Rate to that of a three-person household as established by the Federal Poverty Guidelines, which are issued by the United States Department of Health and Human Services, and the proposed amendments also include a pay band upward adjustment to the minimum, midpoint, and maximums by 3.0 percent, as reflected in the Office of Personnel Managements 2007 Annual Compensation report.
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, 2008:

SUBCHAPTER 3. AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY

PART 2. DISCRIMINATION COMPLAINTS INVESTIGATIONS

530:10-3-22. Training requirements for discrimination complaints investigators

(a) Unless otherwise provided by state or federal law, all persons who are designated to investigate complaints of employment discrimination in executive branch agencies shall ~~complete~~ be subject to the following initial training and initial certification provisions:

(1) completion of four days of initial discrimination complaints investigator training either conducted by the Office of Personnel Management or approved by the Administrator~~; and~~. The initial discrimination complaints investigator training shall provide participants with a current knowledge of:

(A) Oklahoma and federal equal employment opportunity laws and rules;

(B) theories of discrimination and burdens of proof;

(C) planning and conducting complete and impartial investigations;

(D) techniques for interviewing witnesses;

(E) collecting relevant evidence;

(F) documenting the record of investigation; and

(G) preparing the written report of investigation.

(2) In addition to the requirements referenced in (a)(1) of this Section a minimum of one investigation must be completed under the guidance of a senior EEO investigator, designated by the Administrator. The senior EEO investigator shall advise and support the investigator in developing competency in investigating complaints of discrimination.

(3) ~~a minimum of six hours of classroom instruction or 0.6 Continuing Education Units (CEUs) in training related to the subjects listed in subsection (b) of this section or section (a)(1) of OAC 530:10-3-78 each calendar year and other annual training that may be announced by the Administrator. Persons who complete annual training shall submit proof of completion that is acceptable to the Administrator no later than December 31st of each year.~~ a person who has completed the initial training requirements established in (a)(1) of this Section and who is conducting an investigation under the guidance of a senior EEO investigator required in (a)(2) of this Section shall be considered as conditionally meeting the training requirements of the Administrator and shall be considered to be in compliance of this Part for that investigation.

(4) the Administrator will certify that a person has completed the training requirements for investigating complaints of discrimination after the Administrator:

(A) determines the person has completed the initial training requirements established in (a)(1) of this Section, and

(B) receives recommendation from the senior EEO investigator under whose guidance one or more investigations have been conducted as required in (a)(2) of this Section that the person seeking certification has demonstrated competency in conducting investigations; or the Administrator waives the recommendation requirement.

(5) the Administrator shall send notice of certification to the person certified and to the certified person's Appointing Authority if the person is a state employee.

(b) ~~Discrimination complaints investigator training shall provide participants with a current knowledge of:~~All persons who are designated to investigate complaints of employment discrimination in executive branch agencies shall be subject to the following continuing education training requirements:

(1) ~~Oklahoma and federal equal employment opportunity laws and rules;~~A minimum of six hours of classroom instruction or 0.6 Continuing Education Units (CEUs) in training related to the subjects listed in (b)(2) of this section each calendar year or other annual training that may be announced by the Administrator. Investigators who complete annual training shall submit proof of completion that is acceptable to the Administrator no later than December 31st of each year.

(2) ~~theories of discrimination and burdens of proof~~; Discrimination complaints investigator annual training shall provide participants with a current knowledge of:

(A) Oklahoma and federal equal employment opportunity laws and rules; including the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., and Section 504 of the Federal Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq., and court cases;

(B) theories of discrimination and burdens of proof;

(C) planning and conducting complete and impartial investigations;

(D) techniques for interviewing witnesses;

(E) collecting relevant evidence;

(F) documenting the record of investigation; and

(G) preparing the written report of investigation.

(H) investigating discrimination complaints;

(I) personnel practices and procedures;

(J) alternative dispute resolution; or

(K) diversity and multi-culturalism.

(3) ~~planning and conducting complete and impartial investigations;~~ Discrimination complaints investigators who do not complete the annual training described in (b)(1), or who fail to report such training by January 30th of the following year, will be placed on an "inactive" list and shall not conduct discrimination complaints investigations until the training requirement for the previous year has been met and reported.

~~(4) techniques for interviewing witnesses;~~

~~(5) collecting relevant evidence;~~

~~(6) documenting the record of investigation; and~~

~~(7) preparing the written report of investigation.~~

~~(c) A person who has completed the initial training requirements established in (a)(1) of this Section and who is conducting an investigation under the guidance of a senior EEO investigator required in (a)(2) of this Section shall be considered as conditionally meeting the training requirements of the Administrator and shall be considered to be in compliance of this Part for that investigation.~~

~~(d) The Administrator will certify that a person has completed the training requirements for investigating complaints of discrimination after the Administrator:~~

~~(1) determines the person has completed the initial training requirements established in (a)(1) of this Section, and~~

~~(2) receives recommendation from the senior EEO investigator under whose guidance one or more investigations have been conducted as required in (a)(2) of this Section that the person seeking certification has demonstrated competency in conducting investigations; or the Administrator waives the recommendation requirement.~~

~~(e) The Administrator shall send notice of certification to the person certified and to the certified person's Appointing Authority if the person is a state employee.~~

~~(f) Discrimination complaints investigators who do not complete the annual training described in (a)(3), or who fail to report such training by January 15th of the following year, will be placed on an "inactive" list and shall not conduct discrimination complaints investigations until the training requirement for the previous year has been met and reported.~~

SUBCHAPTER 7. SALARY AND PAYROLL

PART 1. SALARY AND RATES OF PAY

530:10-7-1.2. Funding and reporting requirements

(a) Use of pay movement mechanisms involving market adjustments, lateral transfers, skill-based pay adjustments, equity-based adjustments, career progression increases, probationary increases, increases upon the completion of trial periods, and performance-based adjustments are limited to those possible using funds available in the agency's budget for the current and subsequent fiscal year without the need for additional funding. [74:840-2.17]

(b) All Appointing Authorities shall, no later than ~~January~~August **1** of each year, report to the Office of Personnel Management ~~a projection of~~ the cost of the pay movement mechanisms listed in subsection (a) ~~to be~~ used ~~and anticipated costs for the remainder of~~ during the previous fiscal year. [74:840-2.17]

SUBCHAPTER 15. TIME AND LEAVE

PART 5. MISCELLANEOUS TYPES OF LEAVE

530:10-15-45. Family and medical leave

(a) The federal Family and Medical Leave Act of 1993 entitles eligible employees to family and medical leave. This section is not a comprehensive listing of the provisions of the federal Family and Medical Leave Act of 1993 (29 U.S.C, 2601 et seq.) and regulations promulgated thereunder, and is not intended to conflict with either the Act or the regulations. To be eligible, an employee shall have been employed by the state at least **12** months and have worked at least **1,250** hours during the preceding **12**-month period.

(b) An eligible employee is entitled to family and medical leave for up to a total of **12** weeks during any **12**-month period, for the following reasons:

(1) the birth of the employee's son or daughter, and to care for the newborn child;

(2) the placement with the employee of a son or daughter for adoption or foster care;

(3) to care for the employee's spouse, son, daughter, or parent with a serious health condition. As used in this subsection, "son" or "daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability; ~~and~~

(4) a serious health condition that makes the employee unable to perform the functions of the employee's job; or

(5) any qualifying exigency (as defined by U.S. Department of Labor Regulations) arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty or has been notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation.

(c) An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of 26 weeks of leave during a 12-month period to care for the servicemember. The leave described in this paragraph shall only be available during a single 12-month period. During the single 12-month period described in this paragraph, an eligible employee shall be entitled to combined total of 26 weeks of leave under paragraph (b) and (c). Nothing in this paragraph shall be construed to limit the availability of leave under paragraph (b) during any other 12-month period.

(~~c~~d) An Appointing Authority may require that an employee's request for family and medical leave to care for the employee's seriously-ill spouse, son, daughter, or parent, or due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's position, be supported by a certification issued by the health care provider of the employee or the employee's ill family member. An Appointing Authority may require a certification issued by the health care provider of a covered servicemember being cared for by an employee.

(~~d~~e) The entitlement to family and medical leave resulting from (b)(1) and (b)(2) of this Section expires at the end of the **12**-month period beginning on the date of the birth or placement.

(~~e~~f) When family and medical leave is taken to care for a sick family member as defined in (b)(3) of this Section, a covered servicemember as referenced in (c) of this Section, or for an employee's own serious health condition, leave may be taken intermittently or on a reduced leave schedule when it is medically necessary. When family and medical leave is taken for a qualifying exigency as referenced in (b)(5) of this Section, leave may be taken intermittently or on a reduced leave schedule. An Appointing Authority may adopt a policy allowing family and medical leave to be taken intermittently to care for a newborn child or newly placed adopted or foster child.

(~~f~~g) Whenever it is possible, an employee shall schedule family and medical leave to accommodate the operations of the employee's agency. An employee shall give the Appointing Authority notice and a leave request at least **30** days before leave is to begin if the need for family and medical leave is expected. In any case in which the necessity for leave under (b)(5) of this Section is foreseeable, the employee shall provide such notice to the employer as is reasonable and practicable. When the need for family and medical leave is unexpected, an employee shall give the Appointing Authority notice and a leave request as soon as possible. The notice and request shall:

(1) be in writing;

(2) refer to this Section;

(3) describe the reason for the family and medical leave;

(4) specify the type of leave the employee is requesting to account for the time off; and

(5) include any information or documentation required for the type of leave requested.

(~~g~~h) The Appointing Authority has the responsibility to review requests for sick leave and leave without pay for designation as family and medical leave. The Appointing Authority has the right to designate leave taken for an FMLA-qualifying event as FMLA leave, regardless of whether the employee has requested FMLA leave. The Appointing Authority's designation decision shall be based only on information provided by the employee or the employee's spokesperson. In accordance with the federal Family and Medical Leave Act, the Appointing Authority shall not designate leave as family and medical leave retroactively, unless the Appointing Authority does not have sufficient information concerning the employee's reason for taking the leave until after the leave period has begun.

(~~h~~i) Family and medical leave is not a separate type of leave, and it is not accrued or accumulated. An Appointing Authority shall give employees the following options to account for time lost because of leave under the federal Family and Medical Leave Act of 1993.

(1) Charge to accumulated annual leave [74:840-2.22];

(2) Charge to accumulated sick leave [74:840-2.22];

(3) Charge to leave donated by other state employees under Section 840-2.23 of Title 74 of the **Oklahoma Statutes**, which is also known as "shared leave";

(4) Charge to accumulated compensatory time. If FMLA qualifying leave is paid with an employee's accrued compensatory time, the time shall not be charged against the employee's ~~**12** week~~ FMLA entitlement [29 CFR 825.207(i)]; ~~and~~or

(5) Record as leave without pay in accordance with 530:10-15-47.

(~~i~~j) The agency shall continue paying the employee's insurance coverage while the employee is on family and medical leave.

(~~j~~k) Upon return from family and medical leave, an employee shall have the right to be restored to the same or equivalent position and benefits, except for extension of his or her anniversary date for longevity pay, leave accrual, and calculation of retention points, he or she would have had if the employee had been continuously employed in pay status during the leave period.

(~~k~~l) An employee shall not be required to take more leave than necessary to resolve the circumstance that precipitated the need for leave.

SUBCHAPTER 17. PERFORMANCE EVALUATION AND CAREER ENHANCEMENT PROGRAMS

PART 17. STATE WORK INCENTIVE PROGRAM

530:10-17-177. Conversion

(a) **Eligibility.** Persons employed by merit system agencies under the State Work Incentive Program shall be eligible for conversion to permanent classified status at the discretion of the Appointing Authority if the employee has:

(1) completed **2** years of continuous participation in the State Work Incentive Program, not including periods of leave without pay in accordance with 530:10-17-175;

(2) performed satisfactorily as evidenced by performance evaluations conducted according to Section 840-4.17 of Title 74 of the Oklahoma Statutes; and

(3) met the minimum requirements for the position~~; and~~.

~~(4) passed any entrance examination required for the applicable job family level by the Office of Personnel Management~~.

(b) **Direct conversion.** Direct conversion means the conversion of an employee to permanent classified status immediately following the successful completion of **2** years service under the State Work Incentive Program. Conversion shall be to a job consistent with the duties assigned to the employee under the State Work Incentive Program. The conversion of employees who meet the requirements of subsection (a) to permanent classified status shall be exempt from:

(1) the application, certification, and appointment requirements of Subchapter 9 of these rules;

(2) the probationary period requirements of Part 3 of Subchapter 11 of these rules; and

(3) the promotional posting requirements of Part 5 of Subchapter 11 of these rules.

(c) **Conversion following a break in service or to a different job.** If an employee completes a **2** year appointment under the State Work Incentive Program and is separated from the unclassified appointment under this program without being directly converted, the employee will be eligible for future appointment for up to **2** years following the completion of the State Work Incentive Program and eligible persons may make application for employment directly with state agencies. Additionally, a person may be converted to a different job which is not consistent with the duties and responsibilities performed under the State Work Incentive Program appointment subject to the following conditions. Prior to appointment and conversion of a person under this authorization, the agency shall meet the internal positing requirement of Part 5 of 530:10-11 and may require a probationary period in accordance with 530:10-9-102. The following requirements must also be met:

(1) The Administrator must certify that the person meets the current minimum qualifications for the job;

~~(2) The Administrator may require the person to pass a qualifying examination before approving the appointment;~~

(~~3~~2) The date the person enters on duty must be within **2** years after the completion of the State Work Incentive Program appointment; and

(~~4~~3) The probationary period must be in accordance with 530:10-11-30.

(d) **Salary upon conversion.** If there is no break in service and conversion is to a job which is consistent with the duties

and responsibilities performed during the State Work Incentive Program appointment, the salary shall be fixed at the rate of pay in effect for the employee at the time of conversion. If the conversion is to a different job, or the conversion follows a break in service, the salary shall be determined in accordance with 530:10-7-3.

SUBCHAPTER 21. EMPLOYEE ASSISTANCE PROGRAMS

PART 1. GENERAL PROVISIONS

530:10-21-5. EAP records

(a) Records and information that relate to participation by an employee or family member in the EAP *shall be confidential* except as provided in Subsection (b) of this Section [*N]either the records nor the testimony of an Employee Assistance Program professional shall be subject to subpoena unless a participant poses a threat to deliberately harm the participant or others.* [74:840-2.10(D)]

(b) EAP staff and EAP professionals may have access to EAP records within their agency as necessary to perform the duties and responsibilities of their job. EAP staff and EAP professionals may disclose confidential information relating to a participant under the following circumstances:

(1) The participant consents in writing to the release of information;

(2) The participant's employing agency requests verification of an employee's appointment with an EAP professional for the purpose of granting authorized absence according to 530:10-21-7. The disclosure shall be limited to the date and time of the employee's appointment with the EAP professional;

(3) The EAP professional determines that the participant poses a threat to deliberately harm the participant or others [74:840-2.10(D)];

(4) There is *reason to believe that a child under the age of eighteen (18) years has had physical injury or injuries inflicted upon the child by other than accidental means where the injury appears to have been caused as a result of physical abuse, sexual abuse, or neglect* ~~[21:846(A)]~~[10:7103(A)];

(5) There is *reason to believe that* ~~*an*~~*a* ~~*elderly person or incapacitated adult*~~ *vulnerable adult is suffering from abuse, neglect, or financial exploitation* [43A:10-104(A)];

(6) A court of competent jurisdiction orders the inspection, release, or disclosure of confidential information.

(c) Records and information relating to participation by an employee in the EAP *shall be maintained separate and apart from regular personnel records and shall not become part of the employee's personnel file* [74:840-2.10(D)].

(d) Participants in the EAP shall have a right of access to their own EAP records [74:840-2.10(D)].

(e) The provisions of this Section shall remain effective regardless of whether the participant has ceased participation in the EAP or has terminated employment with the state.

SUBCHAPTER 23. EMPLOYEE RECOGNITION

PART 1. GENERAL PROVISIONS

530:10-23-3. Employee performance recognition programs

(a) At the discretion of the Appointing Authority, agencies may establish employee performance recognition programs to recognize individual employees or work units with exceptional job performance records or for other significant contributions to the agency. Agencies may not request additional funding from the Legislature in order to fund employee performance recognition programs.

(b) Recognition awards may consist of distinctive wearing apparel, service pins, plaques, writing pens, or other awards. The value of recognition awards may not exceed $150.00 per recognized employee each fiscal year.

(c) In addition to the recognition awards as provided in Subsection (b), agencies may provide cash awards to recognize outstanding performance in the workplace by the employees of the agency. Cash awards may not exceed ~~$250.00~~$500.00 per recognized employee each fiscal year.

(d) The awards authorized in this Section may be presented at a formal or informal ceremony, banquet, or reception, the cost of which may be funded from monies available in the agency's operating funds. [74:4121]

APPENDIX A. PAY BAND SCHEDULE [REVOKED]

APPENDIX A. PAY BAND SCHEDULE [NEW]

PAY BAND	MINIMUM	MIDPOINT	MAXIMUM
A*	$17,170	$17,701	$22,126
B*	$17,170	$18,551	$23,189
C*	$17,170	$19,626	$24,533
D*	$17,170	$21,158	$26,448
E	$17,456	$23,275	$29,094
F	$19,202	$25,602	$32,003
G	$21,122	$28,163	$35,204
H	$23,234	$30,979	$38,724
I	$25,730	$34,307	$42,884
J	$28,288	$37,717	$47,146
K	$30,920	$41,227	$51,534
L	$34,012	$45,349	$56,686
M	$37,752	$50,336	$62,920
N	$41,906	$55,874	$69,843
O	$46,934	$62,578	$78,223
P	$53,036	$70,714	$88,393
Q	$59,930	$79,907	$99,884
R	$67,721	$90,295	$112,869

[OAR Docket #08-1016; filed 5-22-08]

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

[OAR Docket #08-1027]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. General Course in Method of ~~Operation~~Operations
535:1-5-5.1. Complaint confidentiality
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).
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n/a
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n/a
ANALYSIS:
The revisions in 535:1-5-5.1 in (b) removes "(a) above" and replaces it with "complainant or informant information". It adds a new (c) and (d) which describe record confidentiality and or access to records. It is at recommended by our Assistant Attorney General to encourage the public to come forward with their complaints.
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, 2008:

SUBCHAPTER 5. GENERAL COURSE IN METHOD OF ~~OPERATION~~ OPERATIONS

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 complainant or informant information~~(a) above~~ will be redacted from case files prior to providing the information to the public.

(c) Information obtained during an investigation into violations of the Oklahoma Pharmacy Act is not a record as that term is defined in the Oklahoma Open Records Act nor shall such information be subject to subpoena or discovery in any civil or criminal proceeding.

(d) The respondent may acquire information obtained during an investigation, unless the disclosure of such information is otherwise prohibited, except for an investigation report, if the respondent signs a protective order whereby the respondent agrees to use the information solely for the purpose of defense in the Board proceeding and in any appeal there from and agrees not to otherwise disclose the information.

[OAR Docket #08-1027; filed 5-22-08]

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

[OAR Docket #08-1028]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Pharmacists
535:10-3-1.2. Violations of professional conduct [AMENDED]
Subchapter 7. Pharmacist Licensure
535:10-7-8. Foreign pharmacy graduates licensure applicants [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.
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ANALYSIS:
This revision removes the limiting language on 535:10-3-1.2 (15) regarding theft and adds (23) regarding violation of any voluntary or Board ordered rehabilitation program for the impaired to violations of professional conduct for pharmacists and interns. The revision in 535:10-7-8 adds the option for foreign pharmacy graduates once the have met Board requirements, to use reciprocity or score transfer process for pharmacist licensure as well as Naplex (licensure by examination).
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, 2008:

SUBCHAPTER 3. PHARMACISTS

535:10-3-1.2. Violations of professional conduct

Violations of the rules of professional conduct, which may also be called unprofessional conduct, include, but are not limited to, the following:

(1) The act of violating directly, indirectly, through actions of another, assisting in or abetting the violation of, or conspiring to violate, any provision or term of the Oklahoma State Board of Pharmacy, Title 59, 353 et seq., the Prescription Drug Marketing Act (21 U.S.C., Sec. 331 et seq.), the Robinson-Patman Act (15 U.S.C., Sec. 13 et seq.), or federal, state and local laws and rules governing pharmacists or pharmacies.

(2) Failure to establish and maintain effective controls against the diversion of prescription drugs into other than legitimate medical, scientific, or industrial channels as provided by federal, state or local laws or rules.

(3) Making or filing a report or record which a pharmacist or pharmacy knows to be false, intentionally or negligently failing to file a report or record required by federal, state or local laws or rules, willfully impeding or obstructing such filing, or inducing another person to do so. Such reports or records include only those which the pharmacist or pharmacy is required to make or file in his capacity as a licensed pharmacist or pharmacy.

(4) Practicing pharmacy without reasonable skill and safety by reason of illness, use and/or abuse of drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition.

(5) Knowingly dispensing a prescription drug after the death of a patient.

(6) Knowingly billing or charging for quantities greater than delivered, or for a brand when a generic or a compounded product is dispensed.

(7) Submitting fraudulent billing or reports to a third party payor of prescription drugs.

(8) Refusing to answer reasonable questions or provide information about prescriptions dispensed by the pharmacy when requested by, or for, the patient and which would aid the patient's health in the professional judgement of the pharmacist.

(9) Not attempting to resolve a possible prescription error or situation of potential harm to the patient when apparent or should have been apparent to the pharmacist.

(10) Not attempting to address the possible addiction or dependency of a patient to a drug dispensed by the pharmacist, if there is reason to believe that the patient may be dependent or addicted.

(11) The assertion or inference in a public manner of material claims of professional superiority in the practice of pharmacy that cannot be substantiated.

(12) The publication or circulation of false, misleading, or otherwise deceptive statements concerning the practice of pharmacy.

(13) Discriminating in any manner between patients or groups of patients for reasons of a particular disease, religion, race, creed, color, sex, age or national origin.

(14) Violating patient confidentiality. This does not prevent pharmacies from providing drug therapy information to physicians for their patients, nor does it prevent the provision of information as required by law.

(15) Theft ~~of merchandise (including, but not limited to, legend drugs)~~ while practicing pharmacy.

(16) Knowingly dispensing prescription drug refills after the death of a physician. (A limited quantity may be allowed for the patient's health and safety.)

(17) Failure to establish and maintain effective controls to prevent prescription errors or mis-fills.

(18) The misfilling of a prescription that departs from the standards of care ordinarily exercised by a pharmacist with proof of actual injury not having to be established.

(19) Providing fictitious information, fraud or misrepresentation in applying for or procuring a pharmacist license, preceptor certificate or other permit, or in connection with applying for or procuring periodic re-registration or renewal of the same.

(20) Attempting to cheat or subverting the pharmacist licensure examination, Oklahoma law examination, Oklahoma preceptor examination or any other examination required by the Board.

(21) Allowing a non-pharmacist to perform any of the duties reserved to a pharmacist.

(22) Use or abuse of an illegal CDS substance or a positive drug screen for such illegal CDS substance or its' metabolite.

(23) Violation of any voluntary or Board ordered rehabilitation program for the impaired contract, e.g. OPHP contract.

AGENCY NOTE: *Originally from 535:10-3-1(b), see also 535:10-3-1.1.*

SUBCHAPTER 7. PHARMACIST LICENSURE

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 1000 hours of internship in Oklahoma within 12 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

(1) the NAPLEX (licensure by examination) as set forth in 535:10-7-5, or,

(2) Reciprocity as set forth in 535:10-7-6; or,

(3) Score transfer as set forth in 535:10-7-7.

[OAR Docket #08-1028; filed 5-22-08]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 20. MANUFACTURERS, PACKAGERS, AND WHOLESALERS

[OAR Docket #08-1029]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 7. Wholesalers and Pedigree Rules

535:20-7-1. Purpose [AMENDED]

535:20-7-2. Definitions [AMENDED]

535:20-7-3. Wholesale drug distributor licensing requirement [AMENDED]

535:20-7-4. Minimum required information for licensure [AMENDED]

535:20-7-5. Minimum qualifications [AMENDED]

535:20-7-6. Personnel [AMENDED]

535:20-7-7. Minimum requirements for the storage, ~~and~~ handling, transport, and shipment of ~~prescription~~ drugs and/or devices and ~~for the~~ establishment and maintenance of ~~prescription~~ drug ~~distribution~~ records [AMENDED]

535:20-7-7.1. Facility requirements [AMENDED]

535:20-7-7.2. Multiple Licensing [AMENDED]

535:20-7-7.3. Security and anti-counterfeiting [AMENDED]

535:20-7-7.4. Storage [AMENDED]

535:20-7-7.5. Examination of materials [AMENDED]

535:20-7-7.6. Drug returns, and returned, ~~Returned,~~ damaged, and outdated ~~prescription~~ drugs [AMENDED]

535:20-7-7.7. Recordkeeping [AMENDED]

535:20-7-7.8. Written policies and procedures [AMENDED]

535:20-7-7.9. Responsible persons [REVOKED]

535:20-7-7.10. Compliance with federal, state and local laws [AMENDED]

535:20-7-7.11. Salvaging and reprocessing [REVOKED]

535:20-7-9.1. Prohibited Conduct [NEW]

AUTHORITY:

Title 51 O.S. 24A et seq., 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; and Title 75 O.S., Section 302, 305, 307, and 309; and Title 63 O.S., Sec 2-201, 2-208 and 2-210; and Title 51 Sec. 24 A.5 (3).

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SUPERSEDED EMERGENCY ACTION:

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Subchapter 7. Wholesalers and pedigree rules

535:20-7-1. Purpose [AMENDED]

535:20-7-2. Definitions [AMENDED]

535:20-7-3. Wholesale drug distributor licensing requirement [AMENDED]

535:20-7-4. Minimum required information for licensure [AMENDED]

535:20-7-5. Minimum qualifications [AMENDED]

535:20-7-6. Personnel [AMENDED]

535:20-7-7. Minimum requirements for the storage, ~~and~~ handling, transport, and shipment of ~~prescription~~ drugs and/or devices and ~~for the~~ establishment and maintenance of ~~prescription~~ drug ~~distribution~~ records [AMENDED]

535:20-7-7.1. Facility requirements [AMENDED]

535:20-7-7.2. Multiple Licensing [AMENDED]

535:20-7-7.3. Security and anti-counterfeiting [AMENDED]

535:20-7-7.4. Storage [AMENDED]

535:20-7-7.5. Examination of materials [AMENDED]

535:20-7-7.6. Drug returns, and returned, ~~Returned,~~ damaged, and outdated ~~prescription~~ drugs [AMENDED]

535:20-7-7.7. Recordkeeping [AMENDED]

535:20-7-7.8. Written policies and procedures [AMENDED]

535:20-7-7.9. Responsible persons [REVOKED]

535:20-7-7.10. Compliance with federal, state and local laws [AMENDED]

535:20-7-7.11. Salvaging and reprocessing [REVOKED]

535:20-7-9.1. Prohibited Conduct [NEW]

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n/a

ANALYSIS:

Wholesale / pedigree rules are required by statute (SB-640 and HB-1347, 2005). The purpose statement in 535:20-7-1 is expanded to include the new statutory wholesaler pedigree requirement to ensure the integrity of wholesale drugs owned, purchased, distributed, transferred or sold.

New and modified definitions in 535:20-7-2 include adulterated, authenticate, chain pharmacy warehouse, co-licensee, contraband drug, counterfeit drug, drop shipment, exclusive distributor, misbranded, normal distribution channel, packager, pedigree, prescription drug, repackage, and wholesale distributions. The "Authenticate" definition is changed from the

emergency rules. The "Wholesale Distribution and wholesale distributions" definition is changed from the emergency rules to add (K) and (L).

Changes were made in wholesale drug distributor licensing requirements in 535:20-7-3 to clarify the requirement in statue that each location be licensed and renew annually and provide the minimum required information for licensure and that such license be publicly displayed. Changes were made as required in statute in minimum required information for licensure in 535:20-7-4. In minimum qualifications in 535:20-7-5 revisions were made to clean up language and an addition to enable the Board to disallow renewal of a wholesaler license where there is no record of wholesale distributions. Revisions in 535:20-7-6 personnel describe designated manager requirements. 535:20-7-7 minimum requirement for storage handling transport and shipment of drugs or devices and maintenance of records language cleanup.

Revisions in 535:20-7-7.1 through 535:20-7-7.11 will bring Oklahoma rules into compliance with the updated federal Prescription Drug Marketing Act and improve clarity of the rules. Under examination of materials 535:20-7-7.5 the (e) which was added in the emergency rules will be removed in this permanent rule.

535:20-7-7.7 adds an effective date for pedigree after 1/01/2009 to allow systems to be established by wholesalers to accommodate the pedigree tracking requirement. Rule changes in 535:20-7.7-8 will establish an identifying / reporting procedure for discrepancies. Responsible person language in 535:20-7-7.9 is modified and moved to 535:20-7-6 personnel. Salvaging and reprocessing in 535:20-7-7.11 is modified and moved to 535:20-7-7.6 (h). New prohibited conduct for wholesalers is added at 535:20-7-9.1.

As long as those who divert drugs truthfully report such diversion in a pedigree and as long as wholesalers know who the "bad actors" are and refuse to accept drugs from the same, these rules will protect the drug supply chain.

Concerns regarding the federal injunction of federal FDA pedigree rules and restraint of trade issues; and the lengthy process of getting input from manufacturers, wholesale distributors, chain pharmacy warehouses, logistics providers and repackagers in order to draft these rules delayed the promulgation of these wholesale pedigree rule revision to protect the wholesale drug supply chain.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 7. WHOLESALERS AND PEDIGREE RULES

535:20-7-1. Purpose

(a) The rules in this Subchapter set the minimum standards, terms, and conditions for persons who must license before engaging in wholesale distributions in interstate and/or intrastate commerce of Rx Only (prescription) drugs, and implement the Prescription Drug Marketing Act of 1987.

(b) The rules in this Subchapter are to implement the requirements authorized in Title 59, Oklahoma Statutes Section 353.1 et seq.

(c) The rules in this Subchapter are to implement Title 59 O.S. Section 353.18 (D).

(d) The rules in this Subchapter establish a pedigree or electronic file for the purpose of ensuring the integrity of drugs owned, purchased, distributed, returned, transferred and sold.

535:20-7-2. Definitions

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

"Adulterated" means a drug which shall be deemed to be adulterated if it meets the federal Food and Drug Administration (FDA)'s definition of adulterated. Or:

(A) If it consists in whole or in part of any filthy, putrid, or decomposed substance; or

(B) If:

(i) it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or

(ii) if the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that the drug meets the requirements of this part as to safety and has the identity and strength, and meets the quality and purity characteristics which it purports or is represented to possess; or

(C) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(D) If:

(i) it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of the Federal FDA Act; or

(ii) it is a color additive, the intended use of which is for purposes of coloring only, and is unsafe within the meaning of the Federal FDA Act;

(E) If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in the compendium. Such a determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in the compendium, or in the absence of or inadequacy of these tests or methods of assay, those prescribed under authority of the Federal FDA Act. No drug defined in an official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality, or purity therefore set forth in the compendium, if its difference in strength, quality, or purity from that standard is plainly stated on its label; or

(F) If it is not subject to subparagraph (E) and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess; or

(G) If it is a drug and any substance has been (A) mixed or packed therewith so as to reduce its quality or strength; or (B) substituted wholly or in part therefore.

"Authenticate" means to affirmatively verify before any wholesale distribution of a drug occurs that all transactions as listed on the pedigree has occurred.

"Blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing.

"Blood component" means that part of blood separated by physical or mechanical means.

"Chain pharmacy warehouse" means a central warehouse, licensed as a wholesaler, for prescription drugs that performs intra-company sales or intra-company transfers of such drugs to a group of chain pharmacies that have the same common ownership and control.

"Co-licensee" means a pharmaceutical manufacturer that has entered into an agreement with another pharmaceutical manufacturer to engage in a business activity or occupation related to the manufacture or distribution of a Prescription Drug.

"Contraband drug" means a drug which is counterfeit, stolen, misbranded, obtained by fraud, or purchased and/or placed in commerce in violation of the federal Prescription Drug Marketing Act.

"Counterfeit drug" means a drug which, or the container, shipping container, seal, or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a manufacturer, processor, packer, or distributor other than the person or persons who in fact manufactured, processed, packed, or distributed such drug and which thereby falsely purports or is represented to be the product of, or to have been packed or distributed by, such other manufacturer, processor, packer, or distributor.

"Drop shipment" means the sale of a prescription drug to a wholesale distributor by the manufacturer of the prescription drug, or that manufacturer's co-licensee, that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor, whereby the wholesaler distributor takes title but not physical possession of such prescription drug and the wholesaler distributor invoices the pharmacy or chain pharmacy warehouse, or other person authorized by law to dispense or administer such drug to a patient, and the pharmacy or chain pharmacy warehouse or other person authorized by law to dispense or administer such drug to a patient receives delivery of the prescription drug directly from the manufacturer, or that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor, or that manufacturer's co-licensee.

"Exclusive Distributor" means a licensed wholesaler that contracts with a Manufacturer to provide or coordinate warehousing, wholesale distribution, or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the sale or disposition of the manufacturer's prescription drug.

"Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

"Manufacturer" ~~means anyone who is engaged, except a pharmacy, in preparing, propagating, compounding, processing, packaging, repackaging and labeling or anyone who is engaged in manufacturing of a prescription drug.~~ means manufacturer as defined in Title 59 O.S. Section 353.1.

"Misbranded": A drug shall be deemed to be misbranded if it meets the federal Food and Drug Administration (FDA)'s definition of misbranded, or if the label is false or misleading; or the label does not bear the name and address of the manufacturer, packer, and/or distributor as required and does not have an accurate statement of the quantities of the active ingredients; or does not show an accurate monograph for legend drugs; or other considerations as noted in the Federal Food, Drug and Cosmetic Act.

"Normal distribution channel" means a chain of custody or drop shipment for a prescription drug that goes from a manufacturer of the prescription drug, or from the manufacturer's co-licensee, or from the manufacturer's third party logistics provider, or from the manufacturer's exclusive distributor to:

(A) pharmacy or other persons authorized by law to dispense or administer prescription drugs to a patient; or,

(B) wholesaler to a pharmacy or other persons authorized by law to dispense or administer prescription drugs to a patient; or,

(C) wholesaler to a chain pharmacy warehouse wholesaler to their intra-company pharmacy to a patient by prescription; or,

(D) chain pharmacy warehouse wholesaler to their intra-company pharmacy to a patient by prescription; or,

(E) wholesaler to a pharmacy buying cooperative warehouse wholesaler to a pharmacy that is a member owner of the buying cooperative to a patient by prescription; or,

(F) in limited situations where a documented product shortage, back orders, or emergency exists, one wholesaler to one other wholesaler to a pharmacy or other persons authorized by law to dispense or administer prescription drugs to a patient.

"Packager" means packager as defined in Title 59 O.S. Section 353.1 and includes anyone packaging or repackaging drugs.

"Pedigree" means a document, written or electronic, that records each wholesale distribution of any given drug, from the sale by a manufacturer through acquisition and sale by any wholesale distributor, packager or repackager and includes the information for each transaction shown in 535:20-7-7.7 (b) recordkeeping, et seq.

"Prescription Drug" or "Drug" means any ~~human~~ drug as defined in Title 59 O.S. Section 353.1(16) et seq. that is required by Federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act.

"Repackage" means changing the container, quantity, or labeling of a drug to further the distribution of the drug and

requires a packager license. Repackaging does not include the filling of a prescription by a pharmacy.

"Wholesale distribution and wholesale distributions" means distribution of prescription drugs to persons other than a consumer or patient, but does not include:

(A) Intracompany sales of prescription drugs, between any division, subsidiary, parent or affiliated or related company under common ownership and control, or any transaction or transfer between co-licensees of a co-licensed product ~~from one wholesale facility to another wholesale facility~~;

(B) The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;

(C) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(D) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control; for purposes of this section, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, by contract or otherwise;

(E) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons; for purposes of this section "emergency medical reasons" includes transfers of prescription drug by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;

(F) The sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;

(G) The distribution of drug samples by manufacturers' representatives or distributors' representatives;

(H) The sale, purchase, or trade of blood and blood components intended for transfusion;

(I) The sale, transfer, merger or consolidation of all or part of the business of a licensed pharmacy or pharmacies from or with another licensed pharmacy or pharmacies, whether accomplished as a purchase and sale of stock or business assets;

(J) The delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs, and such common carrier does not store, warehouse, or take legal ownership of the prescription drug;

(K) The sale of minimal quantities of drugs by retail pharmacies to licensed practitioners for office use as allowed in 535:15-7; or

(L) Returns to wholesalers and reverse distributors as described in 59 OS Section 353.18 E.

"Wholesale distributor" means anyone engaged in the wholesale distribution of prescription drugs, including, but not limited to, manufacturers; repackers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain pharmacy ~~drug~~ warehouses, and wholesale drug warehouses; and independent wholesale drug traders.

"Wholesaler" means "Wholesaler or Distributor" as defined in Oklahoma Statutes, Title 59, Section 353.1(15).

535:20-7-3. Wholesale drug distributor licensing requirement

(a) Every wholesale distributor conducting interstate and/or intrastate transactions in Oklahoma must be licensed before engaging in wholesale distributions of ~~prescription~~ drugs.

(b) A wholesaler permit is only valid for the name, ownership and location listed on the permit. Changes of name, ownership or location shall require a new wholesaler permit.

(c) Changes in any information required for licensure must be reported to the Board, in writing, within ten (10) days (e.g. manager, contact person, phone, etc.)

(d) Each location shall possess a wholesaler permit. When wholesale distribution operations are conducted at more than one location, each location shall be licensed by the Board.

(e) A wholesale distributor cannot operate from a place of residence.

(f) Every wholesale distributor who engages in the wholesale distribution of drugs and/or devices shall pay the annual fee and license annually with the Board by application and provide information required on a Board approved application. Minimum required information for licensure is in 535:20-7-4.

(g) Wholesale distributors must publicly display all licenses and have readily available the most recent Board inspection report.

535:20-7-4. Minimum required information for licensure

(a) Minimum required information for licensure shall be that information as required by the FDA Adopted Guidelines for State licensing of wholesale prescription drug distributors, 21 CFR, Part 205.5(a) and the requirements of this section.

(b) All wholesaler applicants must meet the requirements under the Oklahoma Pharmacy Act, this Title and the rules in 535:25 for applicants.

(c) Wholesaler applicants must submit a satisfactorily completed application together with the required fee annually. ~~This application shall include at least the following:~~

~~(1) The name, full business address, and telephone number;~~

~~(2) All trade or business names used by the wholesaler applicant';~~

~~(3) Address, telephone numbers, and the names of contact persons for the wholesaler facility;~~

~~(4) The type of ownership or operation (e.g., partnership, corporation, or sole proprietorship);~~

~~(5) The name(s) of the owner and/or operator of the wholesaler applicant; and~~

(1) New applicants for both in- and out-of-state wholesalers (e.g.: wholesale distributors, chain pharmacy warehouses and repackagers) that ship into Oklahoma shall include at least, the following:

(A) Applicant's full name, full business address, all trade or business names used, and telephone number;

(B) Type of ownership, e.g. individual, partnership or corporation;

(C) Name(s) of the owner(s) and operator of the licensee (if not the same person), including:

(i) if a person; the name, address, social security number and date of birth;

(ii) if other than a person; the name, address, and social security number and date of birth of each partner, corporate officer, or limited liability company member, and the federal employer identification number;

(iii) if a publicly traded corporation, the information in (c)(1)(C)(i) and (c)(1)(C)(ii) above are not required for corporate officers. A publicly traded corporation shall provide information regarding the operator of the licenses; and as required in (c)(1)(D) below the designated manager information.

(D) Names of designated managers (operators of the wholesaler applicant), their Social Security numbers and date of birth;

(E) Applicant's and designated managers' fingerprints,

(F) Criminal background check information for the applicants and designated managers as required by rule;

(G) A surety bond of not less than $10,000, or if located in another state which requires a surety bond, documentation of such bond;

(H) A copy of the license from the resident (home) state where the wholesaler is located; and,

(2) Renewal applications for both in- and out-of-state wholesale distributors, chain pharmacy warehouses and repackagers that ship into Oklahoma shall include those things listed in 535:20-7-4. If such has previously been provided to the Board and has not changed then the applicant can use a Board renewal application.

(~~6~~ 3) Any other information the Board deems necessary to protect the public health.

(d) The Board may use an outside agency, such as the National Association of Boards of Pharmacy (NABP) Verified-Accredited Wholesale Distributors (VAWD), to accredit wholesale distributors and repackagers. The Board may exempt wholesalers accredited by VAWD from some provisions of Subparagraphs (c) (1) of this section.

(e) Logistics providers that receive prescription drugs from original sponsors or manufacturers, deliver the drug products in commerce at the direction of the original sponsor or manufacturer, and do not purchase, sell, trade, or take title to any prescription drug are exempt from the provisions in (c) (1) of this section.

535:20-7-5. Minimum qualifications

(a) The Board shall consider, at a minimum, the following factors in ~~reviewing the qualifications of~~ determining the eligibility for, and renewal of licensure of persons who engage in wholesale distribution of ~~prescription~~ drug ~~within this state~~ or devices:

(1) Any findings by the Board that ~~convictions of~~ the applicant has violated or been disciplined by a regulatory agency in any state for violating ~~under~~ any federal, state, or local laws relating to drug ~~samples, wholesale or retail drug~~ distribution~~, or distribution of controlled substances~~;

(2) Any ~~felony~~ criminal convictions of the applicant under federal, state, or local laws;

~~(3) The applicant's past experience in the manufacture or distribution of prescription drugs, including controlled substances;~~

(3 ~~4~~) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug or device manufacturing or distribution;

(4 ~~5~~) Suspension, sanction, or revocation by federal, state, or local government ~~of~~ against any license currently or previously held by the applicant or any of its owners for violations of state or federal laws regarding drugs or devices ~~for the manufacture or distribution of any drugs, including controlled substances;~~

(5 ~~6~~) Compliance with licensing requirements under previously granted licenses~~, if any~~;

(6 ~~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 to be maintained by wholesale drug distributors ~~under this section~~; and,

(7) Any registrant who has no record of wholesaler distributions during routine inspection may have their subsequent renewal application referred to the Board for review and possible approval or disapproval, and such review may require registrant appearance before the Board.

(8) Any other factors or qualifications the Board considers relevant to and consistent with the public health and safety.

(b) The Board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be consistent with the public health and safety.

535:20-7-6. Personnel

(a) Personnel employed in wholesale distribution shall have education, training and/or experience sufficient so that they may perform assigned functions related to compliance with state licensing requirements.

(b) The Board shall as required in 353.18(B), at a minimum, consider those qualifications listed in 535:20-7-5 for personnel employed in wholesale distribution.

(c) Wholesale drug distributors shall establish and maintain lists of officers, directors, managers and other persons in

charge of wholesale drug distribution, storage, and handling, including a description of their duties and a summary of their qualifications. Also known as responsible persons list.

(d) Each person issued a wholesaler license, initial or renewal, whether in or out-of-state, must designate, in writing, on a form required by the Board a person to serve as the designated manager of the wholesale distributor for each location licensed.

AGENCY NOTE: *Language in subsection (c) moved from 535:20-7-7.9.*

535:20-7-7. Minimum requirements for the storage, ~~and~~ handling, transport, and shipment of ~~prescription~~ drugs and/or devices and ~~for the~~ establishment and maintenance of ~~prescription~~ drug ~~distribution~~ records

The following ~~decimal sections shall~~ describe the ~~minimum~~ requirements for the storage, ~~and~~ handling, transport and shipment of ~~prescription~~ drugs or devices, and for the establishment and maintenance of wholesale ~~prescription drug~~ distribution records, and requirement for ~~by~~ wholesale ~~drug distributors~~ distributor's ~~and their~~ officers, agents, representatives, and employees.

535:20-7-7.1. Facility requirements

(a) All wholesalers of prescription drugs shall conform ~~to U.S. Food and Drug Administration (FDA) Current Good Manufacturing Practices (CGMP)~~ the Prescription Drug Marketing Act of 1988 (21 USC 363) and applicable rules for the storage and handling of prescription drugs.

(b) All wholesalers of prescription drugs shall conform to the Oklahoma Pharmacy Act and the rules of this Title, and be licensed by the Board.

(c) ~~Each facility at which prescription drugs are stored, warehoused, handled, held, offered, marketed, or displayed shall:~~ All facilities at which drugs are received, stored, warehoused, handled, held, offered, marketed, displayed, or transported from shall:

(1) be of suitable construction to ensure that all drugs and devices in the facilities are maintained in accordance with labeling of such drugs, or in compliance with official compendium standards such as USP/NF;

~~(1) Be licensed by the Board;~~

(2) be ~~Be~~ of suitable size and construction to facilitate cleaning, maintenance, and proper wholesale distribution operations;

(3) have adequate ~~Have~~ storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment and security conditions;

(4) have ~~Have~~ a quarantine area for storage of prescription drugs that are outdated, damaged, deteriorated, misbranded, ~~or~~ adulterated, counterfeit, or suspected of being counterfeit, otherwise unfit for distribution, or that are in immediate or sealed, secondary containers that have been opened;

(5) be ~~Be~~ maintained in a clean and orderly condition; and,

(6) be ~~Be~~ free from infestation ~~by insects, rodents, birds, or vermin~~ of any kind.

(d) Each wholesaler shall be in a commercial location and not a personal dwelling or residence.

(e) Wholesale distributors involved in the distribution of controlled substances shall be duly registered with the Drug Enforcement Administration (DEA) and the Oklahoma Bureau of Narcotics, if required, and shall be in compliance with all applicable laws and rules for the storage, handling, transport, shipment and distribution of controlled substances.

535:20-7-7.2. Multiple Licensing

(a) A wholesale facility shall not be located in a facility where a retail pharmacy is located.

(b) The wholesale facility shall be located apart and separate from any retail pharmacy, licensed by the Board of Pharmacy, as set forth in this Title and 535:25-3-5.

535:20-7-7.3. Security and anti-counterfeiting

(a) All facilities used for wholesale drug distribution shall be secure from unauthorized entry.

(1) Access from outside the premises shall be kept to a minimum and be well-controlled.

(2) ~~The outside perimeter of the premises shall be well-lighted.~~

~~(3)~~ Entry into areas where prescription drugs are held shall be limited to authorized personnel.

(b) All facilities shall be equipped with an alarm system to detect entry after hours.

(c) All facilities shall be equipped with a security system that will provide suitable protection against theft, counterfeiting, and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(d) All facilities shall establish and maintain controls and systems that protect against, detect, and document any instances of theft, diversion, or counterfeiting.

(e) If a wholesaler has reason to believe, based on the totality of the facts and circumstance, that any drug purchased is counterfeit, suspected of being counterfeit, misbranded, or adulterated, the purchasing wholesaler must authenticate the pedigree.

535:20-7-7.4. Storage

All prescription drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or with the requirements in the current edition of an official compendium, such as the United States Pharmacopeia/National Formulary (USP/NF).

(1) If no storage requirements are established for a ~~prescription~~ drug, the drug may be held at "controlled" room temperature, as defined in an official compendium such as USP/NF, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(2) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment,

devices, and/or logs shall be utilized to document proper storage of ~~prescription~~ drugs.

~~(3) The recordkeeping requirement in this Title for wholesale drug distributors shall be followed for all stored prescription drugs.~~

(3) Packaging of the drugs should be in accordance with an official compendium such as USP/NF and identify any compromise in the integrity of the drugs due to tampering or adverse storage conditions.

(4) Controlled dangerous substance (CDS) drugs should be isolated from non-CDS drugs and stored in a secure area in accordance with federal and state CDS security requirements and standards.

535:20-7-7.5. Examination of materials

(a) Upon receipt, each ~~outside~~ shipping container shall be visually examined for identity and to prevent the acceptance of contaminated drugs that are otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination, adulteration, misbranding, counterfeiting or suspected of being counterfeit, or other damage to the contents.

(b) The drugs found to be unacceptable under paragraph (a) should be quarantined from the rest of stock until the drugs are determined to be fit for human use.

(~~b~~ c) Each outgoing shipment shall be carefully inspected for identity of the ~~prescription drug products~~ drugs and to ensure that there is no delivery of ~~prescription~~ drugs that have been damaged in storage or held under improper conditions.

(~~c~~ d) The recordkeeping requirement in this Title for wholesale drug distributors shall be followed for all incoming and outgoing prescription drugs.

535:20-7-7.6. Drug returns, and returned, ~~Returned,~~ damaged, and outdated ~~prescription~~ drugs

(a) ~~Prescription drugs that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other prescription drugs until they are destroyed or returned to their supplier.~~ Wholesale distributors shall receive prescription drug returns or exchanges from a pharmacy, chain pharmacy warehouse, or other persons authorized by law to administer and dispense such drugs, pursuant to the terms and conditions of the agreement between the wholesale distributor and the pharmacy, chain pharmacy warehouse or other persons authorized by law to administer and dispense such drugs including the returns of expired, damaged, and recalled pharmaceutical product to either the manufacturer, the wholesaler, or a third party returns processor, and such returns shall not be subject to the pedigree requirement.

(b) ~~Any prescription drugs whose immediate or sealed outer or sealed secondary containers have been opened or used shall be identified as such, and shall be quarantined and physically separated from other prescription drugs until they are either destroyed or returned to the supplier.~~ If, the returns described in (a) appear to be a suspicious, unusual or excessive quantity of drugs, such wholesale distributor shall report such returns to the Board.

(c) Wholesale distributors shall be held accountable for administering their return process and ensuring that the aspects of this operation are secure, and do not permit the entry of adulterated, misbranded, and/or counterfeit drugs.

(d) Any drug returned to a manufacturer or wholesale distributor shall be kept under proper conditions for storage, handling, transport, and shipment.

(e) When drugs are adulterated, misbranded, counterfeited, or suspected of being counterfeit, notice shall be provided to the Board, FDA and manufacturer or wholesale distributor from which it was acquired within three (3) business days.

(f) Contraband, counterfeit, or suspected to be counterfeit drugs, other evidence of criminal activity, and accompanying documentation shall be retained and not destroyed until its disposition is authorized by the Board and/or FDA.

(~~c~~ g) If the conditions under which a prescription drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, then the drug shall be destroyed or returned to the supplier, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, quality, strength, and purity.

~~(1) In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, the wholesale drug distributor shall consider, among other things:~~

~~(A) The conditions under which the drug has been held, stored or shipped before or during its return; and,~~

~~(B) The condition of the drug and its container, carton, or labeling, as a result of storage or shipping.~~

(h) Salvaging and reprocessing. Wholesale drug distributors shall be subject to the provisions of any applicable federal, state or local laws or regulations that relate to prescription drug product salvaging or reprocessing including U.S. 21 CFR Parts 207, 210 and 211.

(~~d~~ i) The recordkeeping requirements for wholesale prescription drug distributors in 535:20-7-7.7 ~~this Title~~ shall be followed for all outdated, damaged, deteriorated, misbranded or adulterated prescription drugs.

AGENCY NOTE: *Language in 535:20-7-7.6 (h) previously in 535:20-7.7.11*

535:20-7-7.7. Recordkeeping

(a) Wholesale ~~drug~~ distributors shall establish and maintain complete inventories and records of all transactions regarding the receipt and distribution or other disposition of ~~prescription~~ drugs and devices. ~~These records shall include the:~~

~~(1) source of the drugs, including the name and principal address of the seller or transferor, and the address of the location from which the drugs were shipped;~~

~~(2) identity and quantity of the drugs received and distributed or disposed of; and~~

~~(3) dates of receipt and distribution or other disposition of the drugs.~~

(b) After January 1, 2009, each person who is engaged in wholesale distribution of prescription drugs, (including

repackagers of the finished form of the prescription drug) whether located in or out-of-state, must maintain and provide a pedigree record developed in accordance with standards and requirements of the Board, for all drugs received, distributed, sold and/or offered for sale outside of the normal distribution channel, or that leave or have ever left the normal distribution channel and shall before each wholesale distribution of such drug provide a pedigree to the person who receives such prescription drug.

(1) A statement or record in written or electronic form shall be used to record each distribution of any given drug, from the sale by a manufacturer through acquisition and sale by any wholesaler distributor, packager and/or repackager.

(2) The pedigree shall include, but not be limited to, the following information for each transaction:

(A) The source of the drug(s), including the name and principal address of the seller;

(B) The name of the drug and the national drug code (NDC) number, the amount of the drug, the date of the purchase, quantity (container size, number of containers), and lot number(s) of the drug;

(C) The business name and address of each owner of the drug, its shipping information, including the name and address of the facility of each person certifying delivery or receipt of the drug;

(D) A certification that the information contained therein is true and accurate under penalty of perjury.

(3) The wholesale distributor must conduct due diligence in verifying pedigrees.

(4) The pedigree or electronic record requirements do not apply to compressed medical gases (medical gas suppliers and medical gas distributors, etc.)

(5) The pedigree or electronic record requirements do not apply to drugs labeled for veterinarian use.

~~(b) Inventories and records shall be made available for inspection and photocopying by authorized federal, state, or local law enforcement agency officials for a period of two (2) years following disposition of the drugs.~~

(c) Wholesale distributors shall establish and maintain inventories and records of all transactions regarding the receipt and distribution, or other disposition of all drugs and devices. Such records shall include the dates of receipt and distribution or other disposition of the drugs and devices. Inventories and records shall be maintained and made available for inspection and photocopying for a period of two (2) years following their creation date.

~~(c)~~

(1) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period.

(2) Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.

(d) Each wholesale distributor should maintain an ongoing list of persons with whom they do business.

535:20-7-7.8. Written policies and procedures

(a) Wholesale drug distributors shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, transport, shipping and distribution of ~~prescription~~ drugs, including policies and procedures for identifying, recording, and reporting losses or thefts, ~~and~~ for correcting all errors and inaccuracies in inventories and implementing and maintaining a continuous quality improvement system. Such written policies and procedures shall be available for inspection.

(b) Wholesale drug distributors shall include in their written policies and procedures the following:

(1) A procedure whereby the oldest approved stock of a prescription drug product is distributed first. The procedure may permit deviation from this requirement, if such deviation is temporary and appropriate.

(2) A procedure to be followed for handling recalls and withdrawals of prescription drugs. Such procedure shall be adequate to deal with recalls and withdrawals due to any:

(A) Action initiated at the request of the Food and drug Administration (FDA) or other federal, state, or local law enforcement or other government agency, including the Board of Pharmacy;

(B) Voluntary action by the manufacturer to remove defective or potentially defective drugs from the market; or

(C) Action undertaken to promote public health and safety by replacing of existing merchandise with an improved product or new package design.

(3) A procedure to ensure that wholesale drug distributors prepare for, protect against, and handle a crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state or national emergency.

(4) A procedure to ensure that any outdated prescription drugs shall be segregated from other drugs and either returned to the manufacturer or destroyed.

(A) This procedure shall provide for written documentation of the disposition of outdated prescription drugs.

(B) This documentation shall be maintained for two (2) years after disposition of the outdated drugs.

(5) A procedure for identifying, investigating, and reporting significant drug inventory discrepancies involving counterfeit, suspected of being counterfeit, contraband, or suspected of being contraband; and for reporting of such discrepancies to the Board and to the appropriate federal agency upon discovery of such discrepancies shall be the same as in 535:20-7-7.6.

535:20-7-7.9. Responsible persons [REVOKED]

~~Wholesale drug distributors shall establish and maintain lists of officers, directors, managers and other persons in~~

~~charge of wholesale drug distribution, storage, and handling, including a description of their duties and a summary of their qualifications.~~

AGENCY NOTE: *see 535:20-7-6.*

535:20-7-7.10. Compliance with federal, state and local laws

(a) Wholesale drug distributors shall operate in compliance with applicable federal, state, and local laws and regulations.

(b) Wholesale drug distributors shall permit the Board of Pharmacy and authorized federal, state, and local law enforcement officials to enter and inspect their premises and delivery vehicles, and to audit their records and written operating procedures, and to confiscate records to the extent authorized by law or rules.

(c) Wholesale drug distributors that deal in controlled substances shall register with the appropriate state controlled substance authority and with the drug Enforcement Administration (DEA), and shall comply with all applicable state, local and DEA regulations.

535:20-7-7.11. Salvaging and reprocessing [REVOKED]

~~Wholesale drug distributors shall be subject to the provisions of any applicable federal, state or local laws or regulations that relate to prescription drug product salvaging or reprocessing including U.S. 21 CFR Parts 207, 210 and 211.~~

AGENCY NOTE: *See 535:20-7-7.6 (h)*

535:20-7-9.1. Prohibited conduct

The following shall be considered prohibited conduct and be a violation of these rules:

(1) Engaging in the wholesale distribution of drugs

(A) with intent to defraud or deceive, failing to maintain or provide a complete and accurate pedigree and/or failure to authenticate a pedigree, when required;

(B) and destroying, altering, concealing, or failing to maintain complete and accurate pedigree concerning any drug in their possession, when required;

(C) and having possession of drug pedigree documents required by the board and failing to authenticate the matters contained in the documents as required, and nevertheless distributing or attempting to further distribute drugs;

(D) with intent to defraud or deceive, falsely swearing or certifying that they have authenticated any documents related to the wholesale distribution of drugs;

(E) and forging, counterfeiting, or falsely creating any pedigree, falsely representing any factual matter contained on any pedigree, or knowingly omitting to record material information required to be recorded in a pedigree;

(F) and knowingly purchasing or receiving drugs from a person, not authorized to distribute drugs, in wholesale distribution; or,

(G) and selling, bartering, brokering, or transferring drugs to a person not authorized to purchase drugs, under the jurisdiction in which the person receives the drug(s) in a wholesale distribution.

(2) Forging, counterfeiting, or falsely creating any label for a drug(s) or who falsely represents any factual matter contained in any label of a drug(s).

(3) Altering, mutilating, destroying, obliterating, or removing the whole or any part of the labeling of a prescription drug or the commission of any other act with respect to a prescription drug that results in the prescription drug being misbranded.

(4) Manufacturing, purchasing, selling, delivering or bringing into the state contraband drug(s), or any one who illegally possesses any amount of contraband drug(s); or,

(5) Any violation of the rules of registrant conduct in 535:25-9 is prohibited conduct.

[OAR Docket #08-1029; filed 5-22-08]

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

[OAR Docket #08-1030]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 9. Violations of the Rules of Registrant Conduct
535:25-9-7. Theft [AMENDED]

AUTHORITY:
Title 51 O.S. 24A et seq., Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18; 353.20, 353.22, 353.24 - 353.26, 353.29, and 354;Title 75 O.S., Section 302, 305, 307, and 309; Title 63 O.S., Sec 2-201, 2-208 and 2-210; and Title 51 Sec. 24 A.5 (3).

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The revision in 535:25-9 removes the limiting language to the theft violation of registrant conduct.
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, 2008:

SUBCHAPTER 9. VIOLATIONS OF THE RULES OF REGISTRANT CONDUCT

535:25-9-7. Theft

Theft ~~of merchandise (including, but not limited to, Rx only drugs)~~ while working as a registrant is a violation of registrant conduct.

[OAR Docket #08-1030; filed 5-22-08]

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

[OAR Docket #08-954]

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RULES:
Subchapter 3. Organization of Board
550:1-3-3 [AMENDED]
550:1-3-4 [AMENDED]
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Oklahoma Police Pension and Retirement Board; 11 O.S. Sections 50-105.2(A)(B), and 50-106(3)
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ANALYSIS:
The amendments to OAC 550:1-3-3 and OAC 550:1-3-4 modify procedures related to the mailing of ballots for the election of Board members. The amendments modify the timing of determining members eligible to receive election ballots and the members' mailing addresses. The amendments also provide for a designee of the Executive Director to be able to perform certain tasks related to the election process.
Related statutes are 11 O.S. Section 50-101 and 11 O.S. Section 50-103.1.
CONTACT PERSON:
Linda Ruckman, Administrative Officer, Oklahoma Police Pension and Retirement System, 1001 N.W. 63rd Street, Ste. 305, Oklahoma City, OK 73116-7335, 405-840-3555 Ext. 227.

PURSUANT TO THE ACTIONS DESCRIBED 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, 2008:

SUBCHAPTER 3. ORGANIZATION OF BOARD

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

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

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

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

(3) The cover letter and the nomination petition will be placed in individual envelopes addressed to each active member separately in care of their mailing address on file with the System. The envelopes will be mailed First Class to the member. Mailings to retired members will be made to the address used to mail year-end tax notices (1099R). Nomination petitions will be mailed at least six

weeks prior to the date the election ballot is to be mailed. The System shall make no attempt to forward/resend any mailing returned by the United States Postal Service as undeliverable unless it is found that the mailing was sent to an incorrect address due to an administrative error on the part of the System.

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

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

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

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

(b) **Certified public accounting firm procedures.** A certified public accounting firm shall: (1) Meet with the Executive Director or the Executive Director's designee and determine the timing of the initial nomination mailing to each member in the districts electing a board member.

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

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

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

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

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

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

(8) Require the Executive Director or the Executive Director's designee to verify that each nominee is eligible to be elected to the Board.

(c) **Oklahoma Police Pension and Retirement System procedures.** The Oklahoma Police Pension and Retirement System shall:

(1) Obtain a mailing list for each district conducting an election. The mailing list should contain the name and mailing address of each member in the district eligible to receive a nomination petition~~ and election ballot~~.

(2) Obtain the nomination petition.

(3) Photocopy the nomination petition. Make enough copies for each member on district mailing list.

(4) Assemble the Executive Director's cover letter, nomination petition and list of eligible municipalities into a package, and mail a package to each member on district mailing list.

~~(5) Prepare the ballot for each district holding an election. Include each nominee's biographical sketch.~~

~~(6) Ballot to be posted in the office of the Oklahoma Police Pension and Retirement System for public view during regular office hours not less than seven business days before the ballot is to be mailed.~~

550:1-3-4. Election of Board members

(a) **Election procedures.** The following procedures shall govern the election of Board members:

(1) Eligible nominees will be placed on the election ballot.

(2) Members eligible to receive election ballots and their mailing addresses will be determined at least one week prior to the date the election ballot is to be mailed.

(~~2~~3) ~~A ballot will be sent to each member in the same manner as nomination requests were sent.~~ The ballot will be mailed at least three weeks prior to the date the completed ballot must be received by the certified public accounting firm. This ballot will instruct voters to return their ballot directly to the certified public accounting firm and will specify the date by which the certified public accounting firm must receive the ballot in order for it to be counted. Self-addressed, postage-paid envelopes will be enclosed to return the ballots. The ballot and return envelope will be placed in individual envelopes addressed to each active member separately in care of their mailing address on file with the System. The envelopes will be mailed First Class to the member. Mailings to retired members will be made to the address used to mail year-end tax notices (1099R). The System shall make no attempt to forward/resend any mailing returned by the United States Postal Service as undeliverable unless it is found that the mailing was sent to an incorrect address due to an administrative error on the part of the System.

(~~3~~4) Ballots will be pre-numbered and require the individual signature of the voter to be counted. Ballots will be printed on the certified public accounting firm letterhead or watermarked paper.

(~~4~~5) The nominee receiving the highest number of votes, even if this constitutes less than 50% of the total votes cast, will be elected to serve on the Board.

(~~5~~6) Votes cast for members other than nominees contained on the ballot will not be counted.

(~~6~~7) Ballots returned to the Oklahoma Police Pension and Retirement System or some location other than the certified public accounting firm's office will not be counted.

(~~7~~8) Ballots received after the deadline will not be counted.

(~~8~~9) Ballots with more than one vote will not be counted.

(~~9~~10) Ballots which are not signed will not be counted.

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

(1) Review ballots before mailing. Judgmatically select members listed on the district mailing list and verify that they are to receive a ballot. Judgmatically select ballots and verify that members are listed on correct district mailing list.

(2) Accumulate responses and total results.

(3) Exclude any ballots not received by the certified public accounting firm by the cut-off date, or other spoiled ballots.

(4) Provide the total number of votes cast for each nominee and total available votes to the Oklahoma Police Pension and Retirement Board.

(c) **Oklahoma Police Pension and Retirement System procedures.** The Oklahoma Police Pension and Retirement System shall:

(1) Prepare the ballot for each district holding an election. Include each nominee's biographical sketch. Photocopy and/or print the ballot on the certified public accounting firm letterhead or watermarked paper.

(2) Copy of ballot to be posted in the office of the Oklahoma Police Pension and Retirement System for public view during regular office hours not less than seven business days before the ballot is to be mailed.

(~~2~~3) Pre-Number each ballot sequentially.

(4) Obtain mailing list for each district conducting an election. The mailing list should contain the name and mailing address of each member in the district eligible to receive an election ballot.

(~~3~~5) Apply the name and mailing address of each member on district mailing list on a ballot and place the ballot and a self-addressed return envelope in window envelopes.

(~~4~~6) After certified public accounting firm has audited the ballots, mail a package to each member on district mailing list.

(~~5~~7) Send notification of election results to nominees via certified mail.

(d) **Tie votes.** Should two nominees tie for the most votes received, the election will be conducted again between the two nominees.

(e) **Election challenge.** A nominee has 10 days from the date they receive notice of the election results to provide the System with written notice of their desire to challenge the results.

(1) Should the election results be challenged by a nominee, procedures for determining the winning nominee will be established by the Oklahoma Police Pension and Retirement Board and could include but are not limited to:

(A) Verification of a sample or all of the signatures on the ballots.

(B) Re-perform the election with notarized ballots.

(2) The Board may order a new election if the Board, in its discretion, finds that the previous election and/or result was affected by some material impropriety. The new election will be conducted in the same manner as provided by rules with the exception that the Board may establish a revised time frame for the new election.

[OAR Docket #08-954; filed 5-19-08]

TITLE 605. OKLAHOMA REAL ESTATE COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #08-1043]

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N/A

ANALYSIS:

Adding to the rules a reference that the Commission may also draft contracts for commercial and lease transaction based on obtaining legislative authority in 2007.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

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 and/or lease 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 #08-1043; filed 05-23-08]

TITLE 605. OKLAHOMA REAL ESTATE COMMISSION
CHAPTER 10. REQUIREMENTS, STANDARDS AND PROCEDURES

[OAR Docket #08-1044]

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RULES:
Subchapter 3. Education and Examination Requirements
605:10-3-2. Application for license [AMENDED]
Subchapter 5. Instructor and Entity Requirements and Standards
605:10-5-1. Approval of prelicense course offerings [AMENDED]
605:10-5-2. Approval of continuing education offerings [AMENDED]
Subchapter 7. Licensing Procedures and Options
605:10-7-2. License terms and fees; renewals; reinstatements [AMENDED]
Subchapter 17. Causes for Investigation, Hearing Process; Prohibited Acts; Discipline
605:10-17-2. Complaint procedures [AMENDED]
605:10-17-3. Complaint hearings; notice and procedures [AMENDED]
Appendix A. Residential Property Condition Disclosure Statement [AMENDED]
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605:10-3-2. Additional language pertaining to criminal history check fees, validity duration and alternative identification methods for applicants; also adds language determining the definition of good moral character if applicant is serving a deferred sentence.
605:10-5-1. Additional language regarding filing time limits and scores for instructor applicants.
605:10-5-2. Additional paragraph establishing guidelines for utilizing guest instructors for in-class instruction.
605:10-7-2: Additional new language indicating that if a licensee allows their license to expire they will be subject to a national criminal history background check.
605:10-17-2. Additional language regarding filing complaints against unlicensed individuals.
605:10-17-3. Additional language regarding formal hearings and violations found against unlicensed individuals.
Appendix A. Revoked form and created new form to amend minor reformatting; also added language regarding flood disclosure and clarified purchaser's signature line.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. §308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 3. EDUCATION AND EXAMINATION REQUIREMENTS

605:10-3-2. Application for license

(a) **Requirements for completing application.**

(1) Any person seeking a real estate license shall make application for such license on a form provided by the Commission. The form shall contain, but not be limited to, the following:

(A) Legal name to include first, middle and last name.

(B) Routine biographical information.

(C) License history in Oklahoma and other states.

(D) Criminal and/or civil charges or convictions, including bankruptcy and judgments.

(E) All residential addresses and employment data for past five (5) years.

(F) Recent photograph.

(G) Birth date.

(H) Evidence of successful completion of course requirement as specified in the "Code".

(I) A sworn statement as to accuracy of the application information.

(J) Documentation required for compliance necessary to verify citizenship, qualified alien status,

and eligibility under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(K) Social security number, pursuant to Title 56, Oklahoma Statutes, Section 240.21A.

(L) Submit to a national criminal history record check, as defined by Section 150.9 of Title 74 of the Oklahoma Statutes. A fee amount, not to exceed sixty dollars ($60.00), shall be sent to the Commission to begin the process of the national criminal history check.

(i) A completed national criminal history record check, completed for the Commission, shall be valid for six (6) months from the date of issuance from the issuing authority.

(ii) In the event an applicant is not physically able to submit to finger printing, other applicant identifiers shall be utilized, i.e., name, birth date and social security number.

(2) An applicant indicating a bankruptcy or judgment, criminal and/or civil charges or convictions on the application, must submit with the application official documents to the Commission which pertain to the disposition of the matter. If official documents are unable to be obtained, a detailed letter explaining the matter(s) must be attached to the application.

(b) **Applicant shall appear for examination.** Each applicant shall appear for an examination as soon as possible subsequent to the filing of an approved application or the signing of a form as required in 605:10-3-3.

(c) **Applicant must be of good moral character.** The application submitted by an individual seeking a license must indicate that the applicant possesses a reputation for honesty, truthfulness, trustworthiness, good moral character, and that he or she bears a good reputation for fair dealing.

(d) **Determining good moral character.** In determining whether or not an applicant meets the definition of good moral character, the Commission will consider, but not be limited to, the following:

(1) Whether the probation period given in a conviction or deferred sentence has been completed and fully satisfied to include fines, court costs, etc.

(2) Whether the restitution ordered by a court in a criminal conviction or civil judgement has been fully satisfied.

(3) Whether a bankruptcy that is real estate related has been discharged.

(4) Whether an applicant has been denied licensure or a license has been suspended or revoked by this or any other state or jurisdiction to practice or conduct any regulated profession, business or vocation because of any conduct or practices which would have warranted a like result under the Oklahoma "Code".

(5) Whether an applicant has been guilty of conduct or practices in this state or elsewhere which would have been grounds for revocation or suspension under the current Oklahoma "Code" had the applicant been licensed.

(e) **Subsequent good conduct.** If, because of lapse of time and subsequent good conduct and reputation or other reason deemed sufficient, it shall appear to the Commission that the interest of the public will not likely be in danger by the granting of such license, the Commission may approve the applicant as relates to good moral character.

SUBCHAPTER 5. INSTRUCTOR AND ENTITY REQUIREMENTS AND STANDARDS

605:10-5-1. Approval of prelicense course offerings

(a) **Course approval.** Any person or entity seeking to conduct an approved course of study shall make application and submit documents, statements and forms as may reasonably be required by the Commission. The request shall include the following:

(1) Completed course application.

(2) Application fee of One Hundred Twenty-five Dollars ($125.00) for each course.

(3) An approved course syllabus encompassing the contents enumerated in 605:10-3-1 and divided by instructional periods, the name, author and publisher of the primary textbook, or a statement stating the entity will use OREC syllabus and other items as may be required by the Commission.

(b) **Course offering requirements.**

(1) An entity not conducting an applicable approved course within any thirty-six (36) month period shall automatically be removed from approved status. In such event, the person and/or entity must re-apply as an original applicant.

(2) If a course of study is to be conducted in the name of a corporation, the application shall include the names and addresses of all directors and officers.

(3) An approved entity shall immediately report any changes in information in regards to the application previously filed with the Commission.

(c) **Denied applications.** No portion of the fees enumerated in this Section is refundable. If an instructor, entity or course application is not approved, the applicant may appeal the decision by filing a written request for a hearing before the Commission. The hearing procedure shall be that as outlined in 605:10-1-3 titled "Appeal of administrative decisions; procedures."

(d) **Advertising course offerings.** No person or entity sponsoring or conducting a course of study shall advertise that it is endorsed, recommended or accredited by the Commission. Such person or entity may indicate that a course of study has been approved by the Commission.

(e) **Instructor application and approval requirements.** An individual determined by the Commission to possess one or more of the following qualifications may, upon receipt of an application and evidence of education and/or experience, be considered for approval as an approved instructor. Each application for approval must be accompanied by a One Hundred Dollar ($100.00) application fee, and documentation required for compliance necessary to verify citizenship, qualified alien status, and eligibility under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. In order to

qualify, an individual must possess proof of one of the following:

(1) A bachelor's degree with a major in real estate from an accredited college or university.

(2) A bachelor's degree from an accredited college or university, and at least two (2) years active experience within the previous ten (10) years as a real estate broker.

(3) A real estate broker licensed in Oklahoma with a minimum of five (5) years active experience within the previous ten (10) years as a real estate broker and proof of high school education or its GED equivalent.

(4) An individual determined by the Commission to possess a combination of education and/or active broker experience in real estate or real estate related fields which constitute an equivalent to one or more of the qualifications in paragraphs (1), (2), or (3) of this subsection.

(f) **Course content examination.** Final approval will be considered after the instructor applicant has successfully completed an applicable Commission administered course content examination with a passing score of 80% or more. An instructor shall be allowed to successfully complete the applicable examination one time without charge; thereafter, the applicable examination fee shall be charged for each examination. <u>If an instructor applicant has successfully taken an applicable examination with a passing score of 80% or more within thirty (30) days of filing an instructor application, such passing score may be utilized to meet the applicable examination requirement in this section. If however, the instructor applicant does not obtain approval within 90 days of filing an instructor application, due to no fault on the part of the Commission, the instructor will be required to take the applicable examination again.</u>

(g) **Instructor renewal requirements.**

(1) In order to maintain approved status, an instructor must comply with the following:

(A) Attend a Commission directed Instructor Renewal Course every twelve (12) months. Instructors approved solely for distance education offerings must complete three (3) hours every twelve (12) months of instructor training as accepted by the Commission and sign a statement that changes to current law and rules have been reviewed and that the instructor has made applicable amendments to the course material.

(B) Furnish evidence that the instructor has taught a Commission approved prelicense course, or any other real estate related course(s) the Commission determines to be equivalent, within a required thirty-six (36) month period.

(2) Any instructor not meeting the requirements of this subsection will be required to re-apply as an original instructor applicant.

(h) **Guest instructors.** Guest instructors may be utilized for in-class instruction provided an approved instructor is also present during presentations. Total guest instruction and lectures shall not consume more than thirty percent (30%) of the total course time.

(i) **Instructor and entity requirements.**

(1) **Instructor must be present.** An approved instructor must be present in the same room during all in-class course instruction for students to receive credit toward course completion.

(2) **Retention of records.** An instructor/entity shall maintain a record of enrollment records and roll sheets which include number of hours attempted by each student.

(3) **Course completion certificate.** Each individual successfully completing a course of study approved by the Commission shall be furnished a certificate prescribed or approved by the Commission certifying completion. The Commission shall accept from a college or university a certified transcript or a course completion certificate as prescribed by the Commission.

(4) **Commission authorized to audit and inspect records.** A duly authorized designee of the Commission may audit any offering and/or inspect the records of the entity at any time during its presentation or during reasonable office hours or the entity may be required to provide the records to the Commission.

(5) **Clock hours and breaks.** Not more than one clock hour may be registered within any one sixty (60) minute period and no more than ten (10) minutes of each hour shall be utilized for breaks.

(6) **Class size limited.** Instructor ratio to students shall not exceed sixty (60).

(j) **Facility approval requirements.** Before an approved course offering can be presented at a location, the person or group presenting the course must seek approval of the facility to be used for presentation of the course. A Commission approved application must be completed and accompanied by a Seventy-five Dollar ($75.00) application fee.

(1) The application fee may be waived if the facility request for approval has been approved for use as a classroom by the State Department of Education, State Regents of Higher Education, or State Vocational and Technical Education.

(2) The application fee may be waived if an entity is requesting to utilize a facility that is currently approved by the Commission as an active facility site.

(3) The Commission shall act on a facility application within thirty (30) days of receipt of application.

(k) **Disciplinary action.** An approved course of study, director, instructor and/or facility may be withdrawn or disciplined as outlined in Title 59, O.S., Section 858-208, paragraph 6 either on a complaint filed by an interested person or the Commission's own motion, for the following reasons, but only after a hearing before the Commission and/or a Hearing Examiner appointed by the Commission:

(1) In the event the real estate license of a director is suspended or revoked, the course of study shall automatically be revoked.

(2) In the event the real estate license of an instructor is suspended or revoked.

(3) Failure to comply with any portion of the Code or the rules of this Chapter.

(4) Failure of an approved entity to maintain a 50% or better pass/fail ratio on the Commission examinations.

(5) Falsification of records and/or application(s) filed with the Commission.

(6) False and/or misleading advertisement.

(7) Any other improper conduct or activity of the director, instructor, or entity as may be determined by the Commission to be unacceptable.

605:10-5-2. 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 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 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) **Course renewal requirements.** An application for renewal of any offering or group of offerings by an entity shall also be accompanied by a non-refundable application fee of Seventy Dollar ($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 requirements and limitations.**

(1) An offering approved pursuant to this Section shall be open to all licensees, except as may otherwise be approved by the Commission upon request of the offering entity.

(2) An offering will not be approved by the Commission if its duration is less than two (2) consecutive clock hours or its equivalent as determined by the Commission.

(3) To meet the statutory requirement, a clock hour shall equal sixty (60) minutes, with no more than ten minutes of each hour utilized for breaks.

(4) An entity conducting an offering shall, within five (5) days of the completion thereof, submit to the Commission on a form prescribed by the Commission, a list of the names and license numbers of those licensees who successfully completed the said offering, along with other information which may reasonably be required.

(5) Each licensee successfully completing an offering shall be furnished a certificate, prescribed or approved by the Commission, certifying completion.

(6) Each offering shall be presented in such facilities and on such premises as shall be necessary to properly present the course as determined by the Commission.

(7) An approved instructor must be present in the same room during all course instruction for students to receive credit toward course completion. If an instructor is presenting a Commission approved course offering which is delivered to the licensees by way of television, the Commission may require that each delivering entity have a monitor in lieu of a Commission approved instructor.

(h) **Recruitment disallowed.**

(1) A coordinator/director or instructor shall not allow the premises or the facilities to be used by anyone to advertise and/or recruit new affiliates for any company. The coordinator/director shall cause the following statement to be posted at the premises or the facilities in such a manner as will be readable by all participants: "No recruiting for employment opportunities for any real estate brokerage firm is allowed in this class or on the premises. Any recruiting on behalf of, or permitted by, the Instructor should

be promptly reported to the Oklahoma Real Estate Commission."

(2) An instructor shall not wear any identification relating to a specific name or identity of a real estate company, a group of companies or franchises while in the class or on the premises.

(i) **Instructor approval requirements.** An individual determined by the Commission to possess one or more of the following qualifications may, upon receipt of an application and evidence of education and/or experience, be considered for approval as an approved instructor. Each application for approval must be accompanied by a Ten Dollar ($10.00) application fee, and documentation required for compliance necessary to verify citizenship, qualified alien status, and eligibility under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. In order to qualify, an individual must possess proof of one of the following:

(1) Possession of a bachelor's degree in a related field.

(2) Possession of a valid teaching credential or certificate from Oklahoma or another state authorizing the holder to teach in an applicable field of instruction.

(3) Five (5) years full-time experience out of the previous ten (10) years in a profession, trade, or technical occupation in the applicable field of instruction.

(4) An individual determined by the Commission to possess a combination of education and/or experience, in a related field to that in which the person is to teach, which constitute an equivalent to one or more of the qualifications in (1), (2) or (3) of this subsection.

(j) **Denied application; appeal.** If the Commission shall be of the opinion that a proposed continuing education offering does not qualify under the Code and/or Rules of the Commission, the Commission shall refuse to approve the offering and shall give notice of that fact to the party applying for approval within fifteen (15) days after such decision. Upon written request from such party, filed within thirty (30) days after receipt of such notice of denial, the Commission shall set the matter for hearing to be conducted within sixty (60) days after receipt of such request. The hearing procedure shall be that as outlined in 605:10-1-3, titled "Appeal of administrative decisions; procedures."

(k) **Disciplinary action.** The Commission may withdraw or discipline as outlined in Title 59, O.S., Section 858-208, paragraph 6 the approval of a coordinator/director, instructor, offering or entity either on a complaint filed by an interested person or on the Commission's own motion, for any of the following reasons, but only after a hearing before the Commission and/or a Hearing Examiner appointed by the Commission:

(1) In the event the real estate license of an instructor and/or coordinator/director is revoked or suspended.

(2) Failure to submit all documents, statements and forms as may be reasonably required by the Commission.

(3) Falsification of records and/or applications filed with the Commission.

(4) False and/or misleading advertising.

(5) Failure to revise an offering so as to reflect and present current real estate practices, knowledge, and laws.

(6) Failure to maintain proper classroom order and decorum.

(7) Any conduct which gives the coordinator/director, instructor or entity presenting the offering an unfair advantage over other brokers and/or real estate companies.

(8) Failure to comply with any portion of the Code or rules of this Chapter.

(l) **Retention of records.** An instructor/entity shall maintain a record of enrollment records and roll sheets which include number of hours attempted by each student.

(m) **Commission authorized to audit.** A duly authorized designee of the Commission may audit any offering and/or inspect the records of the entity at any time during its presentation or during reasonable office hours or the entity may be required to provide the records to the Commission.

(n) **Licensee/Instructor course credit.**

(1) A licensee who shall instruct an approved offering for continuing education shall be credited with one (1) hour for each hour of actual instruction performed.

(2) An instructor may not receive continuing education credit for instructing an offering more than one time during a license term.

(3) Records of such instruction shall be reported and maintained in the same manner as prescribed for participants elsewhere in the rules of this Chapter.

(o) **Guest instructors.** Guest instructors may be utilized for in-class instruction provided an approved instructor is also present during presentations. Total guest instruction and lectures shall not consume more than thirty percent (30%) of the total course time.

SUBCHAPTER 7. LICENSING PROCEDURES AND OPTIONS

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. A person who allows their license to expire shall be considered an applicant and subject to a national criminal history record check, as defined by Section 150.9 of Title 74 of the Oklahoma Statutes.

(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 for all renewals except electronic online renewals wherein this exception would not apply. 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, 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. 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.~~

(m) **Licensed prior to effective date of national criminal history check and license expires however eligible for reinstatement.** A licensee who allows their license to expire after January 1, 2008, shall be required to submit to a national criminal history check; however, such individual shall be allowed to proceed with reinstatement of such license pending receipt by the Commission of a completed fingerprint card, application Part A, and fee as stated elsewhere in these rules for the background search. If, the Commission does not receive a completed Part A of the application, completed finger print card and fee within thirty (30) days from the date their license was reinstated, the license will be placed inactive and a hold placed on the license until receipt by the Commission of the aforementioned items. Thereafter, upon receipt by the Commission, the license may be reactivated so long as appropriate reactivation forms and fees, as stated elsewhere in these rules, have been received by the Commission.

(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.**~~ **Active sales associate to inactive broker license - no remaining credit to be given.** 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~~ credit the difference in the license fees.

SUBCHAPTER 17. CAUSES FOR INVESTIGATION; HEARING PROCESS; PROHIBITED ACTS; DISCIPLINE

605:10-17-2. Complaint procedures

(a) **Complaint may be filed by public or Commission's own motion.** A complaint alleging misconduct on the part of a licensee or any person unlicensed pursuant to the Code who violates provisions of the Code may be filed by any person in writing on a form for such supplied by the Commission, or may be ordered by the Commission on its own motion. The Commission will accept a complaint alleging misconduct on a form not supplied by the Commission if such form is notarized by a notary public.

(b) **Complaint notification; licensee response.** When a complaint has been filed ~~against a licensee,~~ the licensee or unlicensed person pursuant to the Code shall be immediately notified and shall be required to file an adequate written response within fifteen (15) days of the notice.

(c) **Investigation and/or investigative session.** Subsequent to the fifteen (15) day answer period, a field investigation or preliminary investigative session may be conducted to ascertain whether or not charges should be lodged and a formal hearing ordered. Such investigation or investigative session shall be under the supervision of the Secretary-Treasurer of the Commission. He or she may designate an attorney who will act as prosecutor for the Commission to examine the results of the field investigation and/or conduct a preliminary investigative session. The prosecutor so designated may in the name of the Commission subpoena witnesses, take testimony by deposition and compel the production of records and documents bearing upon the complaint.

(d) **Findings reported to Commission.** At the completion of the investigation or investigative session, a written report accompanied by findings, if any, shall be submitted to the Commission. Following receipt of the report, the Commission shall determine whether or not the apparent evidence warrants lodging formal charges and ordering a formal hearing, and if a formal hearing is ordered all parties shall then be furnished with copies of any written report accompanied by findings, if any.

605:10-17-3. Complaint hearings; notice and procedures

(a) **Summary suspension.** If the Commission finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action within thirty (30) days. The summary suspension shall remain in effect until further order by the Commission.

(b) **Formal hearing ordered; notification.** Except as provided in (a) of this section, the Commission may issue a disciplinary order only after a hearing of which licensee or unlicensed person pursuant to the Code affected shall be given at least fifteen (15) days written notice, specifying the offenses of which the licensee or unlicensed person pursuant to the Code is charged. Such notice may be served as provided by law for service of notices, or by mailing a copy by certified mail to the last known address ~~of such licensee~~. If ~~such~~ the licensee is an associate associated with a broker, the Commission in like manner shall notify the broker with whom associated.

(c) **Formal hearing location.** The hearing on such charges shall be set at such time and place as the Commission through its Secretary-Treasurer may prescribe and the notice in (b) of this section shall specify this time and place.

(d) **Formal hearing before Commission; hearing examiner or selected panel.** The Secretary-Treasurer shall schedule each formal disciplinary hearing before a Hearing Examiner, a selected panel of the Commission, or the Commission as a whole. In the case of a proceeding conducted by the Commission as a whole or a panel of the Commission, the Chairman or his/her designee shall preside. Designated counsel shall advise the Chair as to rulings upon the questions of admissibility of evidence, competence of witnesses and any other question of law where such ruling is required or requested.

(e) **Request for postponement.** Once a hearing has been scheduled, the Secretary-Treasurer may for sufficient cause postpone or reschedule a hearing upon proper motion or request having been filed with the Commission office seventy-two (72) hours prior to the hearing.

(1) Each postponement request must be in writing and must state the specific reason(s) for the request.

(2) The Commission may require official documentation supporting such request.

(3) An emergency postponement request shall be considered at the time of the emergency.

(4) The granting of a continuance whether general or emergency, shall not be interpreted to deny the Commission the power to impose summary suspension if the Commission finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its Order, summary suspension of a license may be ordered pending proceedings for revocation or other action within thirty (30) days.

(f) **Hearings public; witnesses may be excluded.** All hearings shall be public except that upon motion of either party, witnesses may be excluded from the hearing room when such witness is not testifying.

(g) **Court reporter.** A court reporter shall be present to record the proceedings on behalf of the Commission. Any person desiring a copy of the transcript of the proceedings, may purchase such from the reporter.

(h) **Formal hearing procedures.** The designated attorney for the State shall present the State's case. The respondent may present his or her own evidence or may present such through his or her own counsel. If the charges against the respondent resulted from a complaint filed by a party present at the hearing, the complaining party may be a witness for the State. In order that the hearing will not be encumbered by evidence having no bearing on the issues, testimony by all witnesses will be limited to matters relevant to the issues involved. The order of procedure shall be as follows:

(1) Recitation of the statement of charges by the person presiding.

(2) Opening statement by the State.

(3) Opening statement by the respondent.

(4) Presentation of the State's case followed by cross-examination and questioning by the Hearing Examiner or Hearing panel.

(5) Respondent's presentation followed by cross-examination and questioning by the Hearing Examiner or Hearing panel.

(6) Closing arguments by the State.

(7) Closing arguments by the respondent.

(i) **Order; hearing before commission.** If the case be heard by the Commission as a whole, the Commission shall deliberate and render a decision with confirmation of such decision in writing in the form of an Order distributed to all parties by mail.

(j) **Proposed order consideration; hearing before hearing examiner or panel.** In the case of a hearing conducted by a panel of the Commission or by a Hearing Examiner, following the hearing, the Hearing Examiner or attorney sitting as counsel to the panel shall prepare a proposed Order to be considered by members of the Real Estate Commission at a future meeting.

(k) **Proposed order notification; written exceptions.** Affected parties will be furnished copies of the proposed Order and notified as to the date the proposal will be considered by the Commission for adoption. At the same time, notice will also be given to the parties that written exceptions or requests to present oral exceptions or arguments, if any, should be submitted on or before a designated date pursuant to Section 311, of Title 75, Oklahoma Statutes. Upon adoption of the Order by the Commission as a whole, the adopted Order shall be distributed to all parties.

(l) **Actual notification pertaining to this Section.** For purposes of this Section, notice shall be deemed to have been given at the time that notice is deposited in the United States mail with proper postage thereon and mailed to the last known address of the notified person, or date when such notice is served in person by a person duly authorized as a representative of the Commission.

(m) **Violation found.** If the Commission shall determine that any licensee or unlicensed person pursuant to the Code is guilty of violation of the "Code," such ~~licensee~~ person may be disciplined in the manner as prescribed in such "Code."

[OAR Docket #08-1044; filed 05-23-08]

TITLE 630. SCENIC RIVERS COMMISSION
CHAPTER 1. ~~RULES~~ OSRC OPERATIONS

[OAR Docket #08-996]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
630:1-1-1. Purpose; construction of rules [AMENDED]
630:1-1-3. ~~Amending of~~Revising rules [AMENDED]
630:1-1-4. ~~Petition requesting promulgation, amendment, or repeal of rules; form and procedure~~Rulemaking petitions [AMENDED]
630-1-1-5. Rulemaking hearings [NEW]
630:1-1-6. Minimum local government standards [NEW]
630:1-1-7. Notice of violation [NEW]
630:1-1-8. The OSRC [NEW]

AUTHORITY:
Oklahoma Scenic Rivers Commission; 82 O.S. § 1461, and the Scenic Rivers Act.

DATES:
Comment period:
February 15, 2008 through March 18, 2008 and March 27, 2008
Public hearing:
March 18, 2008
Adoption:
March 27, 2008
Submitted to Governor:
March 28, 2008
Submitted to House:
March 28, 2008
Submitted to Senate:
March 28, 2008
Gubernatorial approval:
May 5, 2008
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 21, 2008.
Final adoption:
May 21, 2008
Effective:
July 1, 2008

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The OSRC has undertaken a comprehensive review of its regulations. The goal is to make the rules clear and concise, and to conform to the Oklahoma Scenic Rivers Act, the Oklahoma Administrative Procedures Act and other applicable Oklahoma law. OSRC seeks to eliminate redundancy and confusion, streamline procedures, and improve efficiency in order to better preserve the scenic rivers in their natural, scenic state.

The changes in this chapter add new provisions to clarify the rulemaking and evidentiary hearing authority of the OSRC. This includes a new procedure to develop standards applicable to local governments that impact scenic rivers, and replaces various "hearing" provisions in chapter 4. A new rule about the Commission is added to replace Chapter 2, and a new NOV rule is added to notify those believed to be in violation of OSRC rules. Rules in this chapter are promulgated concurrently with changes in chapters 2, 4, 10, 15 and 20.

CONTACT PERSON:
Ed Fite, Administrator (918) 456-3251

PURSUANT TO THE ACTIONS DESCRIBED 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, 2008:

630:1-1-1. Purpose; construction of rules

The rules of this chapter are adopted pursuant to Title 82 O.S. Section 1451-1471. They are adopted as standards guiding the practice and procedures of the Oklahoma Scenic Rivers Commission ("OSRC") and for the purpose of simplifying procedures, avoiding delays, saving expense, and facilitating the administration of the Scenic Rivers Area for the Flint Creek and the Illinois River Scenic River Areas and those portions of Barren Fork Creek within Cherokee County. To the end that these objectives be obtained, the rules of this chapter shall be given a fair and impartial construction and under no circumstances shall they be construed to deprive or limit the commission of any powers, duties and jurisdiction otherwise conferred by law.

630:1-1-3. ~~Amending of~~ Revising rules

The ~~rules of this chapter may be amended or repealed from time to time and new rules adopted by the~~ Commission may adopt, amend or repeal a rule of its own initiative, at the request of the Administrator or upon a rulemaking petition, all pursuant to the Oklahoma Administrative Procedures Act (the "APA," 75 O.S. § 250 et seq.).

630:1-1-4. ~~Petition requesting promulgation, amendment, or repeal of rules; form and procedure~~ Rulemaking petitions

(a) ~~Any interested persons~~ Anyone may petition the ~~Commission~~ OSRC requesting the promulgation, amendment, or repeal of ~~a Commission rule, provided, in submitting such petition, the following requirements:~~ an OSRC rule. Rulemaking petitions shall be in writing, shall identify the text of the particular rule(s) involved, include a brief statement of the issues raised by the rulemaking which cause the request to be made, include a statement of the petitioner's personal interest in the rulemaking, describe how the request would affect those interests and the interests of others, and describe any communications with OSRC members or employees about the rulemaking.

~~(1) All petitions must be submitted in typewritten form or in legible printed form;~~

~~(2) All petitions must clearly identify the party(s) submitting such petition and must include a statement reflecting the interest of the party(s) in submitting such petition, i.e., a showing that such petition is being submitted by an "interested person";~~

~~(3) All petitions must clearly state that the petition is for the promulgation of a new rule, for the amendment of an existing rule, or separately, any combination of the above. In the instance of a requested promulgation of a new rule, a complete text of the requested rules(s) must be submitted. In the instance of a requested amendment to an existing rule(s), a complete text of the existing rule(s) requested for amendment must be submitted reflecting the existing rule language requested for change or deletion and/or such language as may be requested to be added. In the instance of a requested repeal of any rule(s) the petition must state the complete rule(s) requested for repeal;~~

~~(4) All petitions must clearly and separately state the submitted basis, reason, grounds, or justification for each requested rule promulgation, amendment or repeal. Any and all supporting documents, records, statistics, studies, or information must be submitted with the petition, and legality for such requested action, where deemed necessary or appropriate, shall be submitted by the petitioning party;~~

~~(5) All petitions must be duly signed and endorsed by all petitioning parties or their designated representative(s); and the representative(s) must endorse and have notarized said petition representing such signatures;~~

~~(6) Petitions must be received at least two weeks prior to the regularly scheduled Commission meeting to allow for review and to become eligible for placement on the agenda;~~

~~(7) Petitions will be reviewed by the Administrator of the Oklahoma Scenic Rivers Commission to determine if they satisfy the requirements as set forth in this chapter;~~

~~(8) Petitions which satisfy the requirements shall appear on the agenda. Petitions which do not satisfy the requirements shall be duly noted in writing and be returned to the petitioner. Returned petitions must be brought into compliance with the requirements set forth in this chapter and resubmitted at least two weeks prior to the next regularly scheduled Commission meeting for review and to become eligible for placement on the agenda.~~

(b) ~~All petitions requesting the promulgation, amendment, or repeal of any Commission rule, as provided by this chapter, shall be referred to the Commission for review and consideration at the next regularly scheduled meeting following the filing of such petition. Before making any final determination, the requesting party shall be allowed reasonable opportunity to submit to the Commission, argument, written and/or oral, in support of the petition. In making its final determination of the petition, the Commission may, at its discretion, resort to any of the following nonexclusive actions or proceedings, or any combination thereof:~~

~~(1) For good and sufficient cause, summarily grant or deny the petition; or,~~

~~(2) Refer the request to staff and/or committee for additional review, consideration and recommendation prior to a determination thereon by the Commission.~~ The Administrator shall provide a copy of the petition to the Commissioners with a recommendation. Properly filed petitions shall be placed on the agenda for the next regularly scheduled Commission meeting that is at least two weeks after the petition is filed.

(c) Should any petition be granted ~~by~~ in the discretion of the Commission, in whole, or in part, the petition as granted shall be referred to the Administrator and thereafter be treated as in the case of all rule-making and the rulemaking procedures of the ~~Administrative Procedures Act~~ APA shall ~~thereupon become applicable in the further adoption of such rule promulgation, amendment, or repeal~~ apply.

630-1-1-5. Rulemaking hearings

(a) **Conduct.** A Commissioner, the Administrator or his designee may conduct a rulemaking hearing when required by the APA. Notice shall be given as provided in the APA. A rulemaking hearing may be conducted separately from, or as part of, any meeting of the Commission. Rulemaking hearings shall be informal, but conducted in an orderly manner.

(b) **Comments.** Members of the public may comment orally at the hearing or submit written comments by the close of a specified comment period, or both. The person conducting the hearing may set reasonable time limits on oral presentations, may exclude repetitive or irrelevant comments, and shall keep a record of the proceeding.

(c) **Summary of comments.** If the rulemaking hearing is not part of a Commission meeting, then the person conducting the rulemaking hearing shall prepare a fair and accurate summary of relevant comments received, and provide the summary to the Commission before the Commission takes final action on the proposed rules.

(d) **Continuation.** The person conducting the rulemaking hearing or the Commission may continue the hearing. Any continuation shall be announced orally at the rulemaking hearing and shall not require publication.

630:1-1-6. Minimum local government standards

The OSRC is authorized to prepare and establish minimum standards for the planning and other ordinances and rules of local government agencies whose political boundaries cross scenic rivers or lands adjacent and contiguous to scenic rivers. See, 82 O.S. § 1461, paragraph G.

(1) Before taking comment on, adopting or recommending any local government planning standard, the OSRC shall give notice of the proposed action to the public and to each local government agency that may be affected by such standard, and shall generally follow the procedures for rulemaking hearings (OAC 630-1-1-5) insofar as they may be applicable.

(2) Minimum local government standards, while not rules of the Commission, may be adopted by the Commission and may be treated procedurally as if they were rules and subject to petitions for rulemaking and for declaratory rulings. The OSRC shall notify any local government agency that may be affected of the filing of such a petition and allow the agency to comment and intervene if the OSRC convenes an individual hearing.

630:1-1-7. Notice of violation

Whenever the OSRC has reason to believe a person may be in violation of its rules, or its minimum local government standards, the OSRC may give notice of the violation to the person, describe the specific rules or standards involved, describe the acts or omissions that are in violation, and request compliance with the rules or standards within 15 days or some stated schedule of compliance. Except in an emergency, the OSRC shall not commence an individual hearing on the matter if compliance, or a schedule of compliance to correct the violation, has been made within the stated compliance period.

630:1-1-8. The OSRC

(a) **The agency.** The OSRC is an agency of the State of Oklahoma, consisting of a seven-to-fifteen-member governing body of Commissioners (the Commission), an Administrator, support staff and River Rangers. The OSRC implements the Oklahoma Scenic Rivers Act, 82 O.S. Section 1451 and following.

(1) **Officers.** At its first regular meeting each year, the Commissioners shall elect a chair, a vice-chair and a secretary. Officers may succeed themselves once to serve two consecutive years, as provided in the Oklahoma Scenic Rivers Act.

(2) **Commissioner attendance.** As required by the Oklahoma Scenic Rivers Act, any commissioner who misses three regular meetings in succession, without absence excused by the chair, is subject to replacement. The OSRC will look to the appointing authority for the commissioner being replaced to provide the replacement.

(b) **Principal office.** The principal office of the OSRC is 15971 Highway 10, Tahlequah 74464 (which is 2 miles northeast of Tahlequah on State Highway #10). Its mailing address is P.O. Box 292, Tahlequah, OK 74465-0292, and its office hours are 8 to 4:30, Monday through Friday except state holidays.

(c) **Communicating with OSRC.** Communications to the OSRC shall be directed to the Administrator. Communications to the Commission may be made through the Administrator.

(d) **Meetings.** The Commission meets at such times and places as it deems necessary, with a regular meeting at least once each quarter of each calendar year. Meetings of the Commissioners are open to the public except as provided in the Oklahoma Open Meetings Act, 25 O.S. Sections 301 and following.

(1) **Regular meetings.** The OSRC must notify the Secretary of State by December 15th of each year of the date, time and place of regularly scheduled meetings for the following calendar year.

(2) **Special meetings.** Special meetings may be called by the chair or the vice-chair in their discretion, and if three commissioners so request. The OSRC must, at least 48-hours in advance, notify the Secretary of State, and mail to each person who has made a written request to be notified of OSRC meetings and has paid any applicable fees.

(3) **Agendas.** Meeting agendas are to provide factual explanation of matters to be taken up, and shall reserve time during the meeting for public comments on agenda action items. Agendas shall be developed by the Administrator with the advice of the Chair. Time permitting, an agenda shall be sent to each Commissioner in advance of a regularly scheduled meeting. The Commissioners may, by majority vote during a meeting, continue an agenda item or specify a new agenda item for another meeting. The chair may set reasonable time limits on oral comment and may accept written submittals. An agenda is to be posted at the OSRC or other place of meeting at least 24-hours in advance, not including weekends and state holidays.

(4) **Minutes.** Minutes or a record shall be made of all Commission proceedings to show members present and absent, matters considered, actions taken and the vote of each member on each action.

(e) **Open records.** Records of the OSRC shall be open to any person for inspection or copying pursuant to the Oklahoma Open Records Act, 52 O.S. Section 24A.5 and following.

(f) **Committees.** The Commission may appoint ad hoc committees to assist the OSRC for any lawful purpose.

[OAR Docket #08-996; filed 5-21-08]

TITLE 630. SCENIC RIVERS COMMISSION CHAPTER 2. OKLAHOMA SCENIC RIVERS COMMISSION [REVOKED]

[OAR Docket #08-997]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
630:2-1-1. Purpose [REVOKED]
630:2-1-2. Origin and composition of the Commission [REVOKED]
630:2-1-3. Authority of the Commission [REVOKED]
630:2-1-4. Purpose of the Commission [REVOKED]
630:2-1-5. Office of the Commission [REVOKED]
630:2-1-6. Seal [REVOKED]
630:2-1-7. Meetings [REVOKED]
630:2-1-8. Committees [REVOKED]
630:2-1-9. Commission officers and duties [REVOKED]
630:2-1-10. Commission records [REVOKED]
630:2-1-11. Fees for reproduction [REVOKED]
630:2-1-12. Administrative procedures [REVOKED]
630:2-1-13. Reappointments; Oath of Office; Loyalty Oath [REVOKED]
AUTHORITY:
Oklahoma Scenic Rivers Commission; 82 O.S. § 1461, and the Scenic Rivers Act.
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The OSRC has undertaken a comprehensive review of its regulations. The goal is to make the rules clear and concise, and to conform to the Oklahoma Scenic Rivers Act, the Oklahoma Administrative Procedures Act and other applicable Oklahoma law. OSRC seeks to eliminate redundancy and confusion, streamline procedures, and improve efficiency in order to better preserve the scenic rivers in their natural, scenic state.

This chapter is revoked because its rules are either contained in the statutes or have been consolidated elsewhere. This chapter is revoked concurrently with changes in chapters 1, 4, 10, 15 and 20.
CONTACT PERSON:
Ed Fite, Administrator (918) 456-3251

PURSUANT TO THE ACTIONS DESCRIBED 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, 2008:

630:2-1-1. Purpose [REVOKED]

~~The rules of this Chapter are adopted pursuant to Title 82 O.S. Sections 1451 - 1471. They are adopted as standards guiding the practice and procedures of the Oklahoma Scenic Rivers Commission and for the purpose of simplifying procedures, avoiding delays, saving expense, and facilitating administration of the Scenic Rivers Area for the Flint Creek and the Illinois River Scenic River Areas and those portions of Barren Fork Creek within Cherokee County.~~

630:2-1-2. Origin and composition of the Commission [REVOKED]

~~(a) Creation of the Oklahoma Scenic Rivers Commission was provided for by an Act of the Oklahoma Legislature in 1977.~~

~~(b) The Oklahoma Scenic Rivers Commission for the Illinois River and Flint Creek and those portions of the Barren Fork Creek within Cherokee County consists of twelve members.~~

~~(1) The membership and term of office are as follows:~~

~~(A) The Governor appoints three members for four (4) year terms; at least one shall be a representative of the Oklahoma Conservation Commission or the Oklahoma Tourism and Recreation Commission.~~

~~(B) The President Pro Tempore of the Oklahoma State Senate appoints two members for four (4) year terms; one member shall be a member of a statewide citizens conservation or environmental group.~~

~~(C) The Speaker of the Oklahoma House of Representatives appoints two members for four (4) year terms; one member shall be a resident of one of the counties containing the scenic river area.~~

~~(D) The additional members of the Commission are elected in nonpartisan election to represent the following:~~

~~(i) The registered voters who reside or own property within the territorial jurisdiction of the Commission elect one member to represent the county in which they live or own property for an initial term of two (2) years.~~

~~(ii) The registered voters who reside or own property within the territorial jurisdiction of the Commission elect two (2) at-large members for an initial term of four (4) years.~~

~~(2) Thereafter, the vacancies are filled by the procedure in (1) of this Subsection and terms of the members shall be for four (4) years and until their respective successors shall be appointed and qualify, or elected, unless terminated by death or resignation. Such replacement(s) shall serve for the remainder of the unexpired term(s) of the member(s) being replaced.~~

630:2-1-3. Authority of the Commission [REVOKED]

~~The Oklahoma Scenic Rivers Commission receives its statutory authority under Title 82, O.S.1991, Sections 1451 - 1471.~~

630:2-1-4. Purpose of the Commission [REVOKED]

~~The Oklahoma Scenic Rivers Commission is charged with the protection and development of the state's Scenic River Areas and adjacent and contiguous lands, provided for by properly planned and executed regulations respecting public services, land use, occupancy, structures, lot and plot sizes, density of population and other activities as required for the proper protection of the aesthetic, scenic, historic, archeologic and scientific features of the said affected areas, deemed necessary for the protection of the ecosystem and the environment from pollution, despoliation and destruction or waste of natural resources and all other factors adversely affecting the public health, safety, and the general welfare so long as said regulations comply with the exempt provisions pertaining to farming, ranching, forestry, silviculture, and other agricultural uses.~~

630:2-1-5. Office of the Commission [REVOKED]

~~The Commission shall conduct its principal activities within Adair, Cherokee, and Delaware Counties, with its office located out of Tahlequah, Oklahoma.~~

630:2-1-6. Seal [REVOKED]

~~The overall diameter of the Commission's seal shall be two (2) inches. The seal shall consist of the Great Seal of the State of Oklahoma with a beaded border approximately one and one half (1 1/2) inches in diameter, and a knurled border approximately one quarter (1/4) inch wide surrounding the Great Seal in which "Oklahoma Scenic Rivers Commission 1977" shall appear.~~

630:2-1-7. Meetings [REVOKED]

~~(a) Regular meetings.~~

~~(1) The Commission normally meets monthly on the third Tuesday of each month. The commission shall set regular business meetings for the following calendar year at the last Regular Business Meeting before December 15th of the preceding calendar year. At least fifty percent (50%) of the sworn members must be present to constitute a quorum in the transaction of the Commission's business and a majority vote of those present shall be necessary to approve any motion before the Commission.~~

~~(2) People wishing to have an item placed on the meeting agenda must deliver the request in writing to the Commission Office at least ten (10) working days prior to the Commission meeting.~~

~~(3) People wishing to address the Commission should request a place on the agenda. The Chairman will recognize such people and allow them to address the Commission if time is available.~~

~~(4) All Oklahoma Scenic Rivers Commission meetings will be held in compliance with the 1977 Oklahoma Open Meeting Law.~~

~~(b) Special or emergency meetings.~~

~~(1) Special or emergency meetings may be called by the Chairman, Vice-Chairman or by written request of three (3) Commission members as deemed necessary. At least 48 hours prior notice shall be given for special or emergency meetings.~~

~~(2) The Administrator of the OSRC shall be notified by the Chairman, Vice-Chairman or three (3) Commission members of the need for a special or emergency meeting and said Administrator shall call all Commission members of said Commission to be notified. All required notices shall be given pursuant to the Open Meeting Act.~~

~~(c) Meeting attendance.~~

~~(1) Any Commission member missing three (3) regular meetings in succession, without excused absence, is subject to replacement by the Commission pursuant to the provisions of the Scenic Rivers Act.~~

~~(2) In the event of the replacement, resignation, or demise of an appointed Commissioner, for reasons set forth in the Scenic Rivers Act, the appointing authority shall appoint a replacement for the unexpired term of the member being replaced.~~

~~(3) In the event of the replacement, resignation or demise of an elected Commissioner, for reasons set forth in the Scenic Rivers Act, the Commission Chairman shall call a special election to elect a replacement for the unexpired term of the member being replaced, if said member has more that 90 days remaining in the designated term. Such election procedures shall be initiated within 30 days of the date the vacancy occurs.~~

630:2-1-8. Committees [REVOKED]

~~(a) Membership on committees is appointive by the Chairman or Vice-Chairman, in the Chairman's absence. Committee functions are:~~

~~(1) To provide a structure for communication in determining needs and solutions to problems, and make recommendations to the Oklahoma Scenic Rivers Commission.~~

~~(2) To assist the Oklahoma Scenic Rivers Commission assessing Scenic Rivers' needs and priorities.~~

~~(b) Various types of committees shall be named at the pleasure of the Commission.~~

~~(c) The duties of the Committee Chairman are as follows:~~

~~(1) Work with the Administrator in establishing all committee meetings;~~

~~(2) Furnish the Administrator, in the event of the Administrator's absence, a summary of the proceedings of all committee meetings.~~

~~(d) The administrator and the Chairman of the Committee shall serve as ex-officio members on all committees.~~

~~(e) All committees shall make recommendations to the Commission and shall submit all final approved plans and reports to the Commission for its approval.~~

~~(f) A quorum shall be declared by fifty percent (50%) or more of the committee members being present.~~

630:2-1-9. Commission officers and duties [REVOKED]

~~(a) The following officers are to be duly elected by the Commission at the first regular meeting of each calendar year.~~

~~(1) Chairman:~~

~~(A) Shall preside at meetings of the Commission;~~

~~(B) Shall also perform any duties and possess any powers that might be assigned to him herein, and from time to time by the Commission;~~

~~(C) Shall serve for a term of one (1) year.~~

~~(2) Vice-Chairman:~~

~~(A) Shall preside over meetings in the absence of the Chairman, or the resignation or death of the Chairman;~~

~~(B) Shall also perform any duties authorized by the Commission;~~

~~(C) Shall serve for a term of one (1) year.~~

~~(3) Secretary/Treasurer:~~

~~(A) Shall make the monthly Treasurer's Report of Financial Condition to the Commission;~~

~~(B) Shall be able to countersign, with the Administrator, all checks written by the Commission;~~

~~(C) Shall certify approved minutes of the Commission;~~

~~(D) Shall certify actions of the Commission;~~

~~(E) Shall serve for a term of one (1) year.~~

~~(b) In the event of the simultaneous resignation, replacement, or demise, etc., of the Chairman and Vice Chairman, new officers will be elected by the Commission to fill the unexpired term of said officers.~~

~~(c) In the event of the Secretary/Treasurer's demise or resignation, a new Secretary/Treasurer shall be elected to fill the unexpired term.~~

630:2-1-10. Commission records [REVOKED]

~~(a) Commission records shall be public. All official records of the Commission shall be public records, open to inspection under reasonable circumstances, at any reasonable time during business hours, by any person, but such records shall not be taken from the Commission's office except upon official business of the Commission by members, employees, or agents of the Commission.~~

~~(b) Minutes of the Commission. A minutes record shall be made of all proceedings before the Oklahoma Scenic Rivers Commission which shall show those members present and absent, all matters considered, all actions taken, and the vote of each member on any motion.~~

~~(c) Copies and certification. Copies of official records of the Commission may be made and certified to by the Administrator and the expense of same shall be borne by the party requesting such copies in accordance with the fee schedule contained in 630:2-1-11, herein. Certified copies of any records or papers on file in the office of the Commission shall be evidenced equally with the originals thereof and when introduced as evidence shall have the same validity as the originals.~~

630:2-1-11. Fees for reproduction [REVOKED]

~~The following fees for reproduction shall be charged by the Commission:~~

~~(1) For furnishing and certifying a transcript of a hearing - $1.00 per page with $25.00 minimum charge plus postage at cost.~~

~~(2) For making and certifying the transcript of a record for transmittal to the District Court pursuant to 75 O.S. 1971, Section 320 - such fees to be paid by the petitioner for review - same as (1) of this section.~~

~~(3) For reproducing tapes(s) of recorded meetings -~~

~~(A) Actual cost of tapes and postage, plus;~~

~~(B) Operator's time at $4.00 per hour and a minimum time charge of 15 minutes.~~

~~(4) Machine copy charges for any instrument -~~

~~(A) Minimum charge of $1.00 for up to and including ten (10) copies plus $.10 per page for all over ten (10) pages;~~

~~(B) Operator's time at $4.00 per hour and a minimum time charge of 15 minutes. Will apply to all except for ten (10) pages or less; and~~

~~(C) Postage at cost.~~

630:2-1-12. Administrative procedures [REVOKED]

~~In the exercise of all powers and performance of all duties, the Commission shall comply with the procedures provided in the Administrative Procedures Act (75 O.S. 1991, Section 301, et seq., as amended.)~~

630:2-1-13. Reappointments; Oath of Office; Loyalty Oath [REVOKED]

~~(a) Appointed positions on the Commission shall be filled as each designated term expires.~~

~~(b) New Commission members shall receive an Oath of Office and Loyalty Oath to be administered at the next regularly scheduled Commission meeting following the appointment.~~

[OAR Docket #08-997; filed 5-21-08]

TITLE 630. SCENIC RIVERS COMMISSION CHAPTER 4. HEARING PROCEDURES, PRACTICES, AND APPEALS

[OAR Docket #08-998]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 4. Hearing Procedures, Practices, and Appeals [AMENDED]
AUTHORITY:
Oklahoma Scenic Rivers Commission; 82 O.S. § 1461, and the Scenic Rivers Act.
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n/a
ANALYSIS:
The OSRC has undertaken a comprehensive review of its regulations. The goal is to make the rules clear and concise, and to conform to the Oklahoma Scenic Rivers Act, the Oklahoma Administrative Procedures Act and other applicable Oklahoma law. OSRC seeks to eliminate redundancy and confusion, streamline procedures, and improve efficiency in order to better preserve the scenic rivers in their natural, scenic state.

The changes in this chapter simplify processes and conform to the Oklahoma Administrative Procedures Act where the OSRC is authorized to conduct individual proceedings (quasi-judicial hearings). Rulemaking hearings moved to Chapter 1 and provisions for declaratory rulings are added. These were generally what was described in subchapter 3, public hearings. Rulemaking in this chapter is promulgated concurrently with changes in chapters 1, 2, 10, 15 and 20.
CONTACT PERSON:
Ed Fite, Administrator (918) 456-3251

PURSUANT TO THE ACTIONS DESCRIBED 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, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

630:4-1-1. Purpose

The rules of this Chapter are adopted pursuant to Title 82 O.S. Sections 1451 - 1471. They are adopted as standards guiding the practice and procedures of the Oklahoma Scenic Rivers Commission ("OSRC") and for the purpose of simplifying procedures, avoiding delays, saving expense, and facilitating administration of the Scenic Rivers Area for the Flint Creek and the Illinois River and those portions of Barren Fork Creek within Cherokee County.

630:4-1-2. Scope

The rules of this chapter govern all hearing proceedings for ~~public and~~ individual hearings before the OSRC. Exhaustion of these proceedings is required prior to resort to relief of the Oklahoma state district courts.

630:4-1-3. ~~Statutory law~~ Authority

~~All~~ Individual hearings in the name of the Commission are conducted ~~in accordance with~~ pursuant to Article II of the Oklahoma Administrative Procedures Act (75 O.S. ~~1981, Section 301, et seq., as amended~~ Sections 308a and following, the "APA"), to the rules of this chapter and, where additional guidance is needed, generally to the civil procedures followed by the Oklahoma district courts. ~~All persons having business with the Commission should familiarize themselves with these statutes, the specific rules set forth in the chapter applicable to the matter involved in the proceeding, and the procedural rules in this chapter.~~

630:4-1-6. Interpretive opinion about a rule or order

Any person who alleges that any OSRC rule or order interferes with or impairs, or threatens to interfere with or impair, their legal rights may petition the OSRC to request a declaratory ruling about the applicability of the rule or order. The Administrator shall provide a copy of the petition to the Commissioners with a recommendation. Properly filed petitions shall be placed on the agenda for the next regularly scheduled Commission meeting that is at least two weeks after the petition is filed.

(1) **Form and content of petition.** Petitions for a declaratory ruling shall be in writing, shall identify the particular rule(s) involved, include a brief statement of the issues raised by the rule(s) which cause the request to be made, include a statement of the petitioner's personal interest in the ruling, describe any communications with OSRC members or employees about the issues, and pose the specific question(s) to be answered and the relief sought.

(2) **Determination.** To address a petition for declaratory ruling, the Commission may rule on the petition, refer the petition to a hearing examiner or decline to rule on the petition. Rulings shall state the findings of fact and conclusions of law upon which they are based. If the OSRC does not make a ruling or begin an individual proceeding on the petition within 90 days after the petition is filed, the petition shall be deemed to have been denied. If the OSRC begins an individual proceeding on the petition, it shall offer an opportunity for a hearing to the petitioner. After the OSRC issues a ruling or a final order, the OSRC

shall mail a copy of the ruling or final order to the petitioner by certified mail, return receipt requested.

(3) **Judicial review.** A declaratory ruling or refusal to issue such ruling shall be subject to judicial review in the manner provided for review of decisions in individual proceedings in the APA, 75 O.S. § 307.

630:4-1-7. Conduct and record of individual hearings

(a) **Open to public.** The Commission or a designated hearing examiner shall conduct every individual hearing before the OSRC. All hearings shall be open to the public unless a protective order is entered to uphold confidentiality laws; however, upon motion of a party, the Commission or the hearing examiner may exclude from the hearing room any witness not at that time under examination. Neither a party nor their attorney may be excluded.

(b) **Record.** All testimony shall be taken on the record unless otherwise designated by the Commission or the hearing examiner. The OSRC shall make an electronic recording of the hearing proceedings that shall be the official record. The recording will not be transcribed as a matter of course. Copies of the recordings shall be provided to a party on written request. The cost of transcription, if done, shall be borne by the party having the recording transcribed.

(c) **Court reporter.** A party may have the proceeding transcribed by a court reporter at the expense of the party. The original transcript shall be filed with the OSRC. Each party requesting copies shall make arrangements for such with the reporter, and pay the costs.

(d) **Maintenance of the record.** The record of a hearing and the file containing the notices and the pleadings will be maintained by the OSRC. All pleadings, motions, orders and other papers submitted for filing in an individual proceeding shall be stamped with the date filed by the Commission or the hearing examiner upon receipt.

(e) **Designation on appeal.** On an appeal to district court, the parties may designate and counter-designate portions of the record to save costs, following the procedures in the APA.

SUBCHAPTER 3. PUBLIC HEARING PROCEDURES [REVOKED]

630:4-3-1. Conduct of public hearings [REVOKED]

~~(a) Hearing Officer. Public hearings on behalf of the Commission may be conducted by any Commission member, the administrator of the Commission, or an authorized member of the staff designated by the Commission as a hearing examiner.~~

~~(b) Notice. Proper notice of the public hearing shall be given stating the time, place, date and purpose of the hearing.~~

~~(c) Format. Public hearings shall follow this designated format:~~

~~(1) Hearing called to order;~~

~~(2) Introduction of person or persons conducting the public hearing;~~

~~(3) Purpose of meeting announced;~~

~~(4) Copies of proposed action to be sufficiently distributed;~~

~~(5) Explanation or reading of the proposed action;~~

~~(6) Written comments received in the Commission office or at the public hearing shall be identified and read as part of the public hearing;~~

~~(7) Those wishing to comment upon the action or ask questions will be asked to identify themselves by name, town, occupation, and whom they represent. The person or persons conducting the hearing will hear such comments or questions and answer them to the best of their knowledge;~~

~~(8) All comments, questions, and discussion on the proposed action shall be noted;~~

~~(9) After all comments, questions, and due discussion has ceased, the public hearing shall be declared ended;~~

~~(10) All comments, questions, and a brief summary of the discussions entailed during the hearing shall be embodied in the form of a written memo and sent to the members of the Commission for careful consideration before any further actions are taken on the proposed action.~~

~~(d) Commission consideration and action at public hearing.~~

~~(1) Oral arguments regarding public hearing matters may be allowed by the Commission upon request as time permits, and at the discretion of the Commission;~~

~~(2) After appropriate consideration of a public hearing matter, the Commission will vote on the matter at hand upon a motion by one of the Commission members.~~

630:4-3-2. Hearing record for public hearings [REVOKED]

~~All comments, questions, and discussion given at hearings shall be recorded, but shall be transcribed only upon receipt of notice of appeal to the district court pursuant to the Administrative Procedures Act, or upon other request. The cost of transcribing the hearing and furnishing a certified copy of the record to the district court shall be borne by the appellant or petitioner (see OAC 630:2-1-11 Fees for reproduction). When a proceeding is transcribed under the provisions of this section, a copy of the hearing transcript may be obtained from the Commission upon request and payment of the fee as required herein.~~

630:4-3-3. Appeals to state district court from public hearings [REVOKED]

~~Appeals from any ruling, order, decision, or act of the Oklahoma Scenic Rivers Commission rendered as a result of a public hearing may be reviewed in the district court of the county in which the Commission office is located or the county in which the property affected is located and in accordance with the standards established by the Administrative Procedures Act of this state.~~

SUBCHAPTER 5. INDIVIDUAL HEARINGS

630:4-5-1. "Individual hearing" defined

Individual hearings are hearings held on matters directly affecting the interests of an individual person or persons and resulting in the issuance of an Order. An individual hearing is an "individual proceeding" as defined in the APA, 75 O.S. § 250.3 (7). Examples of individual hearings include hearings on ~~commercial flotation devices licenses,~~ revocation of licensing and violations of OSRC rules.

630:4-5-2. ~~Designation~~ Appointment of hearing examiner

~~Individual hearings may be conducted by any Commission member, the~~ The Administrator may appoint hearing examiners to conduct individual hearings from ~~or an authorized member of~~ the OSRC staff or retain local or government counsel ~~designated by the Commission as a hearing examiner~~. ~~In the event a Commission member has acted as a hearing examiner, that Commission member shall not participate as a voting member of the Commission when it acts to review an Order issued by the hearing examiner that has been appealed to the Commission.~~

630:4-5-4. Petition, ~~Service~~ service and request for hearing

(a) **Petition.** ~~Any party initiating a proceeding before the OSRC shall serve copies of the initiating documents on the Administrator. Any party or other person shall serve any other documents being filed subsequently with the OSRC, all other parties and all other persons participating in the proceedings.~~ If the Administrator or the Commission determines that action should be taken to enforce the rules or minimum local government standards of the OSRC, the Administrator may initiate an individual hearing pursuant to the APA by filing a petition with the OSRC and by serving the petition on each respondent. The petition shall include a statement of the legal authority and jurisdiction under which the action is taken, reference to the statutes and rules involved, a short and plain statement of the matters asserted and the relief requested. The petition may allege facts by attaching and incorporating a document by reference. The petition shall provide that the action shall commence and become effective fifteen (15) calendar days after receipt of the petition by the Respondent, unless the Respondent timely files a written request for a hearing with the OSRC.

(b) ~~Copies of documents by which any proceeding is initiated~~ **Service.** The petition shall be served on ~~all statutory parties~~ each respondent personally or by registered or certified mail, return receipt requested. Substitute service of a petition may be completed after personal and mail service are attempted with the filing of an affirmation of the attempted service and that the petition were then mailed first class mail to the last known address of the respondent. All subsequent documents shall be served personally or by first class mail. Service shall thereafter be made on attorneys who have entered an appearance for a party.

~~(c)~~ Service of ~~copies of documents initiating a proceeding~~ a petition is complete at the time of personal service or, if service is made by mail, upon receipt. Service of all subsequent documents is complete at the time of personal service or, if service is by mail, upon mailing.

(c) **Request for hearing.** A request for hearing must set forth objections to the petition and will be timely filed if said request is in writing and postmarked or hand delivered to the OSRC within fifteen (15) calendar days of the date the party received the petition. If a timely written request for a hearing is not filed by the Respondent, the allegations in the petition shall be deemed confessed by the Respondent and the action will become final as set forth herein. If the written request for hearing is timely filed, such hearing shall be scheduled before the Commission or a hearing examiner at least fifteen (15) days after the date said request is filed, and the parties shall be notified of the date, time and place of the hearing. If an emergency exists, a hearing may be conducted without the filing of a petition and without waiting fifteen (15) days.

~~(d) Whenever an attorney has entered an appearance for a party in a proceeding before a hearing examiner or the Commission, service thereafter shall be made upon the attorney.~~

630:4-5-5. Intervention

(a) Any person may petition for leave to intervene at any stage of a proceeding before the OSRC.

(b) A petitioner ~~for~~ seeking leave to intervene shall incorporate in the petition a statement setting forth the interest of the petitioner and ~~where required, a showing of why his~~ how the interest is or may be adversely affected.

(c) The hearing examiner or the OSRC shall grant intervention where the petitioner:

(1) Has a statutory right to initiate the proceeding in which he wishes to intervene; or

(2) Has ~~an~~ a protected interest which is or may be adversely affected by the outcome of the proceeding or the proceeding involves minimum local government standards under OAC 630:1-1-6.

(d) If neither (1) or (2) of subsection (c) of this section apply, the hearing examiner shall consider the following in determining whether the intervention is appropriate:

(1) The nature of the issues;

(2) The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;

(3) The ability of the petitioner to present relevant evidence and argument; and

(4) The effect of intervention on the OSRC's implementation of its statutory mandate.

(e) Any person granted leave to intervene in a proceeding may participate in such proceeding as a full party or, if desired, in a capacity less than that of a full party. If an intervener wishes to participate in a limited capacity, the extent and the terms of the participation shall be at the discretion of the hearing examiner.

630:4-5-6. Voluntary dismissal [REVOKED]

~~Any party who initiated a proceeding before the OSRC may seek to withdraw by moving to dismiss at any stage of a proceeding and the hearing examiner may grant such a motion.~~

630:4-5-7. Motions

(a) Except for oral motions made in proceedings on the record, or where the hearing examiner otherwise directs, each motion shall~~:~~ be

~~(1) Be~~ in writing~~;~~ and shall contain

~~(2) Contain~~ a concise statement of supporting grounds.

(b) Unless the hearing examiner orders otherwise, any party to a proceeding in which a motion is filed ~~under (a) of this section~~ shall have fifteen (15) days from service of the motion to file a ~~statement in~~ response.

(c) Failure to make a timely motion or to file a ~~statement in~~ response may be construed as a waiver of objection.

(d) The hearing examiner shall rule on all motions as expeditiously as possible.

630:4-5-8. Waiver of right to hearing

Any person entitled to a hearing before a hearing examiner may waive such right in writing. ~~Where parties are directed by the regulations of this chapter to file a response pleading on or before a specified time, any party who fails to file such responsive pleading by the time specified, may be deemed to have waived his right to a hearing. Unless all parties to a proceeding who are entitled to a hearing waive, or are deemed to have waived such right, a hearing will be held.~~

630:4-5-9. Powers of hearing examiners

(a) Under the regulations of this subchapter, a hearing examiner may:

(1) Administer oaths and affirmations;

(2) Issue subpoenas;

(3) Issue appropriate orders relating to discovery;

(4) Rule on procedural requests or similar matters;

(5) Hold conferences for settlement of simplification of the issues;

(6) Regulate the course of the hearing and govern the conduct of participants;

(7) Rule on offers of proof, ~~and~~ receive relevant, material and non-repetitious evidence, and make inquiries of parties and witnesses to develop fairly the facts and issues;

(8) Take other actions authorized by these regulations and the act; ~~and~~

(9) Require or allow the filing of briefs, proposed findings of fact and conclusions of law by the parties;

(10) Issue final orders for parties in default, for withdrawals of petitions and for settlements; and

(~~9~~ 11) Make or recommend decisions, issue proposed orders and close the record.

(b) A hearing examiner may order a prehearing conference:

(1) To simplify and clarify issues;

(2) To receive stipulations and admissions;

(3) To explore the possibility of agreement disposing of any or all of the issue in dispute; and

(4) For such other purposes as may be appropriate.

(c) Except as otherwise provided in the regulations of this subchapter, the jurisdiction of the hearing examiner shall terminate upon:

(1) The filing of a notice of appeal from an initial decision or other order dispositive of the proceeding;

(2) The issuance of an order of the Commission granting a petition for review; or

(3) The expiration of the time period within which a petition for review or an appeal to the Commission may be filed.

630:4-5-13. Proposed findings of fact and conclusion of law [REVOKED]

~~The hearing examiner shall allow the parties to a proceeding the opportunity to submit proposed findings of fact and conclusions of law together with a supporting brief at a time designated by the hearing examiner.~~

630:4-5-14. Orders and decisions by hearing examiner

(a) Except as may otherwise be required by the APA, the OSRC has the burden of going forward to make a prima facie case for the petition, and issues are decided by substantial evidence.

(b) An order or decision rendered by a hearing examiner disposing a case shall be delivered or mailed to each respondent, and shall incorporate:

(1) Findings of fact and conclusions of law and the basis and reasons therefore on all the material issues of fact, law and discretion presented on the record; ~~and~~

(2) An order granting or denying relief~~.~~ ; and

(3) A notice that the order or decision of the hearing examiner will be issued as a final order unless, within 15 days after the date it was mailed to them, they mail or deliver to the OSRC a written request for review by the Commission. The appeal to the Commission must state facts, reasons and the specific relief requested.

630:4-5-15. Effect of order or decision by hearing examiner

(a) An order or decision by the hearing examiner shall be made final if that order or decision is not timely appealed to the Commission. If not timely appealed to the Commission, then the Administrator shall sign the order or decision by the hearing examiner as a Final Order and mail a copy to each respondent by certified mail, return receipt requested.

(b) If an order or decision by a hearing examiner is timely appealed to the Commission, then the Commission shall at its next meeting take up the matter, and allow each party an opportunity to present arguments why the order or decision should not become a final order.

(c) After hearing arguments, the Commission may affirm the order or decision of the hearing examiner, or may for good cause modify the decision or order of the hearing examiner and issue a revised order with findings of fact and conclusions of law, or may refer the order or decision back to the hearing

examiner for a hearing on specific matters. The Administrator shall a mail a copy of a Final Order by the Commission to each respondent by certified mail, return receipt requested.

(d) A party may appeal a Final Order as provided in the APA.

630:4-5-17. Discovery

Following the initiation of a proceeding and with permission of the hearing examiner the parties may initiate discovery at any time so long as it does not interfere with the conduct of the hearing. Discovery shall generally be conducted according to the Oklahoma Discovery Code, 12 O.S. § 3224 and following.

~~(1) Discovery methods. Parties may obtain discovery by one or more of the following methods:~~

~~(A) Depositions upon oral examinations or upon written interrogatories;~~

~~(B) Written interrogatories;~~

~~(C) Production of documents of things or permission to enter upon land or other property, for inspection and other purposes; and~~

~~(D) Requests for admission.~~

~~(2) Failure to comply with orders compelling discovery. If a party or an officer, director, or other agent of a party fails to obey an order to provide or permit discovery, the hearing examiner before whom the action is pending may make such orders in regard to the failure as are just, including but not limited to the following:~~

~~(A) An order that the matters sought to be discovered or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;~~

~~(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters into evidence; or~~

~~(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.~~

~~(3) Deposition upon oral examination or upon written questions. Any party desiring to take the testimony of any other party or other persons by deposition upon oral examination or written questions shall, without leave of the hearing examiner, give reasonable notice in writing to every other party, to the person to be examined and to the hearing examiner.~~

~~(4) Written interrogatories to parties. Any party may serve upon any other party written inter rogatories to be answered in writing by the party served, or if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. A copy of the interrogatories, answers, and all related pleadings shall be served on the examiner and upon all parties to the proceedings.~~

SUBCHAPTER 7. PETITIONS FOR REVIEW OF PROPOSED ASSESSMENTS OF FINES [REVOKED]

630:4-7-1. Who may file [REVOKED]

~~Any person charged with an OSRC fine may file a petition for review of a proposed assessment of that fine with the OSRC~~

630:4-7-2. Time for filing [REVOKED]

~~A petition for review of a proposed assessment of a fine must be filed within 30 days of receipt of notice of the proposed fine.~~

630:4-7-3. Contents of petition [REVOKED]

~~The petition for review of proposed assessments shall include:~~

~~(1) A short and plain statement indicating the reasons why either the amount of the fine or the fact of the violation is being contested;~~

~~(2) Identification by number of all violations being contested.~~

630:4-7-4. Appeals [REVOKED]

~~Any party may petition the Commission to review the decision of a hearing examiner concerning an assessment of a fine according to the procedures set forth in Subchapter 13 of this chapter.~~

SUBCHAPTER 9. PROCEEDINGS FOR REVOCATION OF LICENSE [REVOKED]

630:4-9-1. Initiation of proceedings [REVOKED]

~~(a) A proceeding on a show cause order issued by the OSRC pursuant to 630:10-1-5 of the rules shall be initiated by the OSRC serving the show cause order on the licensee.~~

~~(b) A show cause order shall set forth:~~

~~(1) A list of the unwarranted or willful violations which contribute to a pattern of violations;~~

~~(2) A copy of each notice or order which contains one or more of the violations listed as contributing to a pattern of violations;~~

~~(3) The basis for determining the existence of a pattern of violations.~~

630:4-9-2. Answer [REVOKED]

~~(a) The licensee shall have thirty (30) days from receipt of a show cause order within which to file an answer with the OSRC.~~

~~(b) The licensee's answer to a show cause order shall contain a statement setting forth:~~

~~(1) The reasons in detail why a pattern of violations does not exist or has not existed, including all reasons for contesting:~~

~~(A) The fact of any of the violations alleged by OSRC as constituting a pattern of violations; or~~

~~(B) The willfulness of such violations;~~

~~(2) All mitigating factors the licensee believes exist in determining the terms of the revocation;~~

~~(3) Any other alleged relevant facts; and~~

~~(4) Whether a hearing on the show cause order is desired.~~

630:4-9-3. Burden of proof in revocation proceedings [REVOKED]

~~In proceedings to revoke a permit, OSRC shall have the burden of going forward to establish a prima facie case for revocation of the permit. The ultimate burden of persuasion that the licenses should not be revoked shall rest with the licensee.~~

630:4-9-4. Determination by hearing examiner [REVOKED]

~~(a) Upon a determination by the hearing examiner that a pattern of violations exists or has existed, the hearing examiner shall order the licenses revoked. In making such a determination, the hearing examiner need not find that all the violations occurred to establish a pattern.~~

~~(b) The decision of the hearing examiner shall be issued within twenty (20) days following the date the hearing record is closed by the hearing examiner or within twenty (20) days of receipt of the answer, if no hearing is requested by any party and the hearing examiner determines that no hearing is necessary.~~

~~(c) At any stage of a revocation proceeding being conducted by a hearing examiner, the parties may enter into a settlement, subject to the approval of the hearing examiner.~~

630:4-9-5. Failure to appear; summary disposition [REVOKED]

~~(a) In a proceeding under this subchapter where the licensee fails to appear at a hearing, the licensee shall be deemed to have waived his rights to a hearing and the hearing examiner may assume for purposes of the proceeding that:~~

~~(1) Each violation listed in the order occurred;~~

~~(2) Such violations were caused by the licensee's unwarranted failure or were willfully caused; and~~

~~(3) A pattern of violations exist.~~

~~(b) In order to issue an initial decision concerning revocation of the permit when the licensee fails to appear at the hearing, the hearing examiner shall either conduct an ex parte hearing or require OSRC to furnish proposed findings of fact and conclusions of law.~~

630:4-9-6. Appeals from hearing examiner determination; Commission decision [REVOKED]

~~(a) Any party aggrieved by the decision of the hearing examiner shall have two (2) working days from receipt of the decision within which to file a notice of appeal with the Commission. A copy of the notice of appeal must simultaneously be filed with the hearing examiner.~~

~~(b) The Commission shall act immediately to issue an expedited briefing schedule.~~

~~(c) The decision of the Commission shall be issued within thirty (30) days of the date the hearing record is closed by the hearing examiner.~~

SUBCHAPTER 11. REVIEW OF APPROVAL OR DISAPPROVAL OF COMMERCIAL FLOTATION DEVICE LICENSE [REVOKED]

630:4-11-1. Scope [REVOKED]

~~This subchapter sets the procedures for obtaining formal review of a decision by the OSRC to approve or disapprove commercial flotation device license applications, in whole or in part. In the event no request for formal review is requested pursuant to these rules, the decision by the OSRC to approve or disapprove commercial flotation device applications, in whole or in part, shall be final.~~

630:4-11-2. Request for review of approval/disapproval of commercial flotation device license [REVOKED]

~~The applicant or any person having an interest which is or may be adversely affected by the decision of the OSRC to approve or disapprove commercial flotation device applications, in whole or in part, may file a request for an evidentiary hearing to review that decision.~~

~~(1) Where and when to file.~~

~~(A) The request for review shall be filed with the OSRC within thirty (30) days of receipt of a copy of the OSRC's written decision approving or disapproving the application, in whole or in part.~~

~~(B) Any person not served with a copy of OSRC's written decision shall file the request for review within thirty (30) days of the date of issuance of the written decision.~~

~~(2) Contents of request. The request for review shall include:~~

~~(A) A clear statement of the facts entitling that person to administrative relief;~~

~~(B) An explanation of the alleged errors in the OSRC's decision;~~

~~(C) A request for specific relief;~~

~~(D) A statement whether the person requests or waives the opportunity for an evidentiary hearing; and~~

~~(E) Any other relevant information.~~

630:4-11-3. Time for hearing [REVOKED]

~~(a) The hearing examiner shall hold a hearing within thirty (30) days of the date of filing of the request for review and shall notify all interested parties of the time and place of the hearing.~~

~~(b) The hearing examiner may grant an extension of time for the hearing only if all parties to the hearing agree to such extension.~~

630:4-11-4. Status of approved licenses pending review [REVOKED]

~~The issuance of licenses following OSRC approval of a commercial flotation device license application shall not be stayed during the pendency of any administrative review proceeding resulting from such approval, unless:~~

~~(1) The applicant has not received licenses in the prior year or has not received them for the particular Commercial Float Area requested in the year prior to the year for which licenses are being requested.~~

~~(2) Temporary relief has been requested by a party filing a proper request under 630:4-11-2; and~~

~~(3) A decision to grant temporary relief is made.~~

[OAR Docket #08-998; filed 5-21-08]

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

[OAR Docket #08-999]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions and Licensing [AMENDED]
630:10-1-1. Purpose [AMENDED]
630:10-1-3. Definitions [AMENDED]
630:10-1-4. User fees [AMENDED]
630:10-1-5. Commercial licensing procedures, requirements, and annual use fees [AMENDED]
630:10-1-6. ~~Revocation of licensing~~Suspend or revoke license [AMENDED]
630:10-1-7. Limitation on licensing of flotation devices [AMENDED]
630:10-1-8. Enforcement [REVOKED]
Subchapter 2. Public Access Areas
630:10-2-1. Definitions [AMENDED]
630:10-2-2. Camping fees [AMENDED]
630:10-2-3. Time limits and extensions [AMENDED]
630:10-2-4. ~~Conditions of~~Use of public access areas~~area use~~ [AMENDED]
630:10-2-5. Day use [REVOKED]
AUTHORITY:
Oklahoma Scenic Rivers Commission; 82 O.S. § 1461, and the Scenic Rivers Act.
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ANALYSIS:
The OSRC has undertaken a comprehensive review of its regulations. The goal is to make the rules clear and concise, and to conform to the Oklahoma Scenic Rivers Act, the Oklahoma Administrative Procedures Act and other applicable Oklahoma law. OSRC seeks to eliminate redundancy and confusion, streamline procedures, and improve efficiency in order to better preserve the scenic rivers in their natural, scenic state.

Besides simplification and clarification, the revisions to this chapter add some new, technical criteria. The process for licensing commercial flotation devices is changed to clarify rights and obligations in order to promote fairness in distributing new and renewal licenses, and to authorize additional, non-renewable licenses.

Additional requirements are added to commercial float operations, such as making toilets available to the floating public and signage. A new rule establishes new commercial float licensing for non-profit youth organizations. Another new rule prohibits the possession of open containers, or consumption, of alcohol (including 3.2 beer) in four public access areas: Round Hollow, Todd, and US 62 Bridge Access on the Illinois River, and US 412 Bridge Access on Flint Creek. Another new rule prohibits commercial floating on the Barren Fork and Flint Creeks. Rulemaking in this chapter is promulgated concurrently with changes proposed in chapters 1, 2, 4, 15 and 20.
CONTACT PERSON:
Ed Fite, Administrator (918) 456-3251

PURSUANT TO THE ACTIONS DESCRIBED 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, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS AND LICENSING

630:10-1-1. Purpose

The purpose of this Chapter is to establish a system for licensing of commercial float operations and commercial flotation devices and the collection of commercial and private fees to ~~assure compliance with state laws and minimum health and safety standards~~ preserve the scenic rivers in their natural state and to preserve the health and safety of the patrons.

630:10-1-3. Definitions

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

"Commercial float operators (or operations)" means any person ~~who makes~~ or business that rents or leases flotation devices ~~available for hire by~~ commercially to the public for use upon ~~waterways~~ scenic rivers within the jurisdiction of the OSRC.

~~**"Commercial flotation device"** means a canoe, boat, kayak, raft, inner tube, or other similar device suitable for~~

~~transportation of individuals that is available for hire by the public for use upon waterways within the jurisdiction of the OSRC.~~

"Flotation device" means a canoe, boat, kayak, raft, inner tube, or other similar device suitable ~~for transportation of individual on waterways~~ to transport one or more individuals on a scenic river.

~~**"Minimum health standards"** means the minimum health standards prescribed by the Oklahoma State Department of Health.~~

"Scenic rivers" means the Illinois River and Flint Creek within Adair, Cherokee and Delaware Counties, and those portions of Barren Fork Creek within Cherokee County, which are within the jurisdiction of the Scenic Rivers Commission ("OSRC") pursuant to 82 O.S. § 1461(B).

~~**"Minimum water safety standards"** means the minimum safety standards prescribed by the Oklahoma Department of Public Safety.~~

~~**"Private users"** means those persons utilizing the waterways and public facilities within the jurisdiction of the OSRC for recreational purposes, using privately owned flotation devices that are not offered for hire.~~

~~**"Property owners adjacent to the river"** means all landowners with property located within the jurisdiction of the OSRC.~~

~~**"Public facilities"** means state and commercially owned access points and waterside rest areas within the jurisdiction of the OSRC.~~

~~**"Trip per canoe"** means that period of time from the point when an individual first places his flotation device into the river until he removes the flotation device from the river for the last time during consecutive days of down river progression. If the individual removes the flotation device from the river and places it back into the river upstream from the removal point, that shall constitute an additional "trip per canoe"~~

630:10-1-4. User fees

~~A~~ The user fee ~~of one dollar ($1.00) per person per flotation device to be paid~~ assessed by paragraph B of 82 O.S. § 1470 shall be collected and administered as follows:

(1) ~~For~~ Each person using a commercial flotation ~~devices, the individual renting the flotation~~ device must pay the statutory user fee to the commercial ~~flotation device~~ float operator.

(2) ~~For privately owned flotation devices, the individual floating the~~ Each person using a private flotation device must purchase a wrist band by paying the statutory ~~purchase and display a~~ private user fee ~~permit for each person on each trip. Private user permits may be obtained from~~ to the OSRC office, OSRC rangers, commercial ~~flotation device operator~~ float operators, or other authorized businesses.

(3) ~~Property~~ The Scenic Rivers Act allows property owners adjacent to the scenic river ~~may~~ to own and operate one flotation device ~~per trip~~ for their individual use without paying the user fee.

(4) ~~All user fees required pursuant to this chapter are due and payable and must be paid prior to use of the flotation device on the~~ Everyone not exempt by statute must pay the user fee before entering the waters of a scenic river. A River Ranger may require anyone not in an exempt or commercial flotation device or not wearing a wrist band when leaving the waters of a scenic river to pay the statutory fee.

(5) ~~All~~ Commercial float operators and authorized businesses shall accurately record the number of users and user fees collected on tally sheets provided by the OSRC. The tally sheets and the fees collected each month shall be mailed or delivered to the OSRC by the 10th day of the following month or the user fees shall be in arrears and subject to the statutory late fee ~~pursuant to this chapter by authorized individuals must be turned over to the appropriate OSRC representative along with the collection tally sheet required to be maintained by the individual pursuant to the written policy of the OSRC Administrator, on a monthly basis~~.

630:10-1-5. Commercial licensing procedures, requirements, and annual use fees

(a) ~~There is hereby established an~~ The statutory annual use fee ~~of five dollars ($5.00)~~ per commercially owned and operated flotation device~~. Said use fees shall be due, payable and paid at the time of issuance of the license which is required by this section~~ shall be paid at the time of licensing.

(b) The license required on commercial float operations shall be an annual license ~~and the license year shall begin June 1 and end on May 31 of the following~~ covering a calendar year. Licenses shall be ~~available at the office of the Oklahoma Scenic Rivers Commission by April 15 of each year, and must be~~ properly displayed on each flotation device prior to its use on the river. ~~Applications for licenses shall be filed with the Oklahoma Scenic Rivers Commission from February 01-15 through February 10, annually.~~

(c) Applications for new float licenses, not previously held by a commercial float operator, may be filed with the OSRC in January of each year. Commercial float operators shall file applications to renew their existing licenses during the month of September each year.

(1) Any commercial float operator that fails to submit a renewal application in September shall only be entitled to renew 85% of the previous number of licenses, and the other 15% shall be released in January of the following year as new licenses. No renewal application shall be accepted after November.

(2) Any commercial float operator that applies to renew his licenses must pay the statutory annual use fees by the last working day of December or the application shall be denied and the number of licenses released as new licenses in January.

(3) Any person may apply in January for new commercial flotation device licenses which may be available, up to the number provided in 630:10-1-7. The OSRC shall process the applications, divide the numbers of licenses

among the proper applications and issue them in February.

(4) Except for temporary licenses, new licenses shall not be issued unless the number of licenses renewed in the previous year was below the number authorized in 630:10-1-7.

(~~c~~ d) Application for such licenses shall be made on the form prescribed by the OSRC which shall include:

(1) The name and address of the commercial float operation;

(2) The name and address of the owner or owners thereof; ~~and~~

(3) A description of lands owned or leased, and/or intended for use in the operation, including the launch and retrieval points;

(4) An inventory of usable flotation devices;

(5) A description of how the requirements of paragraph (h) of this section will be met; and

(~~3~~ 6) An agreement to abide by all State laws and all OSRC rules and regulations.

(~~d~~ e) Licenses shall be issued in such form as is prescribed by the Administrator ~~of the OSRC~~, and shall be displayed ~~as follows:~~

~~(1) Canoes, Kayaks, jon boats, rubber rafts, and all other boats: Licenses shall be displayed~~ on the right front (starboard bow) of flotation devices that have bows, or ~~,~~

~~(2) Inner tubes and other similar flotation devices: Licenses shall be~~ conspicuously ~~displayed~~ on the outside surface area above the water line of flotation devices without a discernable bow.

(~~e~~ f) ~~The license~~ Licenses granted by this Chapter shall be transferable only after application to and approval by the ~~OSRC board~~ Administrator upon a finding that the transfer will not exceed the float area restrictions of the scenic rivers as described in 630:10-1-7.

(~~f~~ g) The number of flotation devices to be licensed for commercial use shall be limited as provided in 630:10-1-7.

(~~g~~ h) All commercial float operators must maintain ~~at least minimum health and safety standards with respect to their business premises and all~~ clean and sanitary facilities, maintain in good working order their flotation devices offered for ~~hire~~ use, and ~~must~~ also ~~provide or do the following~~:

(1) Provide ~~restrooms (in accordance with minimum health standards) for their customers~~ access to toilet facilities to the floating public.

(2) ~~Offer~~ Provide trash bags and disposal information to all customers.

(3) Conspicuously ~~exhibit safety and trespass rules and information~~ post on business premises and at ~~departure~~ launch points ~~for customer float trips~~ warnings against tying flotation devices together, about trespass and safety, and that drunk and disorderly conduct is cause for arrest.

(4) All signs placed along the river corridor shall be informational in nature and shall comply to standards established by the OSRC.

(5) ~~All flotation devices offered for hire shall conspicuously display~~ Display on each flotation device used the name of the enterprise ~~offering same for hire~~ and an identification number ~~no less that~~ at least three (3) inches ~~in height~~ high and two (2) inches ~~in width~~ wide on both the right and left sides (port and starboard sides), or once if it has no sides.

(6) ~~Each commercial float operator shall provide~~ Provide reasonable assistance in river clean-up and ~~removal of~~ navigational ~~hazards~~ hazard removal in his float area at least once each week during all weeks his flotation devices are operated on the river.

(7) ~~Every vessel shall be required to carry~~ Provide, in each flotation device used, at least one wearable personal flotation device in good and serviceable condition for each person on board so placed ~~at~~ as to be readily accessible and of a size suitable to the person who is or will be wearing it. ~~All lifesaving devices shall be in good and serviceable condition.~~

~~(8) Advise all customers that tying, lashing, or otherwise connecting two or more flotation devices is prohibited.~~

(~~h~~ i) ~~The user fee required to be paid by individuals renting canoes from each commercial operation pursuant to 630:10-1-4, must be collected by the operator or his employees and paid to the OSRC Administrator, in such a form as prescribed by the OSRC, in written policy~~ Non-profit youth organizations may elect to obtain temporary licenses for their flotation devices as commercial flotation devices provided they do not exceed the float area restrictions of the scenic rivers as described in 630:10-1-7.

630:10-1-6. ~~Revocation of licensing~~ Suspend or revoke license

(a) The OSRC retains the right to suspend or revoke the licenses of any commercial float operation after the OSRC makes a finding that:

(1) The operation has engaged in a pattern of willful violation of OSRC rules and regulations;

(2) The ecosystem of the river section within which the particular flotation device is authorized to float is, or is in danger of being, harmed by the number of flotation devices authorized and it is necessary for the protection of that section of the river to revoke a certain number of licenses; ~~or~~

(3) The health and safety of individuals floating on the river is threatened by the number of flotation devices currently licensed to float on a particular section of the river; or

(4) The commercial operator has failed to comply with licensing requirements of 630:10-1-5.

(b) ~~The~~ Except in case of emergency as provided in the Oklahoma Administrative Procedures Act, the OSRC may make such a finding only after the commercial float operation has been given notice and the opportunity for a hearing.

630:10-1-7. Limitation on licensing of flotation devices

(a) It is the intent of the OSRC in issuing commercial flotation licenses to protect the ecosystem and environment and the

aesthetic, scenic, historic, archaeologic, and scientific features of the scenic river areas as well as the public health and safety of individuals using the scenic river areas ~~of the Illinois River, Flint Creek and those portions of the Barren Fork Creek in Cherokee County~~.

(b) It is the determination of the OSRC that at this time the ~~Illinois River, Flint Creek and those portions of the Barren Fork Creek in Cherokee County~~ scenic rivers cannot assimilate the damages to their ecosystems, environments, aesthetic, scenic, historic, archaeologic, and scientific features if more than 3900 licenses ~~in excess of 3,900~~ are issued. Further, the protection of public health and safety requires that the OSRC not grant additional licenses.

(c) The OSRC recognizes the current interests and property rights of persons with respect to flotation devices presently available for hire within its jurisdiction subject to the OSRC Commercial Float Area limitations provided hereinafter. The number of such devices shall be set at a maximum of 3,900 for the combined scenic river areas ~~of the Illinois River, Flint Creek and those portions of the Barren Fork Creek in Cherokee County~~.

(d) Any licensing of flotation devices in excess of said 3,900 shall be subject to approval of the OSRC ~~base upon the impact thereof~~ if the applicant reasonably demonstrates there will not be an adverse impact on the waterways within the jurisdiction of the OSRC. Such additional licensing shall be determined on the basis of density of current usage, number of licenses requested, and other considerations necessary for river protection.

(e) In the event the OSRC determines that the requested licenses may harm the ecosystem, environment, aesthetic, scenic, historic, archaeologic or scientific features of the section of the river for which the licenses are ~~requested to be granted~~ sought, so that the health and safety of individuals floating on the river may be threatened by the addition of new flotation devices, the OSRC shall deny the number of licenses requested over 3,900 that it deems to be necessary ~~for protection of the above interests~~ to protect the scenic rivers. Any license issued above 3,900 in any calendar year shall be temporary, for a stated period of time, and shall not be renewed during the annual licensing process.

(f) ~~Beginning~~ Since May 1, 1987, the Illinois River scenic river area ~~shall be~~ has been divided into the following sections for commercial flotation operation and licensing purposes:

(1) From the Arkansas-Oklahoma state boundary (Illinois River mile 0) southward to Round Hollow Public Access Area (Illinois River mile 27.7) shall be known as OSRC Commercial Float Area One (OSRC CFA One).

(2) From Round Hollow Public Access Area (Illinois River mile 27.7) southward to the Comb's Bridge (Illinois River mile 36.1) shall be known as OSRC Commercial Float Area Two (OSRC CFA Two).

(3) From Comb's Bridge (Illinois River mile 36.1) southward to and including the confluence of the Barren Fork Creek with the Illinois River shall be known as OSRC Commercial Float Area Three (OSRC CFA Three).

(g) Subject to the exception stated in (h) of this section, only the commercial float operations with licenses for OSRC CFA Two may float commercial flotation devices within that section of the Illinois River on all Saturdays and Sundays from May 1 through October 1 of each year.

(h) In the event commercial float operations with licenses for OSRC CFAs One and/or Three have customers who desire to rent commercial flotation devices from the beginning of OSRC CFA One to the end of OSRC CFAs Two or Three or to float from the beginning of OSRC CFA Two to the end of OSRC CFA Three, those customers are authorized to float through OSRC CFA Two subject to the limitation that no commercial float operation shall allow more than twenty (20) commercial flotation devices to float through OSRC CFA Two pursuant to this exception.

~~(i) Any person adversely affected by the decision of the OSRC to grant or deny licenses has a right to request a hearing before the OSRC to review its decision.~~

(~~j~~ i) The operation of a commercial ~~canoe~~ flotation device within an OSRC Commercial Flotation Area in violation of 630:10-1-7, shall subject that commercial float operation to a fine not to exceed One Hundred Dollars ($100.00). [82 O.S. Supp. 1991, Section 1470(A)]

630:10-1-8. Enforcement [REVOKED]

~~(a) Any person who willfully violates any rule, regulation or order of the OSRC except such rules, regulations or orders relating solely to procedural matters shall be guilty of a misdemeanor. [82 O.S. 1981, Section 1467]~~

~~(b) The OSRC may bring an action in the appropriate state district court to enjoin any acts or practices deemed to constitute a violation of the Scenic Rivers Act, and OSRC order or the rules of this Chapter.~~

SUBCHAPTER 2. PUBLIC ACCESS AREAS

630:10-2-1. Definitions

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

"Camping" means any method used for remaining overnight in a public access area which includes, but is not limited to tents, vehicles, cots, and sleeping bags.

"Campsites" means a single site located within a public access area which has been designated as open to camping by the Administrator.

~~**"Family unit"** means a mother and/or father or grandparents(s) and dependent children under the age of eighteen (18).~~

~~**"Group"** means eight (8) or more persons.~~

~~**"Immediate family member"** means person living in the household of a totally disabled or blind individual.~~

~~**"Improved campsite"** means a site where electricity and water are provided.~~

~~**"Per day"** means from 5:00 p.m. to 5:00 p.m. on the following day.~~

~~**"Primitive campsite"** means a site or area where there are no utilities, sanitation facilities or developments and is generally a significant distance from emergency services.~~

"Public Access Areas" means an area within the jurisdiction of the Commission which has been designated by the Administrator as open for use by the public for camping and day use activities under the terms and conditions of this subchapter.

~~**"Reservation"** means a confirmed request to use a public access area which has been verified as available for use for the purpose of camping and for which a fee has been received by the Commission.~~

~~**"Unimproved campsite"** means a site where there are no water, electric or sanitation hookups for recreational vehicles, but at which tables and grills are available in the area.~~

630:10-2-2. Camping fees

(a) Camping shall only be allowed in campsites ~~which~~ that are located within Public Access Areas and are designated by the Administrator ~~and are located within Public Access Areas~~.

(b) ~~Each person shall be charged~~ There shall be a camping fee of ~~$10.00~~ $8.00 per night, or $16.00 per night if the OSRC has provided water and electricity at the campsite. ~~for the use of improved campsites. $8.00 per night for the use of unimproved campsites and $7.00 per night for the use of primitive campsites except that:~~

~~(1) Persons in a family unit shall only be charged one camping fee for each designated campsite, and~~

~~(2) Organized groups shall be charged one camping fee for each multiple of eight persons.~~

(c) The ~~following person or groups shall also receive a 50% discount off of the~~ regular camping fee shall be discounted 50%: ~~.~~

(1) ~~Individuals~~ where one or more campers are 62 years of age or older, ~~and over and his or her spouse, provided that their home state provides similar discounts to Oklahoma residents. Age and residency shall be verified~~ as documented by a valid driver's license, state-issued identification card, or passport; ~~.~~

(2) ~~Individuals who have been~~ where one or more campers are certified as totally (100%) disabled or blind, as documented by a Medicare card or other federal or state-issued instrument; or ~~as defined by state or federal law and immediate family members with out regard to residency. Total disability shall be verified by presentation of a Medicare card, hunting or fishing license issued by the Veteran's Administration, award letter of disability from a retirement insurance board, commission, or administrator which defines total disability, or a letter from a physician declaring and defining total disability.~~

(3) ~~Children's~~ for youth groups that provide at least 25 hours each year of beneficial service to the environment~~. Such services shall be limited to projects that provide environmental education awareness~~ such as tree planting, refuse clean up or wildlife habitat improvement, as approved by the Administrator.

~~(d) All fees established pursuant to this section shall be posted in a convenient location at each public access area.~~

(~~e~~ d) The Administrator may~~, when~~ waive or suspend camping fees for certain periods in the public interest~~, prescribe times or periods during which the collection of fees may be waived or suspended~~.

630:10-2-3. Time limits and extensions

(a) The duration of the ~~stay~~ authorized camping shall be noted on each camping receipt, based on ~~. The duration of stay shall be determined by~~ the number of days paid for in advance.

(b) Camping within the same campsite or public access area for longer than 7 consecutive days is prohibited without prior written approval from the Administrator.

(c) The Administrator may grant extensions beyond the 7 consecutive day limit in writing after consideration of the extent of public access area use, the particular recreation season, and anticipated holiday or weekend occupancy.

(1) Persons receiving extended camping privileges shall be limited to specific campsites.

(2) Extensions shall be requested at least 48 hours prior to the date on which the extension would commence.

(d) Persons with a medical disability, who can verify that they are currently under a physicians care for such disability, may maintain the same campsite for periods longer than 7 days with prior written approval from the Administrator.

630:10-2-4. ~~Conditions of~~ Use of public access areas ~~area use~~

(a) No person shall ~~use~~ camp in a campsite under the jurisdiction of the ~~Commission~~ OSRC without paying the fee established by this section ~~in advance at Commission Headquarters~~.

(b) Camping fee receipts shall be retained by campers for the duration of their stay and shall be available for review upon request of ~~any Commission employee~~ the Administrator, a Camp Host or a River Ranger.

(c) Camping fees receipts entitle the named holder to use a campsite for the duration indicated on the receipt under the conditions set forth in this section. All camping fee receipts are non-transferable.

(d) The daily fee covers use of campsites from 5:00 p.m. on the day of payment until 5:00 p.m. on the following day. Occupants shall vacate the campsite by removing their personal property from the campsite prior to 5:00 p.m. on the day they are scheduled to leave.

(e) The following activities are prohibited in all public access areas:

(1) Excavation or leveling of the ground.

(2) Hanging a propane or gas operated lantern on any tree or plant.

(3) Leaving refuse or human waste at a campsite after departure.

(4) Camping within 25 feet of a water hydrant or within 100 feet of a stream, river or body of water, except where otherwise designated.

(5) Creating or sustaining unreasonable noise at a campsite as determined by the Administrator or a Scenic River Ranger considering the nature and purpose of the actor's conduct, the impact on other users, and other factors

which would govern the conduct of a reasonably prudent person under the circumstances.

(6) Constructing permanent camping facilities or dwellings.

(7) Camping or parking vehicles outside of campsites and parking areas designated by the Administrator.

(8) Parking a vehicle in, blocking access to, or occupying any designated campsites without having first paid camping fees for that campsite.

(9) Using the utility services in a campsite or public access area without having first paid campsite or utility fees.

(10) Connecting more than one water, electrical or sanitary connection per campsite or connecting to a utility which exceeds its manufactured design or capacity.

(11) The placing or parking of 2 or more vehicles on any site not designed for more than one vehicle.

(12) Camping longer than duration of stay noted on the camping receipt or exceeding the time limits set forth in this subchapter without prior written approval from the Administrator.

(13) Entering or remaining in a public access area for any purpose other than camping or authorized day use activities, except fishing.

(14) ~~No~~ Possession or use of fireworks or firearms ~~are allowed~~ in public access areas. The Administrator may authorize fireworks on the 4th of July.

(15) Fires may only be built in fire pits or cookers established by the Commission.

~~(16) Violation of any of the terms and conditions of this subchapter or any other state law may result in the suspension or revocation of the use of campsite and any other penalties prescribed by law.~~

(f) Day use of public access areas for general recreational activities, such as swimming, picnicking, fishing, and boat launching is permissible without charge only during open hours as defined and posted by the Administrator.

(g) Entering or remaining in a day use area during closed hours is prohibited for any purpose, except fishing.

(h) Possession of an open container, or consumption, of alcohol (including 3.2 beer) is prohibited in four public access areas: Round Hollow, Todd, and US 62 Bridge Access on the Illinois River, and US 412 Bridge Access on Flint Creek.

(i) Violations of OSRC regulations or state law may result in the suspension or revocation of camping authorization or day use privileges. Other penalties prescribed by law may also apply.

630:10-2-5. Day use [REVOKED]

~~(a) Day use of public access areas for general recreational activities, such as swimming, picnicking, fishing, and boat launching is permissible without charge only during open hours as defined and posted by the Administrator.~~

~~(b) Entering or remaining in a day used area during closed hours is prohibited for any purpose, except fishing.~~

~~(c) Violation of any of the terms and conditions of this subchapter or any other state law may result in the suspension or revocation of the use of public access area and any other penalties prescribed by law.~~

[OAR Docket #08-999; filed 5-21-08]

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

[OAR Docket #08-1000]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
630:15-1-1. Purpose [AMENDED]
630:15-1-2. Commission responsibilities and objectives [REVOKED]
630:15-1-3. Ownership [REVOKED]
630:15-1-4. Zoning prohibited; relationship with property owners [REVOKED]
630:15-1-6.1. Operation of jet skis prohibited [REVOKED]
630:15-1-6.1. Operation of jet skis, airboats, hovercrafts, and similar water craft prohibited [REVOKED]
630:15-1-7. Glass and Styrofoam containers prohibited [AMENDED]
630:15-1-8. Exemptions [REVOKED]
630:15-1-9. Construction [REVOKED]
630:15-1-10. Voting for Commissioners [REVOKED]
630:15-1-13. Gravel mining operations prohibited [AMENDED]
630:15-1-14. ~~Styrofoam containers~~Ice chest restriction [AMENDED]
630:15-1-15. Tying flotation devices prohibited [AMENDED]
630:15-1-16. Vessel Restrictions [NEW]

AUTHORITY:
Oklahoma Scenic Rivers Commission; 82 O.S. § 1461, and the Scenic Rivers Act.

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ANALYSIS:
The OSRC has undertaken a comprehensive review of its regulations. The goal is to make the rules clear and concise, and to conform to the Oklahoma Scenic Rivers Act, the Oklahoma Administrative Procedures Act and other applicable Oklahoma law. OSRC seeks to eliminate redundancy and confusion, streamline procedures, and improve efficiency in order to better preserve the scenic rivers in their natural, scenic state.

Besides simplification and clarification, the revisions in this chapter add some new, technical criteria. A new rule restricts commercial floating on the Barren Fork and Flint Creek because those scenic rivers will not support commercial floating, and another limits the size of ice chests to 50 quarts. Another addition allows site-specific exemptions for removing gravel above

the high water mark due to floods. Rulemaking in this chapter is promulgated concurrently with changes in chapters 1, 2, 4, 10 and 20.

CONTACT PERSON:

Ed Fite, Administrator (918) 456-3251

PURSUANT TO THE ACTIONS DESCRIBED 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, 2008:

630:15-1-1. Purpose

The purpose of this Chapter is to establish standards for the Oklahoma Scenic Rivers Commission ("OSRC") ~~with respect~~ to protect the natural resources of the scenic rivers located within its current operating area, which includes the Illinois River and Flint Creek within Adair, Cherokee and Delaware Counties, and those portions of Barren Fork Creek within Cherokee County (referred to in this Chapter as "scenic rivers").

630:15-1-2. Commission responsibilities and objectives [REVOKED]

~~(a) **Responsibilities.** The OSRC is responsible for three streams (the Illinois River and Flint Creek and those portions of the Barren Fork Creek within Cherokee County) which have similar qualities with respect to aesthetic, scenic, archaeological, and scientific features.~~

~~(b) **Objectives.** The major objective of the OSRC is to maintain these streams as pollution free as possible. This means that the OSRC will need to serve as a "watch dog" on the adjacent and contiguous areas along these scenic rivers for water pollution. Should pollution or the possibility of pollution be a threat to any of these three streams, regardless of the distance or by whom (commercial, private, or cities) it will be the responsibility of the OSRC to report the problem to the State Health Department, the Oklahoma Water Resources Board, the Environmental Protection Agency, law enforcement agencies, or any other appropriate agencies for proper management.~~

630:15-1-3. Ownership [REVOKED]

~~The unique situation of the Scenic Rivers, being that the State of Oklahoma owns the water only and private land owners own the banks and underneath the water, makes it impossible to zone or restrict with territorial jurisdiction and still be fair to the landowners because of the gross devaluation of their property along these streams.~~

630:15-1-4. Zoning prohibited; relationship with property owners [REVOKED]

~~No zoning or restrictions by territorial jurisdiction will be placed upon the Illinois River and Flint Creek and those portions of the Barren Fork Creek within Cherokee County. Instead, a close working relationship between the OSRC and the property owners will be established to protect the stream banks from vegetation removal that may cause erosion. The OSRC will aid the property owners (at the property owner's request) to plant trees, vines, shrubs, and flowers along the stream banks to make them more beautiful and to help screen out unsightly objects.~~

630:15-1-6.1. Operation of jet skis prohibited [REVOKED]

~~(a) No jet skis similar water craft are to be operated within "Scenic Rivers Areas"~~

~~(1) on the Illinois River and Flint Creek above the confluence of the Barren Fork Creek in Cherokee, Adair and Delaware Counties;~~

~~(2) those portions of Barren Fork Creek in Cherokee County.~~

~~(b) Exceptions to (a) of this Section would be jet skis or other similar water craft used by the OSRC, Lake Patrol and other appropriate organizations and individuals for the purposes of law enforcement, search and rescue and other appropriate purposes.~~

630:15-1-6.1. Operation of jet skis, airboats, hovercrafts, and similar water craft prohibited [REVOKED]

~~(a) No jet skis, airboats, hovercrafts, or similar water craft are to be operated within "Scenic Rivers Areas"~~

~~(1) on the Illinois River and Flint Creek above the confluence of the Barren Fork Creek in Cherokee, Adair and Delaware Counties;~~

~~(2) those portions of Barren Fork Creek in Cherokee County.~~

~~(b) Exceptions to (a) of this Section would be jet skis, airboats, hovercrafts or other similar water craft used by the OSRC, Oklahoma Highway Patrol, Lake Patrol Division, and other appropriate organizations and individuals for the purposes of law enforcement, search and rescue and other appropriate purposes as authorized by the OSRC.~~

630:15-1-7. Glass and Styrofoam containers prohibited

Containers made of glass or Styrofoam (bottles, jars, plates, etc.) ~~will not be~~ are not allowed ~~on scenic river streams~~ on scenic rivers.

630:15-1-8. Exemptions [REVOKED]

~~Farming, ranching, forestry, silviculture and other agriculture uses and practices are hereby exempt from the provisions of this Chapter.~~

630:15-1-9. Construction [REVOKED]

~~New construction that may pollute the Illinois River or Flint Creek and those portions of the Barren Fork Creek within Cherokee County shall meet existing county and state laws regardless of the distance from the scenic streams.~~

630:15-1-10. Voting for Commissioners [REVOKED]

~~Only individuals who meet county and state law election requirements and who own or reside on land that is within six hundred and sixty (660) feet of the Illinois River or Flint Creek or those portions of the Barren Fork Creek within Cherokee County are eligible to vote in elections for the OSRC Commissioner(s) representing their respective counties.~~

630:15-1-13. Gravel mining operations prohibited

(a) When used in this section, the following definitions apply:

(1) The term "river bank" means the area lying directly adjacent to the river bed with a width of 100 feet on either side of the river bed.

(2) The term "river bed" means any area of the river lying below the ordinary high water mark.

(b) Gravel mining operations which remove gravel from the river beds of scenic rivers are prohibited and are declared a public nuisance.

(c) Gravel mining operations are prohibited and declared a public nuisance where such operations remove gravel from the banks of scenic rivers if such removal negatively impacts the river by causing turbidity, erosion, pollution, or otherwise damages the scenic river environment.

(d) This section shall apply to restrict state permits to mine gravel that are pending as of April 20, 1993 or new permit applications submitted after that date. The Administrator may authorize site-specific exemptions for good cause, such as to remove gravel that was deposited above the ordinary high water mark by floods.

630:15-1-14. ~~Styrofoam containers~~ Ice chest restriction

~~Containers made of styrofoam (bottles, cups, plates, etc.) will not be allowed on scenic river streams~~ No person shall carry an ice chest larger than 50-quart capacity on a scenic river.

630:15-1-15. Tying flotation devices prohibited

To minimize environmental damage to the stream and river banks ~~immediately adjoining the waters under jurisdiction of the OSRC~~, operators of ~~both commercial and privately owned~~ flotation devices are prohibited from tying or otherwise connecting two or more flotation devices together ~~while such flotation devices are being floated on OSRC waters~~ on scenic rivers except during rescue and retrieval. ~~This prohibition shall not apply to rescue or flotation device retrieval operations conducted by commercial operators or OSRC authorized personnel.~~

630:15-1-16. Vessel Restrictions

Except for OSRC and law enforcement personnel, and during OSRC-authorized search and rescue training and operations, no person shall:

(1) operate a commercial flotation device on Flint Creek in Delaware County or on those portions of Barren Fork Creek in Cherokee County;

(2) operate a jet ski, airboat, hovercraft or similar water craft on a scenic river; or

(3) operate a vessel with a motor of more than 10 horsepower on a scenic river. Provided, however, that vessels with up to 25 horsepower may be used by anyone gigging during gigging season defined by the Oklahoma Department of Wildlife Conservation, and by commercial flotation device operators to rescue floaters, retrieve vessels and to clean the river and remove navigable obstructions in their flotation areas.

[OAR Docket #08-1000; filed 5-21-08]

TITLE 630. SCENIC RIVERS COMMISSION CHAPTER 20. VIOLATIONS [REVOKED]

[OAR Docket #08-1001]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
630:20-1-1. Purpose [REVOKED]
630:20-1-2. Violations [REVOKED]
630:20-1-3. Penalties [REVOKED]
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ANALYSIS:
The OSRC has undertaken a comprehensive review of its regulations. The goal is to make the rules clear and concise, and to conform to the Oklahoma Scenic Rivers Act, the Oklahoma Administrative Procedures Act and other applicable Oklahoma law. OSRC seeks to eliminate redundancy and confusion, streamline procedures, and improve efficiency in order to better preserve the scenic rivers in their natural, scenic state.

This chapter is revoked because its rules are contained in the statutes. This chapter is revoked concurrently with changes in chapters 1, 2, 4, 10 and 15.
CONTACT PERSON:
Ed Fite, Administrator (918) 456-3251

PURSUANT TO THE ACTIONS DESCRIBED 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, 2008:

630:20-1-1. Purpose [REVOKED]

~~The rules in this Chapter are adopted pursuant to Title 82 O.S. Sections 1451-1471. They are adopted as standards guiding enforcement and levying of fines for violations of the Scenic Rivers Act and/or any established rule or regulation of the present Oklahoma Scenic Rivers Commission.~~

630:20-1-2. Violations [REVOKED]

~~The following violations are identified as nuisances within the Scenic Rivers Area and shall be enforced as provided for by law:~~

~~(1) Boats~~

~~(A) Operating a boat, or motorboat, or sailboat, or watercraft while under the influence of intoxicating liquor or drugs. Misdemeanor (M) 21 O.S. 1207~~

~~(B) Failure to register and license vessel or motorboat or motors (M) 63 O.S. 8041~~

~~(2) Drinking and drugs~~

~~(A) Drinking in a public place (M) 37 O.S. 8~~

~~(B) Drunk in a public place (M) 37 O.S. 8~~

~~(C) Under the influence of intoxicating substance (M) 37 O.S. 8~~

~~(D) Drinking intoxicating liquor in public (M) 37 O.S. 357~~

~~(E) Permitting a person to be intoxicated in a place of business (M) 37 O.S. 537E~~

~~(F) Knowingly sell or furnish or give alcoholic beverage to a person under 21 years of age Felony (F) 37 O.S. 538~~

~~(G) Transporting open container of nonintoxicating beverage (beer) (M) 21 O.S. 1220~~

~~(H) unlawfully transporting open container of alcoholic beverage in vehicle (M) 37 O.S. 357-7~~

~~(I) Unlawful possession of controlled drug with intent to distribute (F) 63 O.S. 401-B~~

~~(J) Unlawful delivery of marijuana (F) 63 O.S. 401-B-2~~

~~(K) Unlawful possession of marijuana with intent to distribute (F) 63 O.S. 401-B-2~~

~~(L) Unlawful possession of marijuana (f) 63 O.S. 401-B-2~~

~~(M) Unlawful delivery of controlled drug (F) 63 O.S. 401-B-2~~

~~(N) Maintaining a place resorted to be users of controlled drugs (F) 63 O.S. 401-A-6~~

~~(O) Unlawful cultivation of marijuana (F) 63 O.S. 509~~

~~(3) Dumping~~

~~(A) Littering Oklahoma Scenic Stream 82 O.S. 1455~~

~~(B) Unlawfully throw, leave, or deposit trash within 100 yards of state or county highway (M) 21 O.S. 1204~~

~~(C) Throwing lighted substance or debris on roadway or public property (M) 21 O.S. 1753.3~~

~~(D) Willfully obstruct public highway or stream (M) 21 O.S. 1754~~

~~(4) Indecent exposure~~

~~(A) Indecent exposure (F) 21 O.S. 1021 (I)~~

~~(B) Indecent exhibition of obscene literature (F) 21 O.S. 1021.3~~

~~(5) Public disturbance~~

~~(A) Creating a public disturbance (M) 21 O.S. 1362~~

~~(B) Grossly disturbing the peace (M) 21 O.S. 1322~~

~~(6) Unlawful assembly~~

~~(A) Unlawful assembly (3 or more persons) (M) 21 O.S. 1314~~

~~(B) Remaining after being lawfully warned to disperse (M) 21 O.S. 1316~~

~~(C) Incitement to riot (F) 21 O.S. 1320.2~~

~~(D) Participating in a riot (F) 21 O.S. 1312~~

~~(E) Unlawful assembly (4 or more persons) (F) 21 O.S. 1320.3~~

~~(F) Remaining at scene of riot after being instructed to disperse (F) 21 O.S. 1320.3~~

~~(7) Destruction of property. Malicious injury or destruction of property (M) 21 O.S. 1760~~

~~(8) Disturbing the peace. Disturbing the peace (M) 21 O.S. 1222~~

~~(9) Weapons~~

~~(A) Unlawfully carrying weapons into building where persons assembled (M) 21 O.S. 1277~~

~~(B) Illegally carrying or transporting a loaded firearm (M) 21 O.S. 1289.6~~

~~(C) Illegally carrying or transporting a loaded firearm (M) 21 O.S. 1289.6~~

~~(D) Unlawfully using or carrying firearms while under influence of intoxicating liquor or drugs (M) 21 O.S. 1289.9~~

~~(E) Reckless conduct while in possession of or use of firearms (M) 21 O.S. 1289.11~~

~~(F) Unlawfully carrying a weapon (M) 21 O.S. 1272~~

~~(G) Unlawfully pointing weapon at another (M) 21 O.S. 1279~~

~~(H) Unlawfully transporting loaded firearm in a motor vehicle (F) 21 O.S. 1289.13~~

~~(I) Unlawfully pointing firearm at another (F) 21 O.S. 1289.16~~

~~(10) Assault and battery~~

~~(A) Aggravated assault and battery upon law officer (F) 21 O.S. 650~~

~~(B) Assault and/or battery with a dangerous weapon (F) 21 O.S. 645~~

~~(C) Assault and battery with deadly weapon (F) 21 O.S. 652~~

~~(11) Eluding an officer. Attempting to elude an officer (M) 21 O.S. 540A~~

~~(12) Escape. Willfully assisting a prisoner to escape confinement (F) 21 O.S. 437~~

~~(13) Driving under the influence~~

~~(A) Driving while under the influence of intoxicating liquor (M) 11 O.S. 902~~
~~(B) Driving while under the influence of drugs (M) 11 O.S. 902~~
~~(C) Actual physical control of a motor vehicle while under the influence of intoxicating liquor (M) 11 O.S. 902~~

630:20-1-3. Penalties [REVOKED]

~~Any person who shall violate any of the provisions of the Scenic Rivers Act (82 O.S. Supp. 1977, Section 1460 et seq.) or willfully violates any rule, regulation or order issued pursuant to this act shall be guilty of a misdemeanor and in addition thereto may be enjoined from continuing such violation. Each day upon which such violation occurs shall constitute a separate violation. Upon request of the Commission, the Attorney General shall bring an action for an injunction against any person violating the provisions of this act or violating any order or determination of the Commission. In any action for an injunction brought pursuant to 82 O.S. Suppl. 1977, Section 1460 et seq., any findings of the Commission after hearing or due notice shall be prima facie evidence of the facts found therein.~~

[OAR Docket #08-1001; filed 5-21-08]

TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS
CHAPTER 3. INDIVIDUAL PROCEEDINGS

[OAR Docket #08-1035]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
675:3-1-2. Definitions [AMENDED]
675:3-1-3. Complaint procedure [AMENDED]
675:3-1-4. Procedures for denials, revocations, suspensions [AMENDED]
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The section regarding individual proceedings was amended for clarification of the complaint procedure and individual proceedings process.
CONTACT PERSON:
Kandi Hoehner, Administrator, 405-946-7230

PURSUANT TO THE ACTIONS DESCRIBED 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, 2008:

675:3-1-2. Definitions

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

"Act" means the Social Worker's Licensing Act, 59 O.S., §§ 1250, et seq., as amended.

"APA" means Article I and/or Article II of the Administrative Procedures Act, 75 O.S.§ 250, et seq.

"Board" means the Oklahoma State Board of Licensed Social Workers.

"Citizen complaint" means a written statement of alleged violation of the Act by a person licensed or certified by the Board and submitted to the Board office by any member of the public.

"Formal complaint" means a written statement of alleged violation of the Act by a person licensed or certified by the Board and which is filed by the ~~Board office~~ Board's attorney along with a Notice of Hearing ~~in anticipation of a hearing and/or discipline~~ scheduling an individual proceeding before the Board.

"Hearing" means the mechanism employed by the Board to provide Due Process to a respondent in an individual proceeding.

"Individual proceeding" means the formal process by which the Board takes administrative action against a person licensed or certified by the Board in accordance with the Act and the APA.

"Respondent" means the person against whom an individual proceeding is initiated.

"Staff" means the personnel of the Board, through employment or contract.

675:3-1-3. Complaint procedure

(a) **Receiving complaints.** The Board shall receive complaints against licensees through the mail or in person at the Board office. Only written complaints shall be accepted for consideration, unless extenuating circumstances exist. The written ~~request~~ complaint may be anonymous as long as it contains detailed information sufficient to independently verify the allegations made. Upon receipt of the complaint, the Board staff shall:

(1) stamp all pages with a Board stamp which indicates the date of receipt,

(2) review the complaint to determine if the person against whom the complaint is ~~registered~~ made is a current licensee,

(3) log the complaint, assigning a number consisting of the year and sequence number in which it was received; further, recording the date received, name of complainant (if provided), and the name and license number of the licensee,

(4) generate a letter to the complainant indicating receipt and review of the complaint by the Board officials (if applicable),

(5) place the complaint in a pending file,

(6) notify the Board chair or chair's designee, a former or current Board member appointed by the Chair, and the Attorney General Liaison (hereinafter referred to as the "Complaint Committee") of receipt of a complaint.

(b) **Reviewing complaints.** Upon notification that a complaint has been received, the Complaint Committee shall review the contents to determine whether or not the allegation constitutes a possible violation of the Code of Professional Conduct. If the allegation does not indicate a possible violation of this code, the Complaint Committee shall instruct the Board staff to generate a letter to the complainant thanking them for their concern and advising them that the complaint does not fall within the purview of the Board. If the allegation does indicate a possible violation of this code, the Complaint Committee shall make the following determination:

(1) The alleged violation appears to be one which would not, if found to be valid, result in a denial, revocation or suspension of a license, as specified in Section 675:3-1-3 of this Chapter, but one which does indicate the need for Board review and possible informal action.

(2) The alleged violation appears to be one which could, if found to be valid, result in a denial, revocation or suspension of a license, as specified in Section 675:3-1-3 of this Chapter.

(c) **Allegations, if substantiated, not appearing to result in a denial, revocation or suspension of a license.** If an alleged violation appears to be one which would not result in a denial, revocation or suspension of a license, the chair or chair's designee shall proceed with addressing the allegation by reviewing the complaint with the Attorney General liaison for the Board. Upon the consent of the chair or chair's designee and the advice of the Attorney General liaison the chair or chair's designee shall proceed by:

(1) Notification of the licensee by certified mail that a complaint has been received, outlining the nature of the complaint.

(2) Forwarding to the licensee a copy of the informal process for addressing complaints, which requires:

(A) a prompt letter to the Board from the licensee responding to the merits of the complaint;

(B) an informal interview with the Board to fully explore the issues involved in the complaint;

(C) an agreement by the Board and the licensee on the merits of the complaint;

(D) a proposed Consent Decree for disciplinary action for the licensee, approved by the Board and signed by the licensee and the chair or chair's designee, which may include, but is not limited to, one or more of the following:

(i) a letter of education instructing the licensee to correct the aspect of practice in question;

(ii) a tutorial assigned to the licensee to remedy the practice in question, under the supervision of a Board Approved Supervisor assigned by the Board, with the wishes and needs of the licensee taken into consideration;

(iii) a letter of censure ~~disciplining~~ reprimanding the licensee for the practice in question;

~~(E) a review of the Consent Decree with the complainant, with consideration given to any disagreement the complainant may have to the course of remedial action;~~

(~~F~~E) a review of the course of action in a specified time, not longer than six months, to determine whether or not remediation has taken place;

(~~G~~F) a letter to the licensee indicating that the informal process has ended.

(3) Referral to the formal investigation process when:

(A) the licensee fails to respond to the certified letter from the Board;

(B) the informal process reveals new or expanded allegations that indicate the possibility of a denial, revocation or suspension of a license;

(C) the licensee fails to meet the requirements of the ~~educational letter or the tutorial~~ Consent Decree without good cause.

(4) A Consent Decree that is agreed to by the Board and the licensee shall not be considered a disciplinary action and will not appear on the Board's website or be reported to a national databank.

(d) **Allegations, if substantiated, appearing to result in a denial, revocation or suspension of a license.** If an alleged violation appears to be one which would result in a denial, revocation or suspension of a license, the Complaint Committee shall proceed with addressing the complaint by the process detailed below based upon agreement of ~~at least two~~ a majority of its members:

(1) Contacting an investigator designated by the Board as qualified to address the nature of the complaint.

(2) Providing the designated investigator with names and addresses of the complainant, if available, and the licensee.

(3) Issuing a letter of intent that specifies:

(A) the intended parameters of the investigation;

(B) the individuals to be interviewed;

(C) the contract fee and travel reimbursement, as allowed by statute;

(D) the time frame for completing the investigation.

(4) Indicating whether or not the licensee should be interviewed by the contract investigator, in reference to:

(A) advice by the Attorney General liaison not to do so in order to reserve the interview with the licensee in a setting under oath;

(B) the possibility of a criminal investigation being conducted concurrently or subsequently to the Board investigation.

(5) Submitting the investigative report to the Complaint Committee for review and recommendation to the Board concerning proposed action to be taken concerning the complaint.

(6) Placing the complaint on the agenda for the next Board meeting for report on the status of the complaint and possible action by the Board. Possible actions by the Board would include:

(A) a dismissal of the complaint due to lack of evidence of a code violation;

(B) a referral to the informal process due to a finding that the results of the investigation reveal code violations, but not ones that would result in the need for denial, revocation or suspension;

(C) a d0ecision to hold a hearing as provided for in Section ~~675:3-1-3~~ 675:3-1-4 of this Chapter.

675:3-1-4. Procedures for denials, revocations, suspensions

(a) **When a hearing is required.** The Board shall hold a hearing when it considers that there is cause to deny, revoke or suspend any license (or specialty certification) issued by the Board or applied for in accordance with the Social Worker's Licensing Act or otherwise to discipline a licensee. The hearing will determine whether or not the person:

(1) Has been convicted of a felony and, after investigation the Board finds that he or she has not been sufficiently rehabilitated to meet the public trust;

(2) Has been found guilty of fraud or deceit in connection with services rendered or in establishing needed qualifications under this act;

(3) Has knowingly aided or abetted a person, not licensed under these provisions, in representing himself or herself as licensed in this state;

(4) Has been found guilty of unprofessional conduct as defined by rules established by the Board;

(5) Has been found guilty of negligence or wrongful actions in the performance of his or her duties;

(6) Is unable to function because of addiction to alcohol, drugs or other chemicals;

(7) Is unable to function because of physical or mental illness;

(8) Has ~~not properly performed because of illegal disclosure of~~ disclosed confidential information without proper authority~~;~~

(9) Conduct which violates the security of any licensure examination materials;

(10) Being the subject of the revocation, suspension, surrender or other disciplinary sanction of a social worker or related license or of other adverse action related to a social worker or related license in another jurisdiction or country including the failure to report such adverse action to the Board; or

(11) Being adjudicated by a court of competent jurisdiction, within or without this state, as incapacitated, mentally incompetent, chemically dependent, mentally ill and dangerous to the public or a psychopathic personality.

(b) **Hearing procedures.** Hearing procedures to be followed shall be in accordance with the Administrative Procedures Act, 75 O.S., §§309-323.

[OAR Docket #08-1035; filed 05-23-08]

TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS
CHAPTER 10. LICENSURE REQUIREMENTS

[OAR Docket #08-1036]

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675:10-1-1.2. Requirements for Licensed Clinical Social Worker [AMENDED]
675:10-1-2. Requirements for Licensed Social Worker [AMENDED]
675:10-1-2.1. Requirements for Licensed Social Worker - Administration [AMENDED]
675:10-1-3. Requirements for Licensed Social Work Associate [AMENDED]
675:10-1-4. Requirements for Private or Independent Social Work Practice [AMENDED]
675:10-1-5. Titles of licenses [AMENDED]
675:10-1-6. Continuing education [AMENDED]
675:10-1-9. Form of application [AMENDED]
675:10-1-12.1. Renewal of licenses [AMENDED]
675:10-1-18. Facility [REVOKED]
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ANALYSIS:
The section regarding licensure requirements was amended to clarify language regarding the requirements of the different levels of licensure issued by the board.
CONTACT PERSON:
Kandi Hoehner, Administrator, 405-946-7230

PURSUANT TO THE ACTIONS DESCRIBED 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, 2008:

675:10-1-1.2. Requirements for Licensed Clinical Social Worker

The Board shall authorize the issuance of licenses to persons who qualify as follows:

(1) as a LCSW who has a master's degree in social work from a Board approved social work program and has two (2) years of full-time post degree experience or the equivalent thereto of part-time experience, a total of 4,000 hours, of experience in the practice of clinical social work under professional supervision of a ~~Board Approved Supervisor~~ licensed clinical social worker. This experience shall include at least 100 hours of face-to- face educational supervision by the supervisor. Ratings on the final evaluations completed by supervisor(s) must document performance at a level meeting or exceeding expectations as defined on the forms approved by the Board, in all areas of evaluation,

(2) passed the examination provided for under the provisions of Section 675:10-1-10, and

(3) is of good moral character.

675:10-1-2. Requirements for Licensed Social Worker

The Board shall authorize the issuance of licenses to persons who qualify as follows:

(1) as a Licensed Social Worker who has a master's degree in social work from a Board approved social work program and has two (2) years of full-time post degree experience or the equivalent thereto of part-time experience, a total of 4,000 hours, of experience in the practice of social work under professional supervision of a licensed clinical social worker or licensed social worker with administration specialty. ~~Board Approved Supervisor~~. This experience shall include at least 100 hours of face-to-face educational supervision by the supervisor. Ratings on the final evaluations completed by supervisor(s) must document performance at a level meeting or exceeding expectations as defined on the forms approved by the Board, in all areas of evaluation,

(2) passed the examination provided for under the provisions of Section 675:10-1-10, and

(3) is of good moral character.

675:10-1-2.1. Requirements for Licensed Social Worker-Administration

The Board shall authorize the issuance of licenses to persons who qualify as follows:

(1) as a LSW-Adm who has a master's degree in social work from a Board approved social work program and has two (2) years of full-time post degree experience or the equivalent thereto of part-time experience, a total of 4,000 hours of experience in the administrative practice of social work under professional supervision of a licensed social worker with administration specialty. ~~Board Approved Supervisor~~. This experience shall include at least 100 hours of face-to-face educational supervision by the supervisor. Ratings on the final evaluations completed by supervisor(s) must document performance at a level meeting or exceeding expectations as defined on the forms approved by the Board, in all areas of evaluation,

(2) passed the examination provided for under the provisions of Section 675:10-1-10, and

(3) is of good moral character.

675:10-1-3. Requirements for Licensed Social Work Associate

The Board shall authorize the issuance of licenses to persons who qualify as follows:

(1) as a Licensed Social Work Associate who has a baccalaureate degree in social work from a Board approved social work program and has two (2) years of full-time experience or the equivalent thereto of part-time experience, a total of 4,000 hours of experience, in the practice of social work under the professional supervision of a licensed social worker, licensed clinical social worker or licensed social worker with administration specialty ~~Board Approved Supervisor and passed the examination provided for under Section 675:10-1-10.~~ This experience shall include at least 100 hours of face-to-face educational supervision by the supervisor. Ratings on the final evaluations completed by supervisor(s) must document performance at a level meeting requirements as defined on the forms approved by the Board, in all areas of evaluation or who has a master's degree in social work from a Board approved social work program and has passed the examination provided for under Section 675:10-1-10~~.~~,

(2) passed the examination provided for under the provisions of Section 675:10-1-10, and

(~~2~~3) is of good moral character.

675:10-1-4. Requirements for Private or Independent Social Work Practice

No person may engage in the private-or independent practice of social

work unless:

(1) licensed under this act as a LSW-Adm or LCSW,

(2) has had 100 hours of face-to-face educational supervision in no less than two (2) years of full-time or the equivalent thereto of part-time experience, a total of 4,000 hours, supervised experience certified by the Board in the method to be offered in private practice and met the requirements set by the Board, and

(3) shall continue to meet continuing education requirements set by the Board.

675:10-1-5. Titles of licenses

(a) **Licensed Clinical Social Worker.**

(1) **Definition.** Clinical social work is defined as practice which focuses on rendering services to individuals,

families, or groups of individuals that involve the evaluation, diagnosis, treatment, and prevention of emotional disorders and mental illness as related to the total health of the client system according to social work theory and methods, providing services of a psychosocial nature pertaining to personality adjustment, behavior problems, interpersonal dysfunctioning and deinstitutionalization. Such practice is based on knowledge of psychodynamics, human relations, human development, personality development, crisis intervention, psychopathology, and group dynamics to effect change in human behavior, emotional responses, and social conditions.

(2) **Setting.** Clinical social work is practiced within a private office or under the auspices of public, voluntary, or proprietary agencies and institutions addressing familial, economic, health, recreational, religious, penal, judicial and educational concerns.

(3) **Model of clinical social work practice.** Within the practice setting, the problem is identified, and a plan of intervention is designed and implemented with the client. The plan is supported by securing historical facts and clues to the latent forces within the individual that shape personality. Individual strengths in conjunction with community resources are activated and utilized to implement the client plan.

(4) **Education and experience criteria.** A master's degree in social work from a Board approved social work program; official transcripts must be received from all applicable schools attended; two (2) years of full-time or the equivalent thereto of part-time experience, a total of 4,000 hours, of post graduate practice experience under the supervision of a licensed social worker with a clinical social work practice specialty which includes at least 3,000 hours of direct client contact; this experience shall include at least 100 hours of face-to-face educational supervision in no less than two (2) years of full-time related employment or the equivalent thereto of part-time employment. Ratings on the final evaluations completed by supervisor(s) must document performance at a level meeting or exceeding expectations as defined on the forms approved by the Board, in all areas of evaluations.

(b) **Licensed Master's Social Worker.**

(1) **Definition.** The practice of a Licensed Master's Social Worker (LMSW) means the application of social work theory, knowledge, methods and ethics and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations and communities. Master's Social Work practice requires the application of specialized knowledge and advanced practice skills in the areas of assessment, treatment planning, implementation and evaluation, case management, information and referral, counseling, consultation, education, research, advocacy, community organization and the development, implementation, and administration of policies, programs and activities.

(2) The LMSW shall not engage in private practice or practice independently.

(c) **Licensed Social Worker.**

(1) The Licensed Social Worker (LSW) shall be able to perform the following functions:

(A) provide counseling to individuals, couples, families and groups directed toward specific goals;

(B) assist in helping individuals or groups with difficult day-to-day problems, such as finding employment, locating sources of assistance, or organizing community groups to work on a specific problem;

(C) consult with other agencies on problems and cases served in common and coordinate services among agencies helping multi-problem families;

(D) conduct basic data gathering on social problems;

(E) serve as an advocate for those clients or groups of clients whose needs are not being met by available programs or by a specific agency;

(F) assess, evaluate and formulate a plan of action based on client need;

(G) provide training to community groups, agencies and other professionals about health-case issues and community problems; and

(H) maintain familiarity with professional and self-help systems in the community and will assist the client in using those services when necessary.

(2) The LSW shall not engage in private practice or practice independently.

(d) **Licensed Social Worker-Adm.**

(1) **Definition.** Social work administration is defined as practice which focuses primarily on directing the development and/or management of social service delivery systems. Such practice is based on knowledge of organization theory, policy development, program management, personnel management, fiscal management, and public relations. Such practice is based on skills necessary for organizing, directing, supervising, staffing, program planning and program evaluating.

(2) **Setting.** Social work administration is practiced within a private setting or under the auspices of public, voluntary or proprietary agencies or institutions addressing familial, economic, health, recreational, religious, penal, judicial and educational concerns.

(3) **Model of social work administration practice.** Within the practice setting, supervises program directors and program staff to insure that personnel, program and/or licensing standards are met and maintained and that staff members grow in skill and efficiency; develops program goals and insures that all program activities and procedures comply with regulations; interprets the services and promotes the image of the programs through regular communication with appropriate groups and individuals in order to maintain a broad base of support; manages budgets to insure a balanced and fiscally sound program is maintained.

(4) **Education and experience criteria.** A master's in social work from a school of social work approved by the Board; official transcripts must be received from all applicable schools attended; two years of full-time

post master's degree related experience or the equivalent thereto of part-time experience, a total of 4,000 hours, in the delivery of social work administration. This experience shall include at least 100 hours of face-to-face educational supervision under a Licensed Social Worker with a Social Work Administration specialty in no less than two (2) years of full-time related employment or the equivalent thereto of part-time employment. Ratings on the final evaluations completed by supervisor(s) must document performance at a level meeting or exceeding expectations as defined on the forms approved by the Board, in all areas of evaluations.

(e) **Licensed Social Worker Associate.**

(1) The practice of a Licensed Social Worker Associate (LSWA) means the application of social work theory, knowledge, methods, ethics and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations and communities. LSWA basic generalist practice that includes assessment, planning, intervention, evaluation, case management, information and referral, counseling, consultation, education, advocacy, community organization, and the development, implementation, and administration of policies, programs and activities.

(2) The LSWA shall not engage in private practice or practice independently.

675:10-1-6. Continuing education

(a) **Continuing education.**

(1) As a requirement for license renewal, sixteen (16) clock hours of continuing education units shall be required for each license held. These hours must have been obtained during the previous renewal period (January through December) and approved by the Board. At least 3 hours must be categorized as ethics training as defined by the Board.

(2) Approval of continuing education shall be at the discretion of the Oklahoma State Board of Licensed Social Workers and shall be in accordance with standards acceptable to the profession of social work.

(3) A licensee called to active duty in the armed forces of the United States for a period of time exceeding one hundred and twenty (120) consecutive days during a calendar year shall be exempt from obtaining the continuing education required during that calendar year.

(4) A licensee experiencing physical disability, illness or other extenuating circumstances may request partial or complete exemption from the continuing education requirements. The licensee shall provide supporting documentation for the Board's review. Such hardship cases will be considered by the Board on an individual basis.

(5) Effective January 1, 2004 licensees who have passed the examination during the months of July through December may receive eight (8) hours of continuing education for that year. The ~~remaining~~ required eight (8) hours must be in category 1 and include three (3) hours of ethics.

(b) **Audit/Verification.**

(1) Each applicant for renewal of license shall certify that he/she has completed the requisite hours of continuing education.

(2) The Board staff may, each year, randomly or for cause select licensees to be audited for verification that continuing education requirements have been met.

(3) Licensees selected for audit must submit verification of meeting the continuing education requirement with the renewal application.

(4) Failure to submit such records shall constitute an incomplete application and shall result in the application being returned to the licensee and the licensee being unable to practice.

(5) A license renewed through misrepresentation shall result in Board action.

675:10-1-9. Form of application

(a) Applicants for licensure as a LCSW, LMSW, LSW, LSW-Adm or LSWA shall make such application on the most current form prescribed by the Board, shall submit the required fee and shall supply appropriate documentation as required by the Board to validate the facts which are claimed as a part of the licensing process. Such items to include but not be limited to:

(1) official transcript

(2) notarized photograph taken within the last 12 months

(3) record of work experience

(4) certification by employers as to the facts or an affidavit attesting to the facts by the applicant

(5) notarized signature

(6) signed consent authorizing the Board to conduct a criminal background check and/or receive criminal history information on the applicant

(7) verification of supervision

(b) ~~The Board may conduct a criminal background check on all applicants.~~ The ~~Fee~~ fee for the criminal background check shall be paid separately from the license application fee by the applicant at the time application is made.

(c) The use of false or fraudulent information by an applicant may be grounds for denial of a license.

675:10-1-12.1. Renewal of licenses

(a) All licenses shall expire at the end of each calendar year and shall be subject to renewal on the first day of the next calendar year.

(b) All licensees must submit a complete renewal package, including fee, postmarked by December 31 of the calendar year. Only renewals submitted on the most current forms provided by the Board will be accepted.

(c) Licenses will lapse on the last day of the calendar year. Such lapsed licenses shall be renewed upon receipt of a complete renewal application and payment of the renewal fee plus a late fee as set forth in 675:1-1-9 if submitted within ninety (90) days from the first day of the new calendar year. Licensees that submit documentation for renewals postmarked after December 31 of the calendar year will be assessed the late renewal fee.

675:10-1-18. Facility [REVOKED]

~~"Health care facility licensed by the State" as used in the Social Worker's Licensing Act is an entity which operates under the licensing or regulatory authority of a State agency and is established to serve an individual's health care needs. Attorney General Opinion 95-68. In order for employees of a health care facility to be exempt for licensure under Section 1251(C) of the Social Worker's Licensing Act, the facility must be a location at, which social work services are provided under the supervision of a licensed social worker who is available on the premises and able to observe or consult with the beneficiary of services and the social work provider.~~

[OAR Docket #08-1036; filed 05-23-08]

TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS
CHAPTER 12. GUIDELINES FOR SUPERVISION

[OAR Docket #08-1037]

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675-12-1-2. Supervision [AMENDED]
675:12-1-6. Board Approved Supervisors [AMENDED]
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ANALYSIS:
The sections regarding supervision and board approved supervisors were amended to clarify questions with regard to supervision for licensure.
CONTACT PERSON:
Kandi Hoehner, Administrator, 405-946-7230

PURSUANT TO THE ACTIONS DESCRIBED 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, 2008:

675:12-1-2. Supervision

(a) **Licensed clinical social worker.** The two year supervised experience requirement for licensure as a LCSW must be under the supervision of a social worker holding the LCSW license.

(b) **Licensed master social worker.** No supervision is required for the LMSW.

(c) **Licensed social worker.** The two year supervised experience requirement for licensure as a LSW must be under the supervision of a social worker holding the LSW, LSW-Adm or LCSW license.

(d) **Licensed social worker with a specialty of administration.** The two year supervised experience requirement for licensure as a LSW-Adm must be under the supervision of a social worker holding the LSW-Adm license.

(e) **Licensed social worker associate.** The two year supervised experience requirement for licensure as a Licensed Social Work Associate must be under the supervision of a social worker holding the LSW, LSW-Adm or LCSW license.

675:12-1-6. Board Approved Supervisors

(a) **Requirements.** The two year experience requirement for specialty certification contracted external to the agency must be under the supervision of a Board Approved Supervisor. A Board approved social worker with one of the specialty certifications presently recognized by the Board does not automatically qualify as a Board Approved Supervisor. The knowledge, experience, and skill base of a Board Approved Supervisor exceeds the minimum requirements for specialty certification. Applicants for a Board Approved Supervisor shall:

(1) Submit an application on the most current forms provided by the Board.

(2) Be a Licensed Social Worker with the title licensure in the same method as supervisor status is sought.

(3) Have at least five (5) years of full time work experience (or equivalent) beyond the master's degree in social work. Three of these five years must be full time work experience (or equivalent) in the specialty that supervisory status is sought.

(4) Have at least two years of supervisory work experience following completion of the master's degree in social work.

(5) Have two (2) letters of reference submitted to the Oklahoma State Board of Licensed Social Workers. At least one letter shall be from a licensed social worker holding the same licensure title and shall address supervisory skills. ~~Documentation of such participation will be furnished the Board and will be updated periodically as required by the Board.~~

(b) **Approved supervisor status.** Board approved supervisor status remains in effect contingent upon maintaining a current license in good standing and completing supervisor training, sponsored or approved by the Board, within one year

of approval and at least every three years thereafter. Documentation of such participation will be furnished to the Board and will be updated periodically as required by the Board.

(c) **Minimum supervision expectations.**

(1) A supervisee must receive an average of one continuous hour per week of face-to-face supervision for two years (minimum of 100 hours). The maximum period between educational supervision meetings is two weeks, in which case the supervisor and supervisee must meet for two hours. Group supervision is acceptable if such supervision does not exceed at least one-fourth of the total supervisory time per evaluation period. Group supervision is defined as educational supervision conducted with more than one supervisee by ~~an LSW~~ a licensed social worker with appropriate certification in the specialty sought by supervisees, or a Board Approved Supervisor with appropriate certification in specialty sought by supervisees. The group should be limited in size to no more than 4 supervisees.

(2) A contract will be negotiated by supervisor and supervisee and a copy furnished to the Oklahoma State Board of Licensed Social Workers prior to beginning. Any supervision completed prior to approval of the supervision contract will not be accepted. An official transcript with degree posted and current job description must accompany the contract. Such a contract shall not be valid if the supervisor and supervisee have a relationship that could affect the employment or benefits of the supervisor, and that relationship could, in any way, bias or compromise the supervisor's evaluation of the supervisee. A supervisor may not be related within the second degree by affinity (marriage) or within the third degree by consanguinity (blood or adoption) to the person whom he or she is supervising. Should the contract be terminated before completion of the minimum number of hours required, the supervisee is responsible for negotiating a new contract and obtaining all evaluation and termination forms required to document prior supervision. The supervisee shall notify the Board within 30 days of any job change and submit a new job description.

(3) There will be a periodic written evaluation:

(A) no less than 6 months and a total of 25 hours of supervision

(B) no less than 12 months and a total of 50 hours of supervision

(C) no less than 24 month and a total of 100 hours of supervision

(4) A copy of the written evaluation will be provided by the supervisee to the Board office.

(5) If supervision is terminated by either party, the supervisee is responsible for notifying the Board and completing a termination form which the Board will provide. Such termination form must be received by the Oklahoma State Board of Licensed Social Workers within 14 days of the termination.

(6) If there is any question regarding the supervisee's competency, the supervisor is free to ask for a sample of supervisee's work.

(7) It is required that all supervisors for licensure participate in supervision training sponsored or approved by the Board. Board Approved Supervisors are required to participate in the training. Documentation of such participation will be furnished the Oklahoma State Board of Licensed Social Workers and will be updated periodically as required by the Board.

(8) When the proposed supervisor is not a staff member of the supervisee's agency, social work ethics demand that the proposed supervisor insure that the agency administration (or its representative) is in accord with the arrangements for supervision by a qualified ~~LSW~~ supervisor. This is essential whether these arrangements are made by the agency or the supervisee and regardless of whether the agency contributes to financial compensation of the supervisor. The supervisor is responsible for securing agreement from the agency administration as to the purpose and content of the desired supervision and the supervisor's specific role responsibilities and limitations. The supervisor is also responsible for learning agency functions and policies so that any supervisory suggestions are constructive and realistic within agency purposes and resources.

(9) Supervision from a Board Approved Supervisor may be contracted from outside the agency should internal supervision be unavailable.

(10) All supervisors will adhere to the guidelines on supervision required by the Oklahoma State Board of Licensed Social Workers.

(d) Licensees supervising within their agency must have a minimum of two years work experience post passage of the proper licensure exam in order to be eligible to supervise individuals for licensure.

[OAR Docket #08-1037; filed 05-23-08]

TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS
CHAPTER 15. GUIDELINES FOR CONTINUING EDUCATION

[OAR Docket #08-1038]

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675-15-1-2. Introduction [AMENDED]
675:15-1-3. Continuing education standards [AMENDED]
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The section regarding introductions is being amended to include "National Association of Social Workers (NASW-CE)" under approved continuing education activities.
The section regarding continuing education standards is being amended to clarify the number of hours required to renew "per license specialty"; "three hours of ethics per licensee" for licensure renewal purposes; "verification of attendance form should be retained by licensee"; and "verification of Category III activities" approval.
CONTACT PERSON:
Kandi Hoehner, Administrator, 405-946-7230

PURSUANT TO THE ACTIONS DESCRIBED 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, 2008:

675:15-1-2. Introduction

The Oklahoma State Board of Licensed Social Workers will recognize all continuing education activities provided by ASWB-ACE, ~~NASW National~~ National Association of Social Workers (NASW-CE), and those state and local providers who have been approved by the Oklahoma State Board of Licensed Social Workers.

675:15-1-3. Continuing education standards

(a) **Continuing education hours.** The number of hours specified for each social work license specialty title is 16 clock hours of verified continuing education per specialty per licensing period. At least 3 hours per licensee ~~title~~ must be categorized as ethics training as defined by the Board. As specified in the Oklahoma Social Worker's Licensing Act, the license must be renewed every twelve months.

(b) **Categorical learning activities.** It shall be the responsibility of the individual social worker to choose his/her own continuing education program. The continuing education experience may be organized into three main categories. Eight hours of the continuing education requirement must fall within the parameters of Category I learning experiences.

(1) **Category I - Formally Organized Learning Events.** Category I includes formally organized learning events, involving face to face interaction with a teacher for the purpose of accomplishing specific learning objectives. Examples include courses, workshops, practice oriented seminars, and training offered by accredited programs of social work education, and live, interactive, video conferencing by an approved program. The Verification of Attendance form should be retained by the ~~LSW~~ licensee and submitted to the Board on request.

(2) **Category II - Professional Meetings.** Category II includes professional meetings on the national, state and local levels. Events in this category involve formally structured discussions among professionals about professional issues, whereby participants increase their awareness of new developments in social work and related fields. Documentation of Category II is the same as described for Category I in (1) of this subsection.

(3) **Category III - Individual Professional Activities.** Category III consists of a variety of self-directed professional study activities and growth experiences. Examples include writing papers and books for presentation or publication; making presentations on major professional issues or programs; teaching or training assignments, engaging in research, correspondence work, televised courses, audio/visual videotapes and other forms of self-study upon approval by the Board, shown to update or enhance competence in social work practice. Social workers/teachers whose primary job responsibilities include designing new courses will be allowed to receive continuing education credit hours. Specifically, when a social worker/teacher engages in the initial preparation of a course he/she will be awarded continuing education hours commensurate to the number of semester hours of the course. If a quarter system is utilized, credit for quarter hours will be allowed utilizing the ratio of 3 quarter hours to 2 semester hours. Inherent in the nature of Category III experiences is the expectation that an individual will spend a greater number of clock hours in a self-directed activity than he/she will receive actual continuing education credit. ~~Verification of Category III activities can be achieved by receiving prior or retroactive approval of the proposed self-directed activity and evidence of the completed project to the Board utilizing the Application for Prior Approval Category III Individual Professional Activities or the Application for Retroactive Approval Category III Individual Professional Activities.~~

[OAR Docket #08-1038; filed 05-23-08]

TITLE 675. STATE BOARD OF LICENSED SOCIAL WORKERS
CHAPTER 20. CODE OF PROFESSIONAL CONDUCT

[OAR Docket #08-1039]

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ANALYSIS:
The section regarding definitions is being amended to include "licensed master's social workers and licensed social workers with administration specialty".
CONTACT PERSON:
Kandi Hoehner, Administrator, 405-946-7230

PURSUANT TO THE ACTIONS DESCRIBED 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, 2008:

675:20-1-3. Definitions

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

"Social worker" means any person licensed by the Board of Licensed Social Workers and includes licensed master's social workers, licensed social workers with administration specialty, licensed social workers, licensed social work associates and licensed clinical social workers.

[OAR Docket #08-1039; filed 05-23-08]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #08-1014]

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RULES:
Subchapter 3. Public Policy
Part 11. Public Records
710:1-3-70 [AMENDED]
Subchapter 5. Practice and Procedure
Part 5. Administrative Proceedings Related to Tax Protests
710:1-5-27 [AMENDED]
710:1-5-40 [AMENDED]
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ANALYSIS:
Section 710:1-3-70 has been amended to reflect recent internal changes within the Tax Commission. The duties and responsibilities of the Audit Division have been transferred to the Compliance Division.

Section 710:1-5-27 has been amended to clarify policy regarding the representation of taxpayers in administrative proceedings by enrolled agents.

Section 710:1-5-40, dealing with hearings en banc, has been amended for clarification consistent with the Commission's policy allowing an opposing party fifteen (15) days to reply to a motion for a hearing en banc.
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 JULY 1, 2008:

SUBCHAPTER 3. PUBLIC POLICY

PART 11. PUBLIC RECORDS

710:1-3-70. Records in general

(a) **Confidentiality of records.** Generally, the law provides that the records and files of the Oklahoma Tax Commission are **confidential** except as specifically provided otherwise by statute. [**See:** 68 O.S. § 205]

(b) **Classes of exceptions to the general rule of non-disclosure.** Certain documents are available to the public by specific exception to the general law set out in (a) of this Section. In addition, some documents are considered public in nature, pursuant to the Open Records Act. [**See:** 68 O.S. § 205-205.3; 51 O.S. § 24A.4]

(c) **Records available under specific provisions of law.** By specific statutory mandate and by exceptions to the general rule of confidentiality set out in 68 O.S. § 205, there are a

number of sources of information available to the public and maintained by the Commission.

(1) **List of income tax filers.** A list of persons who filed Oklahoma Income Tax Returns is prepared annually and made available for inspection at the Taxpayer Assistance Division during normal business hours.

(2) **Register of tax warrants filed.** A register of current outstanding tax warrants issued is maintained and updated monthly by the Taxpayer Assistance Division of the Commission. The tax warrant register may be inspected at the M. C. Connors Building, Room 4-18, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma, during normal business hours.

(3) **Oklahoma aircraft registry.** A list of aircraft registered with the State is maintained and available for public inspection at Aircraft Section of the Taxpayer Assistance Division, 409 N.E. 28th Street, Oklahoma City, Oklahoma, during normal business hours).

(4) **Decedents list.** A list of decedents within the state, county of probate, and probate number is maintained by the ~~Audit~~ Compliance Division Estate Tax Section. The decedents list may be inspected at the offices located on the third floor at 409 N.E. 28th Street, Oklahoma City, Oklahoma, during normal business hours.

(5) **Permits, licenses, exemptions.** Information regarding the issuance or revocation of licenses and permits and documents evidencing exemption are available for most applicable tax types. The elements or items of information available regarding permits, licenses and exemptions may vary by tax type. In addition, the format in which a particular record is available may be limited to that normally used by the agency. Items of permit-related information may include permit number, permittee name, name of business, and business address. Inquiries should be made to the Taxpayer Assistance Division.

(d) **Limited disclosure in some instances.** Some records and information from records maintained by the Commission may be accessible only by certain persons, or for certain limited uses. In these instances, the release of information must be one permissible by statute. The Commission may require that the request be written and may require supporting documentation or identification, if the release of information sought is one statutorily limited in scope.

(e) **Requesting records; fees.** Where a person desires the Commission to make photocopies of public records, the request should be made in writing, specifying the record requested. The Commission may collect a fee for the copying of records, as well as other fees required by statute, and may structure the manner of response to requests so as to protect the normal business of the agency from undue disruption or delay. [For specific fee information, see Appendix A of this Chapter, Schedule of fees.]

SUBCHAPTER 5. PRACTICE AND PROCEDURE

PART 5. ADMINISTRATIVE PROCEEDINGS RELATED TO TAX PROTESTS

710:1-5-27. Representation and participation in administrative proceedings

(a) **Representation.** In an administrative proceeding the taxpayer may represent himself at any stage of the proceeding or may be represented by:

(1) an attorney;

(2) an accountant; ~~or,~~

(3) an enrolled agent; or

(4) a representative who has been approved by the Commission to represent the taxpayer.

(b) **Proper showing may be required.** If a taxpayer wants to be represented by someone other than himself, an attorney, or an accountant, the Administrative Law Judge may require that such person, before being recognized as a representative of the taxpayer, make a proper showing that he or she is of good character and in good repute and possessed with necessary qualifications to enable the representative to render such services to the taxpayer. Upon such showing by the representative, the Administrative Law Judge will certify the representative.

(c) **Proof of authority.** Any person representing a taxpayer in any matter may be required at any time to show written proof, in a form satisfactory to the Commission, of his or her authority to represent such taxpayer in that matter.

(d) **Confidentiality of proceedings; participation of others.** Proceedings are not open to the public unless confidentiality has been waived by the taxpayer or his representative. Any person who is not a party, not employed by a party, or not called as a witness, must obtain the permission of the Administrative Law Judge before observing or participating during any stage of the proceeding. Under provisions of Title 68 O.S. § 205, the taxpayer has the right to enforce the confidentiality of the proceedings.

710:1-5-40. Options available to parties after action by Administrative Law Judge

The following options are available to parties to an administrative proceeding related to a tax protest after issuance of an unfavorable recommendation:

(1) **Motion for rehearing; content; replies; time limitations.** Within fifteen (15) days following mailing of the Findings of Fact, Conclusions of Law and Recommendations of the Administrative Law Judge, any party to the proceedings may file a ~~Motion~~ motion for ~~Rehearing~~ rehearing or ~~Reconsideration~~ reconsideration with the Administrative Law Judge. Such ~~Motion~~ motion must specify each ground upon which the party alleges the ~~Findings~~ findings to be erroneous. The opposing party may reply to a ~~Motion~~ motion for ~~Rehearing~~ rehearing or ~~Reconsideration~~ reconsideration within fifteen (15) days after mailing of the ~~Motion~~ motion for ~~Rehearing~~ rehearing or ~~Reconsideration~~ reconsideration.

(2) **Rehearing procedure.** If a party elects to file a ~~Motion~~ motion for ~~Rehearing~~ rehearing or ~~Reconsideration~~ reconsideration, that party will be precluded upon rehearing, should the ~~Motion~~ motion be granted, from raising as error any issue not set forth in the ~~Motion~~ motion, and the proposed decision is vacated pending a subsequent

decision or rehearing. If the ~~Motion~~ motion is overruled in whole or in part, the original proposed decision stands on the date the ~~Motion~~ motion is overruled. If a rehearing is granted, notice will be issued to the parties setting out the date, time and place of the hearing.

(3) **Application for en banc hearing before Commission.** If a ~~Motion~~ motion for ~~Rehearing~~ rehearing or ~~Reconsideration~~ reconsideration is denied, the aggrieved party may, within fifteen (15) days following mailing of such denial, file an application for oral argument before the Tax Commission en banc. If a ~~Motion~~ motion for hearing en banc is granted, the case will be heard by the Commissioners sitting together as a decision making body.

(4) **En banc hearing procedure.** Any party may apply for a hearing en banc before the Commissioners whether or not he/she moved for rehearing or reconsideration before the Administrative Law Judge. If a ~~Motion~~ motion for ~~Rehearing~~ rehearing or ~~Reconsideration~~ reconsideration before the Administrative Law Judge is not filed, any party requesting a direct appeal to the Commission en banc, must file said motion for a hearing en banc within fifteen (15) days of the mailing of the Administrative Law Judge's ~~Findings~~ findings. The application must specify each ground upon which the party alleges the Findings, Conclusions and Recommendations to be erroneous. The opposing party may reply to a motion for hearing en banc within fifteen (15) days after mailing of the motion for hearing en banc. Should the ~~Application~~ application be granted, the moving party will be precluded from raising as error any issue not set forth in the ~~Application~~ application for a ~~Hearing En Banc~~ hearing en banc.

(5) **Granting of hearing en banc; filing of briefs; time limitations.** If such application for oral argument is granted, the Commissioners will set a date, time and place for the hearing and notice will be given to each side by mail at least twenty (20) days in advance of the hearing. Typewritten briefs must be submitted to the Commissioners at least fourteen (14) days prior to such hearing, or as otherwise directed by the Commission. Time limits for oral arguments will be set by the Commissioners at the time of the hearing.

(6) **Exhaustion of administrative remedies.** Although taxpayers must exhaust all administrative remedies before appealing to the Oklahoma Supreme Court, or if appropriate to a Federal court, it is not necessary to move for reconsideration or rehearing or to apply for a hearing en banc to exhaust administrative remedies. All that is necessary for exhaustion is to pursue a protest until the Commissioners issue a final decision in the form of an ~~Order~~ order.

(7) **~~mission~~ Commission decision commences appeal time.** Neither a ~~Motion~~ motion for ~~Reconsideration~~ rehearing or ~~Rehearing~~ reconsideration nor an application for a hearing en banc will be granted after a final decision has been made and an order issued. Therefore, a ~~Motion~~ motion for ~~Reconsideration~~ rehearing or ~~Rehearing~~ reconsideration or an application for a hearing en banc will not serve to stay the time to appeal to the Supreme Court.

[OAR Docket #08-1014; filed 5-22-08]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 10. AD VALOREM ~~TAX~~

[OAR Docket #08-1013]

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RULES:
Subchapter 2. Business Personal Property Valuation Schedules
710:10-2-5 [AMENDED]
Subchapter 7. Manufacturing Facilities
710:10-7-2.2 [AMENDED]
710:10-7-5 [AMENDED]
Subchapter 14. Full Fair Cash Value Exemption for Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate
710:10-14-5 [AMENDED]
Subchapter 15. Freeport Exemption [NEW]
710:10-15-1 [NEW]
710:10-15-2 [NEW]
710:10-15-3 [NEW]
710:10-15-4 [NEW]
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n/a
ANALYSIS:

As part of the Commission's ongoing review of its rules, many proposed amendments to the existing Ad Valorem rules have been made to implement recent legislation. All legislative references unless otherwise indicated are to the 51st Legislature, 1st Regular Session (2007).

Amendments to **Subchapter 2,** "*Business Personal Property Valuation Schedules*" has been made to reflect the provisions of House Bill 1485 which provides for specific valuation sources and methodology for taxable personal property used in the exploration of oil, natural gas, or other minerals including drilling equipment and rigs.

Amendments to **Subchapter 7**, *"Manufacturing Facilities"*, have been made to reflect the provisions of Section 1 of Senate Bill 798 which amends the five year manufacturing exemption for ad valorem tax to include designated distribution establishments meeting certain investment, employment, and

wage requirements and to delete a provision, rendered obsolete by Senate Bill 1577 [2006], regarding the allowance of an additional exemption year when an otherwise qualifying manufacturing facility fails to file a timely exemption application.

Amendments to **Subchapter 14**, *"Full Fair Cash Value Exemption for One Hundred Percent Disabled Veterans"* have been made to clarify the administration of the exemption.

New **Subchapter 15**, *"Freeport Exemption"* and new sections contained therein have been added to implement the provisions of Senate Bill 685 made pursuant to authority granted the Legislature by adoption of State Question 734 at election held November 7, 2006.

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 JULY 1, 2008:

SUBCHAPTER 2. BUSINESS PERSONAL PROPERTY VALUATION SCHEDULES

710:10-2-5. Petroleum related equipment

(a) **Petroleum related equipment. "Petroleum related equipment"** includes, but is not limited to: cable tool rigs, casing and tubing, crude oil, drill pipe, drilling rigs, gas compressors, meters, natural gas, pipeline costs, tanks, and valves.

(b) **Exploration related equipment.** All taxable personal property used in the exploration of oil, natural gas, or other minerals, including drilling equipment and rigs shall be assessed annually at the value set for the first *Hadco International* monthly bulletin published for the current tax year, using the appropriate depth rating assigned to the drawworks by its manufacturer and actual condition of the rig. [**See:** 68 O.S. Supp.2007 § 2817(K)]

(c) **Sources.** Sources utilized to determine the values of petroleum related equipment are:

(1) For cable tool rigs, values are determined by reference to catalogs of equipment manufacturers and dealers.

(2) For casing, tubing, ~~and~~ drill pipe, collars, and drilling rigs the source for values utilized is *Hadco International*, an appraisal and data firm specializing in the petroleum industry which measures current market conditions and values of various assets. This is a monthly publication.

(3) For crude oil, values are determined from the Oklahoma market twelve-month average.

(4) For valves and tanks, values utilized are taken from *Marshall and Swift Valuation Service*, a national valuation service contracted by the Division to provide tables of values for real and personal property, depreciation schedules, and trending tables for historical costs. The service is updated on a monthly basis.

(5) For natural gas in storage, value is determined by reference to the *New York Mercantile Exchange (NYMEX)*, which provides average cost of natural gas purchased from the storage facility, including data on well head gas purchase price, pipeline transportation, and storage fees.

(6) For gas compressors, meters, pipeline costs, and related equipment, values are determined from surveys of Oklahoma companies, research of records filed in the various counties, and other available sources. Such values may be adjusted using *Marshall and Swift Valuation Service* tables as provided in *OAC* 710:10

SUBCHAPTER 7. MANUFACTURING FACILITIES

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) and (e)(7) 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.

(7) For applications received after November 1, 2007, establishments primarily engaged in distribution as defined under industry Numbers 49311, 49312, 49313 and 49319 and Industry Sector Number 42 of the NAICS Manual latest revision, must meet all criteria required by statute and outlined in paragraphs (e)(4) and (e)(5) of this Section and the following subparagraphs:

(A) Initial capital investment of at least Five Million Dollars ($5,000,000.00);

(B) Employment of at least one hundred (100) FTE as certified by OESC;

(C) Wages and salaries equal to or exceeding one hundred seventy-five percent (175%) of the federally mandated minimum wage; and

(D) Commencement of construction on or after November 1, 2007, to be completed within three (3) years from the date of commencement of construction. [**See**: 68 O.S. 2007 Supp.§ 2902(B)(1)(e)].

(f) **Review of facility eligibility.** Eligibility subject to review by the Tax Commission. The Tax Commission may request any information from the applicant or verification of any information as required.

(g) **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~~h) **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.

710:10-7-5. Date of qualification; application for exemption

(a) The period of exemption granted to qualifying manufacturing concerns shall be computed from the assessment date immediately following the initial qualifying use of the property in the manufacturing process and subject to the statutory requirements for qualification in place at the time of the initial qualifying use. Applicants may claim any remaining eligibility not to exceed five years from the initial qualifying use.

(b) When completion of a facility or facilities will occur after January 1 of a given year, a facility may apply to claim the ad valorem tax exemption for that year. If the facility is found to be qualified, the exemption shall be available for the entire year and shall apply to the ad valorem valuation as of January 1st of that given year.

(c) Qualifying manufacturing concerns owning facilities engaged in manufacturing in Oklahoma on the first day of January may file an application for ad valorem manufacturing exemption on or before March 15, or as otherwise provided by law. Approved applications shall be filed by the county assessor with the Oklahoma Tax Commission no later that June 15 of the **TAX** year in which the facility desires to take the exemption. Incomplete applications and applications filed after said date will be declared null and void by the Commission. [**See:** 68 O.S. § 2902]

~~(d) If a taxpayer fails to file or timely file an initial application or any subsequent application for any year that the facility was otherwise qualified, the taxpayer may file an application for one (1) additional year within two (2) years past the end of the original five year period. Qualified manufacturing concerns filing for the additional one (1) year must document the request and detail the specific circumstances by an attached addendum to the application at time of filing the application.~~

SUBCHAPTER 14. FULL FAIR CASH VALUE EXEMPTION FOR DISABLED VETERANS IN RECEIPT OF COMPENSATION AT THE ONE HUNDRED PERCENT RATE

710:10-14-5. Application

In order to be eligible for the one hundred percent disabled veterans exemption, the individual must apply at the county assessor's office by completing an **Application for 100% Disabled Veterans Property Tax Exemption, Oklahoma Tax Commission Form 998.** The application should be made between January 1 and March 15th in the same manner as for homestead exemptions. However, if the county assessor becomes aware of an otherwise-qualified applicant at any time during the current tax year, the county assessor may, upon compliance with all qualification criteria, make the appropriate adjustment. Providing all homestead requirements are met, if an otherwise qualified applicant receives their one hundred percent (100%) disability rating effective on or before the date of application, the property is exempt for the entire year regardless of the status of disability on January 1. If an otherwise-qualified applicant is discovered after the tax roll has been certified, then a tax roll correction may be made pursuant to 68 O.S § 2871(C)(2). Any applications that are denied by the county assessor shall be subject to the same protest procedure as provided for homestead exemption. If the disability rating of any veteran participating in the exemption program is reduced by the U.S. Dept. of Veterans Affairs to less than one hundred percent, the veteran shall immediately notify the county assessor of the change in status. Failure to do so will result in loss of any future homestead exemption pursuant to 68 O.S. §§ 2892(K) and 2900.

SUBCHAPTER 15. FREEPORT EXEMPTION

710:10-15-1. General provisions

(a) The procedures and requirements set out in this Subchapter shall be used to administer the exemption.

(b) The "Freeport Exemption" refers to the Oklahoma Constitutional provision contained in Oklahoma Constitution Article 10, Section 6A relating to property moving through the state and goods, wares and merchandise held for assembly, storage, manufacturing, processing or fabricating purposes if not for more than nine (9) months.

710:10-15-2. Application

(a) In order to be eligible for the "Freeport Exemption" the owner or owner's agent must apply at the county assessor's office in the county where the property was located on the assessment date of January 1.

(b) The initial and any subsequent applications shall be made on Oklahoma Tax Commission Form 901-F, latest revision. Applications on non-approved Tax Commission forms or other submissions shall not be accepted by the county assessor.

(c) Applications shall be filed during each year in which the tax is due, on or before March 15 or within thirty (30) days from and after the receipt of a notice of valuation increase, whichever is later.

(d) Claims for previous years shall be declared null and void by the county assessor.

(e) Eligibility for the "Freeport Exemption" shall be established by annually filing an application for exemption using Oklahoma Tax Commission Form 901-F latest revision, on or before March 15 or within thirty (30) days from the receipt of a notice of valuation increase. **[See:** 68 O.S. § 2902.2**]**

710:10-15-3. Duties of the assessor

The county assessor has the authority to verify any information provided by the applicant, ask any necessary questions, request documentation and conduct interviews. The county assessor may physically inspect the property and access applicant's books and records and any other information that the assessor may feel is relevant to the exemption application. The county assessor shall deny any application that is inaccurate, incomplete, inadequately documented, or otherwise invalid pursuant to this Subchapter.

710:10-15-4. Right of appeal

Each application shall be examined by the county assessor in the manner provided for homestead exemptions pursuant to 68 O.S. § 2893. The applications for "Freeport Exemption" shall be reviewed by the county board of equalization in the same manner as homestead exemption applications pursuant to 68 O.S. § 2894 and shall be subject to the same review and appeal process as provided in 68 O.S.§ 2895.

[OAR Docket #08-1013; filed 5-22-08]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 20. ALCOHOL, MIXED BEVERAGES, AND LOW-POINT BEER

[OAR Docket #08-1012]

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710:20-1-3 [AMENDED]
Subchapter 2. Low-Point Beer
Part 1. General Provisions
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710:20-2-52 [AMENDED]
710:20-2-53 [AMENDED]
710:20-2-55 [AMENDED]
710:20-2-56 [AMENDED]
Subchapter 5. Mixed Beverages
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Sections 710:20-1-3 and 710:20-5-4 have been amended to correct a scrivener's error.
Sections 710:20-2-20, 710:20-2-52, 710:20-2-53, 710:20-2-55 and 710:20-2-56 were amended to reflect recent internal changes within the Tax Commission. The duties and responsibilities of the Audit Division have been transferred to the Compliance Division.

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 JULY 1, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

710:20-1-3. Purchase requirements for mixed beverage permit holders

(a) No mixed beverage or beer and wine licensee shall purchase or receive any alcoholic beverage other than from:

(1) A person holding a wholesaler or Class B wholesaler license issued pursuant to the Oklahoma Alcoholic Beverage ~~control~~ Control Act; or,

(2) A licensed Oklahoma winemaker, if the licensee's premises is also a restaurant. In this instance, the licensee may purchase wine produced at Oklahoma wineries directly from the winemaker. [**See:** 37 O.S. § 537(E)(1)]

(b) No mixed beverage, beer and wine, caterer, or special event licensee, nor any officer, agent, or employee of such licensee, may possess or allow on the licensed premises, any container of any alcoholic beverage which is not listed on an invoice from the wholesaler or from a licensed Oklahoma winemaker from whom the alcoholic beverage was purchased. [**See:** 37 O.S.Supp.2001, § 582(A)]

SUBCHAPTER 2. LOW-POINT BEER

PART 1. GENERAL PROVISIONS

710:20-2-20. Keg identification seal requirements and recordkeeping for licensed retailers

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

(1) ***"Beer keg"*** *means any brewery-sealed, single container that contains not less than four (4) gallons of low-point beer.* [37 O.S.Supp.2003, § 163.2]

(2) ***"Licensed retailer"*** *means a retail dealer licensed to sell low-point beer in original containers for consumption off the premises.* [37 O.S.Supp.2003, § 163.2]

(3) ***"Identification seal"*** *means any device approved by the Tax Commission which is designed to be affixed to beer kegs and which displays an identification number and any other information as may be prescribed by the Tax Commission.* [37 O.S.Supp.2003, § 163.2]

(b) **Identification seals required on kegs sold.** Every licensed retailer of low-point beer shall affix an identification seal to an outside surface of each beer keg as defined by 37

O.S. Section 163.29. The identification seal shall be affixed to the surface of the beer keg in a manner so as not to conceal any information pertaining to the brand name, brewery code, or container size.

(c) **Contents of identification seal.** The identification seal shall consist of a durable material and be in a form approved by the ~~Audit~~ Compliance Division of the Oklahoma Tax Commission. The identification seal shall be attached at the time of sale and shall include the following information:

(1) The licensed retailer's name, address, beer license number, and telephone number;

(2) The beer keg number assigned by the licensed retailer; and,

(3) A warning that intentional removal or defacement of the seal is a misdemeanor.

(d) **Recordkeeping requirements.** Records required of each beer keg sale shall include:

(1) The purchaser's name and address;

(2) The driver's license number or identification card number issued by the Department of Public Safety, a military identification card number, or the number from a valid United States or foreign passport;

(3) The date and time of the purchase;

(4) The purchaser's signature; and,

(5) The beer keg identification seal number.

(e) **Retention of records.** The licensed retailer shall retain on file the records set out in (d)(1) through (d)(4) of this Section pertaining to the sale of each beer keg for a period of not less than one (1) year after the sale of a keg, and shall keep a record of the beer keg identification seal number set out in (d)(5) of this Section for one (1) year from the return of the keg.

PART 3. LOW-POINT BEER DISTRIBUTION

710:20-2-52. Procedures for filing agreements

(a) On or before July 1, 1994, a copy of all agreements entered into between a manufacturer and a wholesaler as required by 37 O.S. §163.18B shall be filed with the ~~Audit~~ Compliance Division of the Commission.

(b) After July 1, 1994, a copy of all agreements entered into between a manufacturer and a wholesaler shall be filed with the ~~Audit~~ Compliance Division within fifteen (15) calendar days of the date it was signed.

(c) The copy filed shall be a photo copy of the original signed agreement so as to clearly show the names of all signatories to the agreement.

(d) If the agreement does not contain a map indicating the sales territory, then a map indicating the sales territory shall be filed with the copy of the agreement.

(1) The map shall be not less than eight and one half (8 1/2) inches by eleven (11) inches in size.

(2) The map shall indicate approval by the licensed manufacturer and the licensed wholesaler.

(e) Any changes or amendments to an agreement which do not necessitate a signing of a completely new agreement shall be reduced to writing and shall be signed in the same manner as if there were a completely new agreement.

(f) A copy of any changes or amendments to an agreement shall be filed with the ~~Audit~~ Compliance Division within fifteen (15) calendar days of the date the changes or amendments were signed.

710:20-2-53. Registration of designated brands

(a) On or before July 1, 1994, a manufacturer shall register each designated brand with the ~~Audit~~ Compliance Division of the Commission in such form as the Oklahoma Tax Commission shall prescribe.

(b) After July 1, 1994, a manufacturer shall register each designated brand at the same time that an agreement is filed. In the event a change or amendment is made to an agreement:

(1) An affidavit to the effect that there has been no change in the registered designated brands or information concerning the registered designated brands shall be filed with the changes or amendments; or

(2) If the changes or amendments affect the registered designated brands, then a new registration for each designated brand shall be necessary.

(c) With each brand registered, the following information shall be furnished:

(1) The full and correct brand name.

(2) The name and corporate address of the owner of the designated brand.

710:20-2-55. Delivery outside sales territory

(a) When a wholesaler is temporarily unable to provide the designated brands of the manufacturer within the sales territory, the manufacturer may authorize another wholesaler to supply the designated brands within that sales territory.

(b) A wholesaler shall be deemed to be temporarily unable to provide the designated brands when the manufacturer finds that illness, natural catastrophes such as tornadoes, fires, floods, or other conditions will prevent the wholesaler from providing the designated brands for a determinate period of time.

(c) In the event the manufacturer determines that a wholesaler is temporarily unable to provide the designated brands within a sales territory, the manufacturer shall provide written notification within ten (10) calendar days from the date of the determination to:

(1) The temporarily unavailable wholesaler,

(2) The wholesaler which will be providing the designated brands within the sales territory, and

(3) The ~~Audit~~ Compliance Division of the Commission.

710:20-2-56. Termination of agreement

(a) A manufacturer terminating an agreement with a wholesaler shall file a copy of the written notification of termination with the ~~Audit~~ Compliance Division of the Commission no more than five (5) calendar days from the date of termination.

(b) If a manufacturer enters into an agreement with another wholesaler to provide any designated brands of the manufacturer in the sales territory of the terminated wholesaler, the new agreement shall be filed with the ~~Audit~~ Compliance Division

not more than five (5) calendar days from the date the new agreement is signed.

SUBCHAPTER 5. MIXED BEVERAGES

710:20-5-4. Calculation of gross receipts tax for mixed beverage transactions

(a) **Advertised price; admission charge.** The advertised price of a Mixed Beverage shall be the sum of the total retail sale price and the Gross Receipts Tax levied thereon. Admission charges to a Mixed Beverage establishment which entitle a person to complimentary mixed beverages or discounted prices for mixed beverages are subject to the Gross Receipts Tax.

(b) **Records.** On and after June 29, 1987, Mixed Beverage Permittees shall maintain records of the total retail prices of all drinks and the Gross Receipts Tax shall be calculated on the individual total retail price of each drink and added thereto to ~~from~~ form the advertised price.

(c) **Calculation of tax.**

(1) A mixed beverage tax permit holder shall report the following:

(A) The total amount received for mixed beverages sold, prepared or served at the total retail price;

(B) The total retail value, computed at the total retail price, of all mixed beverages sold, prepared or served either upon a discounted or complimentary basis;

(C) The total amount received for ice or nonalcoholic beverages sold, prepared, or served for the purpose of being mixed with alcoholic beverages and consumed on the premises where the sale, preparation, or service of mixed beverages occurs; and

(D) The total gross amount received as admission charges which entitle a person to complimentary mixed beverages or discounted prices for mixed beverages.

(2) The sum of the four amounts in (1) of this subsection, multiplied by the 13.5% tax rate, shall constitute the amount of the Gross Receipts Tax.

(d) **Example.** If the total retail sales price for a mixed drink is $3.00, each drink sold, and each drink served as a "complimentary drink" incurs a Forty-one Cent Gross Receipts Tax which shall be added to the total retail price to form an advertised price of $3.41. Sales tax shall be calculated on the total retail price of $3.00. [**See:** 37 O.S. §576]

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TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 22. BOATS AND MOTORS

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Section 710:22-7-5 has been amended to clarify policy and procedure for utilizing the manufacture year as the model year when no model year is designated by the manufacturer
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 7. TITLES

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. Should no model year be reflected on the Manufacturers Statement of Origin, the year of manufacture, or equivalent date, if termed otherwise, reflected on that Statement will be utilized as the model year in the Oklahoma title record files. An exception to this guideline may be considered upon receipt and review of a letter from the manufacturer, not the dealership, identifying the vessel or outboard motor by serial number and clarifying its model year.

(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).

[OAR Docket #08-1011; filed 5-22-08

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 23. CHARITY GAMES TAX

[OAR Docket #08-1010]

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The 2006-2007 Legislative Session enacted statutory changes which require amendments to the existing rules in the following areas:

Section **710:23-1-4** has been amended to require documentation from distributors concerning exempt sales to group homes for mentally disabled individuals. [**3A:422**]

Section **710:23-1-8** has been amended to add the provision that sales of charity game equipment to group homes for mentally disabled individuals are exempt from sales tax and the charity games tax levied by Section 421of Title 3A **[HB 1094 §1]** [**68:1355**] and to reference the charity games tax exemption for "veterans' organizations". **[HB 1889 (2004)]**

In addition, other rule changes may be made to clarify policy, improve readability, correct scriveners errors, update statutory citation, and insure accurate internal cross-references.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

710:23-1-4. Distributor operations and reporting

(a) **Sales of conforming bingo faces.** A licensed distributor must sell bingo faces, imprinted with the word "Oklahoma" and outline of the state of Oklahoma ("conforming bingo faces"), to licensed organizations, exempt organizations, and exempt entities. Except for sales to veterans' organizations and sales to group homes for mentally disabled individuals, all sales of conforming bingo faces are subject to tax. Conforming bingo faces may not be sold to federally recognized Indian tribes or nations.

(b) **Records and reports required.** The following items apply to records and reports of distributors:

(1) A distributor who sells, leases, or otherwise provides charity game equipment must record the transaction on a sales invoice.

(2) A sales invoice must be on a form approved by the Tax Commission and must contain the following information:

(A) The "ABLE" license number of the distributor;

(B) The name of the licensed organization, entity, or licensed distributor;

(C) The complete business name and address of the organization, entity, or licensed distributor;

(D) The "ABLE" license or "ABLE" exemption permit number of the organization, entity, or licensed distributor;

(E) The invoice number;

(F) The date the equipment was shipped;

(G) A full description of each item of equipment sold;

(H) The serial numbers of the bingo sets, U-Pik-Em game sets, breakopen ticket games, and selection equipment. The invoice for bingo faces must designate whether the bingo faces are conforming bingo faces;

(I) The identity of the manufacturer from which the distributor purchased the equipment;

(J) The date of the sale of the charity game equipment;

(K) The name of the person who ordered the charity game equipment;

(L) Whether the sale was an exempt sale made to a veterans' organization;

(M) Whether the sale was an exempt sale made to a group home for mentally disabled individuals.

(c) **Monthly reporting.** Each distributor shall submit monthly to the Tax Commission:

(1) **Purchase invoices.** Copies of all purchase invoices from the licensed manufacturer, licensed distributor, or printer (jobber), stating the amount and price of each item obtained and in the case of invoices for bingo faces, whether they are conforming or nonconforming;

(2) **Sales invoices.** Copies of all sales invoices submitted for payment to purchasers of charity game equipment, bingo faces (conforming and nonconforming), U-Pik-Em

game sets, and breakopen ticket games, regardless of whether the sale was to a licensed organization, exempt organization or entity, or person or entity excluded from the Act;

(3) **Printing invoices.** Copies of all invoices and work orders for conversion by jobbers, (i.e., the printing of the outline of the state of Oklahoma onto nonconforming paper) and for the printing of U-Pik-Em game sets. The invoice and work order must include the name of the printer, the number of bingo faces, and the series and serial numbers of the bingo faces. If the bingo faces printed are in sets, only the serial number of the top sheet must be included.

(4) **Reconciliation of inventory of charity game equipment.**

(A) The perpetual reconciliation of inventory is reported on the monthly reporting form, Schedule A, pertaining to bingo faces, and shall be detailed as to the number of conforming, nonconforming, and U-Pik-Em bingo games purchased from licensed manufacturers, licensed distributors, and printers (jobbers). It must reflect the total number of faces and U-Pik-Em games purchased and sold by the distributor.

(B) The breakopen ticket game reconciliation is reported on Schedule B on the monthly reporting form and must reflect the retail sales value of the breakopen ticket games purchased and sold by the distributor.

(C) Distributors who are also licensed as manufacturers must include in the reconciliation, the number of U-Pik-Em bingo game sets printed or purchased and transferred by the manufacturer and the number of U-Pik-Em bingo game sets printed by a jobber for the distributor.

(5) **Physical inventory required.** All licensed distributors shall be required to file a physical inventory of all paper (designated conforming and nonconforming), U-Pik-Ems, Tabs, and Equipment, the month following the ending month of the distributor's fiscal year. Such inventory shall include the number of conforming faces, nonconforming faces, and U-Pik-Ems, and for Tabs and Equipment, the total number of deals and items, as well as the total retail value.

(6) **Remittance of tax.** Remittance of tax is due on charity game equipment sold, rented or leased the previous month, less any discount lawfully retained. With the exception of conforming bingo faces sold to veterans' organizations and group homes for mentally disabled individuals, all conforming bingo faces sold or otherwise transferred during the previous month are subject to tax. Adjustments may be made upon proper showing, as a result of destruction or breakage. [**See:** 710:23-1-6]

(7) **Remuneration.** A distributor who timely reports and remits monthly may retain the discount provided in the Act. If the tax becomes delinquent, the discount is forfeited by the distributor.

(8) **Interest and penalty.** Interest and penalty as provided in 68 O.S. §217 shall apply to all liability not paid at the time required by the Act.

(d) **Quarterly reporting.** Each distributor, on the last day of the month following the end of the quarter, shall submit a report and supporting data to the Tax Commission containing the name, address, and license or exemption number, if any, of each purchaser of charity game equipment.

(e) **Magnetic or electronic reporting.** The quarterly report may, if desired, be submitted via magnetic media (tape or diskette) or by modem, directly to the Commission. Reports submitted via the magnetic media or electronic data shall conform to the Magnetic Media Guide prepared by the Oklahoma Tax Commission.

710:23-1-8. Limited exemptions

(a) **Use of conforming bingo faces required.** If an exempt entity or exempt organization chooses to use disposable paper bingo faces in conducting charity games, only bingo faces with the word "Oklahoma" and outline of the state of Oklahoma printed thereon ("conforming bingo faces") purchased from a licensed distributor may be used and the tax levied by the Act must be paid.

(b) **Charity game equipment purchased from licensed distributors.** An exempt entity or exempt organization purchasing charity game equipment from a licensed distributor or licensed organization shall pay the tax levied by the Act in the same manner as prescribed for licensed organizations.

(c) **Exemption if tax levied by the Act is paid.** An exempt entity or exempt organization shall be exempt from sales and use tax on any item of charity game equipment purchased by the exempt entity or organization on which tax levied by the Act has been paid.

(d) **Sales of charity game equipment to veterans' organizations.** The sale of charity game equipment to a veterans' organization is exempt from sales tax and charity games taxes levied pursuant to Section 421 of Title 3A.

(e) **Sales of charity game equipment to group homes for mentally disabled individuals.** The sale of charity game equipment to a group home for mentally disabled individuals is exempt from sales tax and charity games tax levied pursuant to Section 421 of Title 3A.

[OAR Docket #08-1010; filed 5-22-08]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 35. ESTATES

[OAR Docket #08-1009]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Returns; Remittance; Releases
Part 1. Filing and Payment
710:35-3-9 [NEW]
Part 3. Releases
710:35-3-20 [AMENDED]

AUTHORITY:
Oklahoma Tax Commission; 68 O.S. § 203
DATES:
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
New Section 710:35-3-9 has been added to clarify the effect of the repeal of the Oklahoma estate tax on the ten (10) year Oklahoma estate tax lien.
Section 710:35-3-20 has been amended to reflect internal changes within the Tax Commission. Because there is no longer an Income Tax Division, the duties and responsibilities set out in this rule are now under the direction of the Estate Tax Section.
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 JULY 1, 2008:

SUBCHAPTER 3. RETURNS; REMITTANCE; RELEASES

PART 1. FILING AND PAYMENT

710:35-3-9. Estate tax lien

(a) **General rule.** For decedents who die on or before December 31, 2009, Oklahoma estate taxes shall be and remain a lien upon all property which is part of the gross estate of the decedent, as defined in 68 O.S. § 807, immediately upon the death of the decedent.

(b) **Exceptions.** The Oklahoma estate tax lien does not attach to the following categories of property:

(1) Property used for the payment of charges against the estate and expenses of administration, allowed by the court having jurisdiction thereof;

(2) Property reported to the Oklahoma Tax Commission by the responsible party or parties which shall have passed to a bonafide purchaser of value in which case the tax lien shall attach to the consideration received from such purchaser by the heirs, legatees, devisees, distributes, donees or transferees; and

(3) Property passing to the surviving spouse, either through the estate of the decedent, by joint tenancy, or otherwise.

(c) **Duration.** The Oklahoma estate tax lien shall continue as a lien on all property of the decedent's gross estate, except for the categories of property described in subsection (b), for ten (10) years from the death of the decedent, unless an order releasing taxable estate or order exempting the estate from estate tax is obtained from the Tax Commission. The Oklahoma estate tax lien is extinguished upon the expiration of ten (10) years from the date of the death of the decedent unless prior thereto the Tax Commission causes a tax warrant to be filed and appear of record in which case the Oklahoma estate tax lien then shall continue as a lien on all property of the decedent's gross estate, except for the categories of property described in subsection (b), until a release of the tax warrant is obtained and filed of record

PART 3. RELEASES

710:35-3-20. Estate tax releases

(a) For purposes of this Part and administration of the Oklahoma Estate Tax Code, the word **"release"** shall mean and include the words **"acquittance," "waiver," "disclaimer," "order exempting"** or other similar language used in the Estate Tax Code.

(b) The Division Administrator of the Estate Tax Section of the Oklahoma Tax Commission is authorized to issue releases of Oklahoma Estate Tax liability and liens thereby as to all property listed in the Oklahoma Estate Tax Return or other information filed with the Oklahoma Tax Commission in accordance with 710:35-3-21 and 710:35-3-24. Such releases shall be upon forms approved by the Commission, issued under facsimile signature of the Commissioners and the official seal of the Oklahoma Tax Commission, and shall constitute orders of the Commission.

(c) The ~~Director of the Income Tax Division~~ Division Administrator of the Estate Tax Section of the Tax Commission or his designee shall have authority to attest the signatures and affix the official seal of the Oklahoma Tax Commission to releases and liens associated with Estate Taxes. [**See:** 68 O.S. §806(c)]

[OAR Docket #08-1009; filed 5-22-08]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 40. FRANCHISE TAX

[OAR Docket #08-1003]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
710:40-1-17 [AMENDED]
AUTHORITY:
68 O.S. §§ 203 and 1210; Oklahoma Tax Commission
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The 2006-2007 Legislative Session enacted a statutory change which requires amendment to the existing rule:
Section 710:40-1-17 has been amended to clarify the filing requirements of corporations that owe $250.00 or less in franchise tax pursuant to the changes to 68 O.S. § 1205 made by Section 1 of Senate Bill 861 which will become effective January 1, 2008.
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 JULY 1, 2008:

710:40-1-17. Reporting form to be used by taxpayers exempt from the tax as a result of a tax of ~~$10.00~~ $250.00 or less being due

For all franchise tax returns due on or after ~~July 1, 2006~~ January 1, 2008, if a taxpayer computes the franchise tax due and determines that it amounts to ~~$10.00~~ $250.00 or less, the taxpayer is exempt from the tax and a "no tax due" report as prescribed by the Tax Commission is required to be filed. A schedule of corporate officers must still be filed and, for foreign corporations, the $100.00 registered agents fee is still due. [See: 68 O.S. § 1205]

[OAR Docket #08-1003; filed 5-22-08]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 45. GROSS PRODUCTION

[OAR Docket #08-1005]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Payment; Remittance; Refunds
710:45-3-5 [AMENDED]
Subchapter 5. Required Returns and Reports
710:45-5-2 [AMENDED]
Subchapter 9. Exemptions and Exclusions
Part 5. Horizontally Drilled Production Wells
710:45-9-28 [AMENDED]
Part 7. Incremental Production from Enhanced Recovery Projects or Properties
710:45-9-32 [AMENDED]
Part 9. Production Enhancement Projects
710:45-9-43 [AMENDED]
Part 11. Reestablishment Of Production From an Inactive Well
710:45-9-53 [AMENDED]
Part 13. Deep Wells
710:45-9-62.1 [AMENDED]
Part 15. New Discovery Wells
710:45-9-73 [AMENDED]
Part 17. Economically At-Risk Leases
710:45-9-81 [AMENDED]
710:45-9-82 [AMENDED]
Part 19. Production Using Three Dimensional Seismic Shoots
710:45-9-93 [AMENDED]
Part 21. Marketing Costs Deduction [NEW]
710:45-9-100 [NEW]
710:45-9-101 [NEW]
710:45-9-102 [NEW]
710:45-9-103 [NEW]
710:45-9-104 [NEW]
710:45-9-105 [NEW]
Appendix A. Marketing Costs [NEW]
AUTHORITY:
68 O.S. §§ 203, 1001(M) and 1001.4(I); Oklahoma Tax Commission
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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 Gross Production rules have been made to implement recent legislation. All legislative references are to the 51st Legislature, 1st Regular Session (2007).

The proposed amendments reflect the provisions of House Bill 1718 which clarify qualifying criteria for the rebate of gross production tax on economically at-risk leases and extend the sunset provisions through 2010. The proposed amendments reflect the provisions of Senate Bill 119 which correct eligibility criteria for the exemption of sales tax on electricity used in enhanced recovery methods of oil production. New rules are being promulgated to reflect the provisions of House Bill 1485 which provides for a deduction on the levy of gross production tax for certain non-production related costs associated with the marketing and transportation of natural gas. Other sections are being amended to clarify policy, improve readability, correct scrivener's errors, update statutory citation, insure accurate internal cross-reference and comply with statutory changes

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 JULY 1, 2008:

SUBCHAPTER 3. PAYMENT; REMITTANCE; REFUNDS

710:45-3-5. Issuance and release of order to stop payment

(a) The Director of the ~~Audit~~ Compliance Division of the Oklahoma Tax Commission, or a designee, is delegated the duty and authority to issue orders to withhold payment for production and orders releasing payment for production to purchasers of oil and gas produced in Oklahoma.

(b) Orders to withhold payment for production shall be issued if and when the required reports and/or forms have not been filed or when the Gross Production Tax penalty and interest on any production are unreported, unpaid or delinquent. Orders releasing payment for production shall be issued if and when all required reports have been filed and all tax, penalty and interest accrued have been paid.

(c) Orders to withhold payment for production and orders to release payment for production shall be upon forms approved by the Commission and shall be issued under facsimile signatures of the Commissioners, attested with the official seal of the Oklahoma Tax Commission affixed thereto. [**See:** 68 O.S. §1007]

SUBCHAPTER 5. REQUIRED RETURNS AND REPORTS

710:45-5-2. Incomplete monthly production report forms filed shall constitute no report

(a) Any Monthly Production Report form filed with the Oklahoma Tax Commission shall include the minimum information specified in 68 O.S. §1010 and in 710:45-5-1. Any such required monthly report form that does not include these minimum requirements shall not constitute the mandatory report required by statute.

(b) Any Gross Production, Petroleum Excise or Conservation Excise Taxes remitted with an incomplete report form shall be accepted as payment of taxes due, and upon receipt of a proper report, the tax payment shall be apportioned.

(c) Upon receipt of a Monthly Production Report form, which has been approved by the Commission, from a person required to report monthly, which does not include the required information, the Director of the ~~Audit~~ Compliance Division of the Oklahoma Tax Commission, or a designee, shall notify the reporting taxpayer that:

(1) The monthly report form filed with the Commission does not contain the minimum information required by 68 O.S. §1010 and 710:45-5-1 and such form does not constitute a valid Monthly Production Report;

(2) Pursuant to this Section, the person has failed to file a Monthly Production Report;

(3) The amount of penalties accrued; and,

(4) Any remittance or payment made therewith has been accepted and will be apportioned by the Commission in accordance with the applicable statute. [**See:** 68 O.S. §1010]

SUBCHAPTER 9. EXEMPTIONS AND EXCLUSIONS

PART 5. HORIZONTALLY DRILLED PRODUCTION WELLS

710:45-9-28. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation 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~~ Compliance 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) A copy of the application approved by the Corporation Commission certifying the well as a horizontally drilled well;

(2) A copy of an approved OTC Form 320A that shows the date of initial production;

(3) A properly completed OTC Form 328 Gross Production 841/495 Refund Report; and

(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.** Approval of a "Horizontal Drilling 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.

(c) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim

for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(d) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(e) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(f) **Claim limitation.** For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available.

(g) **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.

PART 7. INCREMENTAL PRODUCTION FROM ENHANCED RECOVERY PROJECTS OR PROPERTIES

710:45-9-32. Qualification procedures

The provisions of this Section establish criteria for determining if an operator of an enhanced recovery project has met the required conditions to qualify the incremental production from such project for the exemption from the Gross Production Tax. [**See:** 68 O.S. § 1001]

(1) **Administrative approval and determination; order.** An operator, seeking an exemption of incremental production from the gross production tax shall make application to the Oklahoma Corporation Commission, as provided in OAC 165:5-7-14, for a determination that such project qualifies, a determination of the starting date, and of the base production amount.

(A) If the application is approved, a copy shall be forwarded to the operator.

(B) 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.

(2) **Tax Commission approval of exemption.** An operator desiring an exemption from the gross production tax shall make application by letter to the ~~Audit~~ Compliance Division, Oklahoma Tax Commission. Such application shall be accompanied by:

(A) A copy of the approved application by the Corporation Commission containing a determination of the project beginning date, base production amount and project payback;

(B) The ratio of working interest/royalty interest in the well. Only the incremental production attributable to the working interest owners shall be exempted from the gross production tax. For purposes of this exemption, overriding royalty shall be included in working interest;

(C) A schedule of production, by month, of the gross amounts of crude oil or other liquid hydrocarbons produced, and the gross values thereof, from the project beginning date until the date application is made to the Tax Commission; and,

(D) 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.

PART 9. PRODUCTION ENHANCEMENT PROJECTS

710:45-9-43. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the 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~~ Compliance 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) A copy of the application approved by the Corporation Commission certifying the well as production enhanced;

(2) A properly completed OTC Form 328 Gross Production 841/495 Refund Report; and

(3) 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.** Approval of a "Production 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.

(c) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(d) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(e) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(f) **Claim limitation.** For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available.

(g) **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.

PART 11. REESTABLISHMENT OF PRODUCTION FROM AN INACTIVE WELL

710:45-9-53. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the 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~~ Compliance 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) A copy of the application approved by the Corporation Commission certifying the well as an inactive well for which production has been reestablished;

(2) A copy of an approved OTC Form 320C that shows the date of the reestablishment of production of oil and/or gas;

(3) A properly completed OTC Form 328 Gross Production 841/495 Refund Report; and

(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.** Approval of a "Reestablished 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.

(c) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(d) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(e) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(f) **Claim limitation.** For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available.

(g) **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.

PART 13. DEEP WELLS

710:45-9-62.1. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the 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~~ Compliance 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) A copy of an application approved by the Corporation Commission certifying the well as a well spudded within the applicable time periods and drilled to the prescribed depths provided in *OAC* 165:10-21-45;

(2) A copy of an approved OTC Form 320A that shows date of first sale of production;

(3) A properly completed OTC Form 328 Gross Production 841/495 Refund Report; and

(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.** Approval of a "Deep Well 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.

(c) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(d) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(e) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(f) **Claim limitation.** For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available. Claims for refund for deep wells spud on/or after July 1, 2005 which are completed at a depth of fifteen thousand (15,000) feet or greater and certified by the Oklahoma Corporation Commission must be filed with the Tax Commission no later than six (6) months after the first day of the fiscal year in which the refund is initially available.

(g) **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.

PART 15. NEW DISCOVERY WELLS

710:45-9-73. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the 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~~ Compliance 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) A copy of the application approved by the Corporation Commission certifying the well as a new discovery well spudded or re-entered between July 1, 1995 and July 1, 2009;

(2) A copy of an approved OTC Form 320A that shows date of first sale of production;

(3) A properly completed OTC Form 328 Gross Production 841/495 Refund Report; and

(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.** Approval of a "New Discovery 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.

(c) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(d) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(e) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(f) **Claim limitation.** For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available.

(g) **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.

PART 17. ECONOMICALLY AT-RISK LEASES

710:45-9-81. Definitions

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

"Economically at risk oil or gas lease" means any lease operated at a net loss or a net profit which is less than the total gross production tax remitted for such lease during the previous tax reporting year.

"Lease" means a spaced unit, a separately metered formation within the spaced unit, or each tract within a Corporation Commission approved unitization, or a lease which, for tax reporting purposes, has been assigned a production unit number. A lease may contain one or more wells which have identical interest and payout.

~~**"Oil lease"** means a lease containing one or more wells which have identical interest and payout and which are either:~~

~~(A) Classified by the Oklahoma Corporation Commission as an oil well, OR~~

~~(B) The ratio of gas to oil produced from the lease is equal to or less than fifteen thousand (15,000) cubic feet of gas for each one (1) barrel of oil produced.~~

~~Note: The economically at risk rebate applicable to calendar years 1997 and 1998 only pertains to a qualified oil lease. The economically at risk rebate applicable to calendar years 2005, 2006 and 2007 pertains to both qualified oil and gas leases.~~

710:45-9-82. Exemption period

The exemption for economically at risk oil leases is limited to calendar years 1997 and 1998. The exemption for economically at risk oil and gas leases is limited to calendar years 2005~~, 2006 and 2007~~ through 2010.

PART 19. PRODUCTION USING THREE DIMENSIONAL SEISMIC SHOOTS

710:45-9-93. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation 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~~ Compliance 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 after July 1, 2000, and prior to 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 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) If the refund request is filed by any person other than the party named in the Oklahoma Corporation Commission order, a notarized affidavit, signed by the party named in the order must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for prior periods.** 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.

(c) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(d) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for

the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(e) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(f) **Claim limitation.** For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available.

(g) **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.

PART 21. MARKETING COSTS DEDUCTION

710:45-9-100. Scope of Part 21

Producers of natural gas and casinghead gas who incur certain marketing costs of the gas produced may deduct such costs from the gross value when computing the gross value subject to gross production tax.

710:45-9-101. Definitions

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

"Overhead costs" mean the actual direct labor incurred on the exempt facility compared to the total direct labor incurred by the producer as a whole. Allowable overhead costs shall not exceed ten percent (10%) of the total direct marketing costs and depreciation associated with the marketing equipment.

"Marketing costs" are non-production related costs incurred by the producer to enable the transport of gas from the well to the market, including costs for compressing, dehydrating and sweetening the gas sold; and delivering the gas to the purchaser. Appendix A of this Chapter provides a list of costs by category, identifying which costs are allowable as marketing costs. Whether the cost is deductible or not will often depend upon exactly how the item is used. If the cost is deductible, it must then be determined whether the item should be expensed or depreciated.

"Marketing facilities" include but are not limited to flow lines or gathering systems from the separator to the purchaser's transmission line, compressor stations, dehydration units, line heaters (after the separator) and sweetening facilities.

710:45-9-102. Qualifying criteria

Qualified deductions of marketing costs must meet the following criteria:

(1) They shall not include any costs incurred in the production of gas, oil or condensate or in the separation there from of any product subject to gross production tax.

(2) Taxes shall be computed on gross proceeds, including tax reimbursement, less the cost of gathering, compressing and treating the gas sold;

710:45-9-103. Calculation of marketing costs

Marketing costs are determined by adding:

(1) Charges for depreciation of the marketing facility being used, provided that, if the facility is rented, the actual rental fee is added;

(2) A return on the producer-owned investment equal to six percent (6%) per year on the average depreciable balance;

(3) Costs of direct or allocated labor associated with the marketing facility;

(4) Costs of materials, supplies, maintenance, repairs, and fuel associated with the marketing facility; and

(5) Ad valorem taxes paid on the marketing facility.

710:45-9-104. Depreciation and return on investment

(a) Depreciation shall be determined by subtracting the salvage value from the purchase price and multiplying the difference by the number of years of useful life. Example of calculation:

(1) Purchase price $100,000
(2) Minus salvage value $10,000
(3) Equals $90,000
(4) Divided by useful life ÷ 10
(5) Equals depreciation per year $9,000

(b) Return on investment shall be determined by adding the undepreciated balance at the beginning of the year with the undepreciated balance at the end of the year, dividing the sum by 2, subtracting the salvage value from the quotient, multiplying the difference by 6% to get the return on investment per year. Example of return on investment calculation:

(1) Undepreciated balance at beginning of year $100,000
(2) Add undepreciated balance at year end $91,000
(3) $191,000
(4) Divide by 2 ÷ 2
(5) $95,500
(6) Less salvage value $10,000
(7) $85,500
(8) Multiply by 6% rate $.06
(9) Return on investment per year $5,130

(c) Ten years useful life and a depreciation rate of 10% per year are normally used. However, a different term can be used if the situation calls for it, based upon documentation in the

taxpayer's records. Useful life must be the lesser of the expected life of the equipment, or the life of the field. Straight line depreciation is the preferred and recommended depreciation method. If another method is used, the taxpayer should be ready to support why that particular method is appropriate for the situation. If fully depreciated equipment continues in use by the taxpayer, they can continue to deduct the return on investment amount on the salvage value.

710:45-9-105. Reporting requirements

(a) The remitter of gross production tax shall enter the cost deduction taken for each lease, each month, as a code 9 exemption on the monthly gross production tax report. The deduction must be computed on the basis of the cost per MCF of handling the gas sold. The total amount of annual depreciation, ad valorem taxes and other allowed costs for the year divided by the number of MCF handled through the system during that year equals the cost allowed per MCF sold.

(b) Inasmuch as cost deductions are to be reported on a monthly basis during the year the costs are being incurred, estimates of costs should be made as accurately as possible. If the costs reported are within 25% of the actual costs incurred, the amounts reported for the succeeding year may be adjusted upward or downward to compensate for the error. Should the error be more than 25%, amended reports must be made and accompanied by either payment of additional tax, penalty and interest or a claim for refund. Cost deductions and adjustments reported shall never be allowed to result in a minus taxable value nor in a taxable value greater than the gross proceeds. Records of all expenditures must be maintained for examination by the Tax Commission.

APPENDIX A. MARKETING COSTS [NEW]

Item	Allowable	Disallowed	Comments
WELLHEAD AND DOWNHOLE EQUIPMENT/OPERATIONS			These items all relate to either the drilling of the well or well servicing activities. None are deductible as marketing costs.
Acidizing		X	
Casing		X	
Cementing		X	
Drill Pipe		X	
Fishing/fishing tools		X	
Fracturing		X	
Hot oiling/hot oil treatment		X	
Injecting baroid		X	
Logging		X	
Packers/setting packers		X	
Paraffin removal		X	
Perforating		X	
Swabbing		X	
Tubing		X	
Well Service		X	
Wire line service		X	

Item	Allowable	Disallowed	Comments
PRODUCTION EQUIPMENT/OPERATIONS			These items are all involved with the production of oil and gas, not marketing the gas. Therefore, none are allowable as marketing costs.
Christmas tree		X	
Compressors: wellhead/suction/vacuum		X	This type of compressor sits on top of the well bore and is used to suction out the oil and gas.
Corrosion inhibiting chemicals	*	X	Most of these chemicals are used downhole and are not allowable. If the chemical is used in pipelines that are part of the marketing function, that portion may be allowed.*

Downhole separation		X	
Electricity to run pumping unit		X	
Lease use gas to run pumping unit		X	
Pumping unit		X	
Replacement valves/parts for Christmas tree		X	
Rods/ pulling rods		X	
Submersible pumps		X	
Tanks		X	
Tank and Vessel cleaning		X	

Item	Allowable	Disallowed	Comments
LEASE EQUIPMENT AFTER THE WELLHEAD			
Air compressors used to start lease equipment		X	Not allowable unless used to start equipment that otherwise qualifies as marketing equipment.
Break out of heater and removal; set new heater and start hook-up.		X	Not allowable unless this refers to a qualifying line heater.
Cathodic protection	X		Allowable if used on pipeline that qualifies as a marketing deduction.
Chrome/stainless steel piping for handling gas with high H2S content.	X*		*Depends on if the piping qualifies as allowable, based on location of the piping and its function. The "chrome/stainless steel" element is irrelevant.
Clean contacts on coffing	X		See "coffing for compressor"
Coffing for compressor building	X		Coffing is used like a crane to lift and move the compressor.
Compressor installation charges	X		If compressor is owned, may be included in depreciable base.
Compressors/parts and service for compressors - gas lift systems		X	
Compressors/parts and service for compressors - to return gas to leases		X	

Compressors/parts and service for compressors - to get gas up to required sales pressure. Compressors owned rather than rented.	X		If compressors perform a dual purpose, the costs can be allocated between allowable and not allowable marketing costs. Must be depreciated over useful life, and return on investment may be calculated.
Compressors - rented sales compressors	X		Deducted as a monthly expense.
Compressors- at central facility (compressor stations)	X		Same as above for all compressors.
Compressors- transmission line		X	Not allowable unless it occurs before the sale has been made.
Compression charge on settlement statement	X*		*Allowable if not already deducted from the reported price.
Compressor fuel for gas lift compressors		X	
Concrete slab for compressor	X		If compressor is owned, cost of slab may be included in depreciable base.
Concrete pad around compressor to collect oil and drainage, to reduce environmental clean-up in the future.		X	
Cost reimbursement from gas purchaser for compression		X	Should be included in gross taxable value, and actual marketing costs deducted
Dehydrators	X		Takes the water content out of the gas stream.
Demulsification chemicals		X	*Used to break down oil* emulsions, usually in a heater treater.
Fence around compressor		X	
Filters	X*		*Allowable if used on a piece of equipment that qualifies as a marketing cost deduction.
Fin Fans	X		Used to cool the gas after it has been compressed.
Flow lines from separator to purchaser's transmission line	X		
Glycol for use in dehydrators	X		See "dehydrators"
Heater treater		X	Used to treat oil, not gas.
Hydrogen sulfide monitoring		X	
Insurance on compressor		X	

LACT Units		X	These measure crude oil being sold.
Lease separators		X	
Line heaters	X*		*Allowable if the heater is located after the separator. Not allowable if heater is located before the first separator.
Methanol for gas line	X		Used in preventing freeze-ups.
Oil/condensate storage tanks		X	
Painting dehydrator and sales compressor building	X		
Painting separators		X	
Paint storage tanks to prevent rusting		X	
Pig socks used around oil storage tanks & compressor		X	Used to clean oil spills.
Pigs and pigging equipment	X		Allowable if used on line that qualifies as a marketing deduction.
Pipeline between wellhead and separator		X	
Pipeline between wellhead and central separation facility		X	
Pipeline between wellhead and sales line if there is no lease separation and no separation prior to sale.	*	*	*Allocate costs of this line between gas and condensate. Marketing costs are allowable on portion of line allocated to gas, and not allowable on the portion allocated to condensate.
Pipeline between wellhead and plant if there is no lease separation and gas is going full well stream to the plant for processing	*	*	*Allocate costs of this line between gas and condensate. Marketing costs are allowable on portion of line allocated to gas, and not allowable on the portion allocated to condensate.
Pipeline after first separator	X		Between separator and sales line.
Purchase and installation of compressor to increase capacity due to tight sands drilling program		X	A vacuum type compressor being used to increase production.
Removal of contaminated soil, back-fill new dirt		X	
Repair handrails on vessels at tank battery		X	
Repair water leg on heater treater		X	

Security alarm on compressor		X	Not necessary and essential.
Separators at central facility		X	
Shed/cover over sales compressor	X		
Skid mounting of sales compressor	X		Skid mounting of gas lift compressor not allowable.
Stack packs/ production units		X	Basically separators that contain a heat source. There may also be lease use gas consumed on these.
Sweetening chemicals	X		Used to remove hydrogen sulfide from gas.
Vapor recovery units		X	Recovering additional vapors is a production function, not marketing.

Item	Allowable	Disallowed	Comments
OTHER LEASE RELATED ITEMS			
Ad valorem taxes	X*		*Allowable on value of marketing equipment only. If there is no breakdown between marketing equipment vs other equipment, taxes are not allowable.
Building or trailer rental		X	
Cattle guards around lease equipment or on lease roads		X	
Clean out dumpsters, trash barrels at lease facility		X	
Cleaning agents	X*		*Deductibility depends on purpose for which they are being used. Costs are allowable if used on allowable marketing equipment.
Construction/installation of lease road		X	
Cost to acquire pipeline right of way		X	
Fence around lease facility		X	
Fire ant treatment around lease, including compressor		X	
Fire extinguishers		X	
Heat sensing devices on leases		X	

Hydrostatic testing	X*		*Usually refers to testing pressure and amount of water in pipelines. Deductibility depends on which pipelines are being tested. Testing after separation is allowable.
Miscellaneous parts, valves, fittings, plugs, duct tape, lubricants, tools, etc.	X*		*Deductibility depends on purpose for which they are being used. Costs are allowable if used on allowable marketing equipment.
Motor freight & hauling	X*		*Deductibility depends on purpose of freight and hauling. Costs are allowable if for allowable marketing equipment.
Mowing, weeding around lease equipment		X	
Mowing, weeding pipeline right of way		X	
Repairing fire wall		X	
Repair and maintenance on lease roads		X	
Salt water disposal expenses, including wells or hauling		X	

Item	Allowable	Disallowed	Comments
LABOR EXPENSES			
Cellular phone in pumper's truck, radios, CBs, etc.	X*		*Include in overhead. Allow at 10% rate.
Company labor expenses if there is contract labor on the same lease		X	Company labor should not be allowed when the company has hired contractors to work on the marketing equipment. The contract labor expenses can be claimed on marketing equipment. If the contractors work only on specific equipment, i.e., the compressor, then an appropriate percentage of company labor can be allowed for time spent working on other marketing equipment.

Contract labor	X*		See "Company labor expenses"
Cost to operate district office building, warehouses, shops, garages, etc.		X	
Cost of secretary in district office		X	Does not work on equipment which is physically handling gas.
Field supervisor cost	X*		*Include in overhead and allow at 10% rate.
Gauger salaries	X		Gaugers normally refer to employees who measure volumes in storage tanks. If this is the case, the gauger's salary would not be deductible. However, the use of this term differs from company to company. Some gaugers are actually doing the work of a pumper. The determining factor as it relates to marketing costs is exactly what the job duties entail.
Hand tools used by pumper/gauger		X	
Meals/food expenses for pumper/gauger	X*		*Include in overhead and allow at 10% rate.
Meals/food expenses for other district office personnel		X	
Pumper/gauger benefit costs	X*		*Allow the same percentage as for pumper's salary and benefits.
Pumper salaries/benefits	X*		*The percentage of salary attributable to pumper's time spent working on marketing equipment is allowable. The percentage of salary attributable to other duties, i.e. production, is not allowable.
			A standard percentage is often used, i.e., 50% of the salary charged to gas wells and 25% charged to oil wells. Each situation should be evaluated independently to determine appropriate percentages.

			If the only meter on the lease is an allowable marketing meter, and no other marketing equipment, only 10% of the salary is deductible.
Safety clothing/equipment		X	Required by OSHA or EPA
Thawing gas lines	X*		*Allowable if the lines being thawed are after initial separation.
Transportation expenses for pumpers/gaugers (trucks)	X*		*Include in overhead and allow at the 10% rate.

Item	Allowable	Disallowed	Comments
METERS			
Gas analysis expenses	X		To make sure contract requirements are met.
Meters - sales	X		Meter on which payment is based. If sales meter is owned by producer, the cost of the meter (depreciation plus monthly maintenance expense) is deductible.
Meter- allocation meter	X		Allowable if more than one well or lease is paid from a single purchaser meter. If the sales meter is owned by the purchaser, the producer is allowed to take the cost of lease allocation meters (since we require lease level reporting).
Meters- check		X	Used to verify sales volumes; usually located next to the purchaser's sales meter.
Meter to measure lease use gas		X	
Meter calibration services	X*		*For sales or allocation meters only.
Pens for meters: graphic red pen, graphic green pen, black static pen	X		Allowable if used in an allowable meter only.

Item	Allowable	Disallowed	Comments

ELECTRICITY			
Central separation/compression facility	X*		*Partially allowable. Allocate electricity costs based on how much is used in each function of the facility.
District office building		X	
Electronic gate		X	
Gas lift compressor		X	
Gas sales compressor	X		
Generators	X*		*Depends upon use. If used for allowable equipment, it is allowable.
Lease security light		X	
Maintenance shop		X	
Oil pumps		X	
Pumping unit		X	
Storage building		X	

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TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 50. INCOME

[OAR Docket #08-1006]

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PERMANENT final adoption
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Subchapter 7. Remittances
710:50-7-2 [AMENDED]
Subchapter 15. Oklahoma Taxable Income
Part 5. Other Adjustments to Income
710:50-15-66 [AMENDED]
710:50-15-67 [NEW]
Part 7. Credits against Tax
710:50-15-71 [AMENDED]
710:50-15-86.1 [AMENDED]
710:50-15-87.1 [AMENDED]
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ANALYSIS:
Section 710:50-3-3 has been amended to implement the provisions of Senate Bill 1076 which provides for a later due date for filing a state income tax return if the Internal Revenue Code authorizes a later due date for filing the federal income tax return and allows individual income taxpayers to file and pay on or before April 20th if the return is filed electronically.

Section 710:50-7-2 has been amended to clarify policy regarding the application of payments and to conform with Section 710:1-3-46.

Section 710:50-15-66 has been amended to implement the provisions of Senate Bill 854 which provides that a deposit into an Oklahoma College Savings Plan which is rolled over will not be eligible for the deduction.

New Section 710:50-15-67 has been added to implement the provisions of Senate Bill 806 which provides for an income tax deduction of up to $10,000 for persons that donate an organ to another human being for human organ transplantation.

Section 710:50-15-71 has been amended to implement the provisions of Senate Bill 861 which allows taxpayers to claim either the existing Oklahoma childcare tax credit or the new Oklahoma childcare tax credit available for tax year 2008.

Sections 710:50-15-86.1 and 710:50-15-87.1 have been amended to limit the scope of letter rulings issued pursuant to the Small Business Capital Formation Incentive Act and the Rural Venture Capital Formation Incentive Act.

Section 710:50-15-96 has been amended to implement the provisions of Senate Bill 1076 which requires a taxpayer who has an income tax filing requirement to file the claim for sales tax credit relief by April 15 as part of the regular income tax return (or until April 20 if the taxpayer is filing electronically) unless the taxpayer has been granted a valid extension of time to file said income tax return.

Sections 710:50-15-98 and 710:50-15-106 have been amended to implement the provisions of House Bill 1513 which extends the sunset provisions of the Ethanol Production Credit and the Biodiesel Production Credit to December 31, 2012.

Section 710:50-15-107 has been amended to correct a scrivener's error.

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 JULY 1, 2008:

SUBCHAPTER 3. RETURNS AND REPORTS

PART 1. GENERAL INFORMATION

710:50-3-3. Due dates; timely filing of returns

(a) Income Tax Returns of individuals are due on the 15th day of the fourth month following the close of the taxable year unless the returns are filed electronically. If the individual income tax returns are filed electronically, the returns are due on the 20th day of the fourth month following the close of the taxable year. This change to the due date will be effective for tax year 2007 returns and subsequent tax years.

(b) If the Internal Revenue Code provides for a later due date for returns of individual filers, the Oklahoma income tax returns may be filed by the later due date and will be considered timely filed. This change to the due date will be effective for tax year 2007 returns and subsequent tax years.

(c) Income Tax Returns of corporations are due on the 15th day of the third month following the close of the taxable year.

(~~c~~ d) To be considered timely filed, Income Tax Returns are to be filed with and received by the Oklahoma Tax Commission at 2501 Lincoln Blvd., Oklahoma City, Ok. 73194-0009 on or before the statutory filing date. However, dates placed on returns by the Oklahoma Tax Commission corresponding to postmarks that indicate timely mailing will be accepted as timely filed. In the case of electronically filed returns, any payment of taxes due on the 20th day of the fourth month following the close of the taxable year must also be remitted electronically in order to be considered timely paid. If balances due on electronically filed returns are not remitted to the Oklahoma Tax Commission electronically, penalty and interest will accrue from the 15th day of the fourth month following the close of the taxable year

SUBCHAPTER 7. REMITTANCES

710:50-7-2. Application of payments

Any income tax payments received without designation shall be applied to the oldest outstanding liability first. Payments are first applied to tax, then ~~penalty and interest~~ interest and penalty.

SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME

PART 5. OTHER ADJUSTMENTS TO INCOME

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.

(f) For tax years beginning on or after January 1, 2007, taxpayers who elect the five-year carryforward election and take a rollover or have a non-qualified withdrawal during the five-year carryforward period, must reduce the otherwise available tax deduction by the amount which is equal to the rollover or non-qualified withdrawal.

(g) For tax years beginning on or after January 1, 2007, taxpayers who elect to take a rollover or non-qualified withdrawal within the same tax year in which a contribution was made to the taxpayer's account must reduce the otherwise available tax deduction by the amount which is equal to the rollover or non-qualified withdrawal.

(h) For tax years beginning on or after January 1, 2007 taxpayers who elect to take a rollover within one year of the date of contribution for which a deduction has been taken must include the amount of the rollover in their adjusted gross income the taxable year of the rollover.

(i) For tax years beginning on or after January 1, 2007 taxpayers who make a non-qualified withdrawal of contributions for which a deduction was taken must include the amount of the non-qualified withdrawal and any earnings thereon in their adjusted gross income in the taxable year of the withdrawal

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

(1) **"Non-qualified withdrawal"** means a withdrawal from an Oklahoma College Savings Plan account that is not:

(A) a qualified withdrawal;

(B) a withdrawal made as a result of the death or disability of the designated beneficiary of an account;

(C) a withdrawal that is made on the account of a scholarship or the allowance or payment described in Section 135(d)(1)(B) or (C) of Title 26 of the Internal Revenue Code, received by the designated beneficiary to the extent the amount of the refund does not exceed the amount of the scholarship, allowance, or payment; and

(D) a rollover or change of designated beneficiary as permitted by subsection F of Section 3970.7 of Title 70 of Oklahoma Statutes.

(2) **"Rollover"** means any transfer of funds from an Oklahoma College Savings plan to any other plan under Section 529 of the Internal Revenue Code.

710:50-15-67. Deduction for living organ donation

(a) Oklahoma resident individuals (or their dependents) who donate one or more human organs while living, may deduct up to Ten Thousand Dollars ($10,000.00) of un-reimbursed expenses from Oklahoma adjusted gross income to arrive at Oklahoma taxable income.

(b) **"Human organs"** mean all or part of a liver, pancreas, kidney, intestine, lung, or bone marrow.
(c) The deduction is allowed only one time and may be claimed only for un-reimbursed expenses that are incurred by the individual and related to the organ donation of the individual in the taxable year in which the transplant occurs.

PART 7. CREDITS AGAINST TAX

710:50-15-71. Credit for child care/child tax credit

(a) For tax years beginning before January 1, 2008, resident individuals, part-year resident individuals or nonresident individual members of the Armed Forces may claim a credit against the tax imposed by 68 O.S. § 2355 equal to twenty percent (20%) of the credit for child care expenses allowed under the Internal Revenue Code of the United States.
(b) For tax years beginning after December 31, 2007, resident individuals, part-year resident individuals or nonresident individual members of the Armed Forces may claim a credit against the tax imposed by 68 O.S. § 2355 equal to the greater of twenty percent (20%) of the credit for child care expenses allowed under the Internal Revenue Code of the United States or five percent (5%) of the child tax credit allowed under the Internal Revenue Code, whichever amount is greater. If federal adjusted gross income is greater than One Hundred Thousand Dollars ($100,000.00), no credit is allowed.
(c) Taxpayers must attach a completed copy of the Federal child care schedule to the Oklahoma Income Tax Return to receive a child care credit.

710:50-15-86.1. Letter rulings pursuant to the Small Business Capital Formation Incentive Act

The Oklahoma Tax Commission will only 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~~ to determine whether a business in which it intends to invest ~~is~~ meets the definition of 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~~ meets the definition of 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.

(4) Requests for letter rulings issued pursuant to this Section are limited to paragraphs (1), (2) and (3) above. [68 O.S. §2357.63D]

(5) All other requests for rulings with respect to the Small Business Capital Formation Incentive Act should be submitted separately and shall be issued pursuant to *OAC* 710:1-3-73.

710:50-15-87.1. Letter rulings pursuant to the Rural Venture Capital Formation Incentive Act

The Oklahoma Tax Commission will only 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~~ to determine whether a business in which it intends to invest ~~is~~ meets the definition of 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~~ meets the definition of 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.

(4) Requests for letter rulings issued pursuant to this Section are limited to paragraphs (1), (2) and (3) above. [68 O.S.2357.74D]

(5) All other requests for rulings with respect to the Rural Venture Capital Formation Incentive Act should be submitted separately and shall be issued pursuant to *OAC* 710:1-3-73.

710:50-15-96. Sales tax relief credit

(a) **General provisions.** Eligible individual taxpayers may claim an income tax credit for "Sales Tax Relief" pursuant to 68 O.S. § 5011. The credit is forty dollars ($40.00) multiplied by the number of allowable personal exemptions the taxpayer is entitled to claim under the Oklahoma Income Tax Act.

(b) **Eligible taxpayers.** For purposes of this Section, **"Eligible Taxpayer"** means an individual who is a resident of, and domiciled in Oklahoma, for the entire calendar year.

(c) **Gross Household Income.** For purposes of this Section **"Gross Household Income"** is the gross income of every type received by all persons occupying the same household. It includes, but is not limited to, pensions, annuities, federal social security benefits, unemployment payments, veterans disability compensation, loss-of-time insurance payments, capital gains, and any other type of income. It is not relevant whether or not the income is taxable for state or federal income tax purposes. **"Gross Household Income"** does not include gifts, or income that is considered deferred.

(d) **Eligibility for tax year 2004.** To be eligible to claim this credit, the following Gross Household Income limits apply for tax year 2004:

(1) For those taxpayers that can claim no allowable personal exemption other than themselves or their spouse, Gross Household Income cannot exceed Fifteen Thousand Dollars ($15,000.00).

(2) For those taxpayers who can claim a personal exemption other than themselves or their spouse; who are

at least 65 years of age; or, who have a physical disability that is a substantial handicap to employment, Gross Household Income cannot exceed Thirty Thousand Dollars ($30,000.00).

(e) **Eligibility for tax year 2005 and following years.** To be eligible to claim this credit, the following Gross Household Income limits apply for tax year 2005 and following years:

(1) For those taxpayers that can claim no allowable personal exemption other than themselves or their spouse, Gross Household Income cannot exceed Twenty Thousand Dollars ($20,000.00).

(2) For those taxpayers who can claim a personal exemption other than themselves or their spouse; who are at least 65 years of age; or, who have a physical disability that is a substantial handicap to employment, Gross Household Income cannot exceed Fifty Thousand Dollars ($50,000.00).

(f) **Filing Requirements.** Procedures for claiming the "Sales Tax Relief" credit are:

(1) ~~If~~ For tax years beginning before January 1, 2007:

(A) If the claim for sales tax relief is taken as a direct credit against the income taxes owed by the taxpayer, the claim must be filed by April 15 as part of the regular income tax return, using Oklahoma Tax Commission Form 538S (OTC Form 538S). Extensions of time to file an Oklahoma income tax return will **not** extend the time to file for the Sales Tax Relief Credit.

(B) If the claim for sales tax relief is not taken as a direct credit against income taxes owed by the taxpayer, the claim must be filed by June 30 for the preceding calendar year, using Form 538S as a stand-alone refund claim.

(2) For tax years beginning on or after January 1, 2007:

(A) If the taxpayer has an income tax filing requirement, the claim must be filed by April 15 as part of the regular income tax return in the year following the close of the taxable year, unless the taxpayer has been granted a valid extension of time to file said income tax return (including the April 20th due date for electronically filed returns). In the case where a valid extension of time to file has been granted, the claim for sales tax relief may be filed with the income tax return pursuant to the extension granted. In all cases taxpayers must attach Oklahoma Tax Commission Form 538S (OTC Form 538S) to their regular income tax return in order to claim the sales tax relief credit.

(B) If the taxpayer does not have an income tax filing requirement the claim must be filed by June 30 for the preceding calendar year, using Form 538S.

(g) **Exceptions and exclusions.** The exceptions and exclusions set out in this subsection apply to the "Sales Tax Relief" credit.

(1) Persons who have received temporary assistance for needy families (TANF) for any month during the tax year are not eligible for the sales tax refund under this Section, but shall receive sales tax relief as a part of their monthly TANF benefit. [**See:** 68 O.S. § 5013(B)]

(2) The Oklahoma Department of Human Services will issue the sales tax refund to persons who have continuously received aid to the aged, blind, disabled or Medicaid payments for nursing home care for the tax year. [**See:** 68 O.S. §5013(C),(D)]

(3) A person convicted of a felony shall not be permitted to file a claim for sales tax relief for any year for which that person is an inmate in the custody of the Department of Corrections for any part of that year. [**See:** 68 O.S. § 5011(E)]

(4) Alien individuals living in Oklahoma under a temporary or restricted status do not qualify for the sales tax relief credit. [**See:** 8 U.S. § 1101(a)(15)(B) and § 1101(a)(15)(F)(i)]

(5) If a taxpayer or spouse died during the tax year, the sales tax credit cannot be claimed for the deceased. However, if the death occurred after the close of the tax year, but before the claim for sales relief was filed, the sales tax credit or refund for the deceased will be issued to the deceased's estate. [**See:** 68 O.S. § 5011]

710:50-15-98. Credits for biodiesel production

(a) **General provisions.** For tax years beginning after December 31, 2004 and before January 1, ~~2012~~ 2013, there is an income tax credit for biodiesel production at certain biodiesel facilities.

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

(1) **"Biodiesel"** is any diesel-equivalent biofuel made from renewable materials such as vegetable oils or animal fats.

(2) **"Biodiesel facility"** is a plant or facility primarily engaged in the production of biodiesel derived from animal fats, grain components, coproducts, or byproducts. The facility must be located within the State of Oklahoma.

(3) **"Name plate design capacity"** means the original designed capacity of a biodiesel facility. Capacity must be specified as gallons of biodiesel produced per year.

(c) **Basic credit.** Any biodiesel facility which is in production at the rate of at least twenty-five percent (25%) of its name plate design capacity for the production of biodiesel, on or before December 31, ~~2007~~ 2008 is eligible for a credit in the amount of twenty cents ($0.20) per gallon of biodiesel produced for the first sixty (60) months provided the biodiesel facility maintains an average production rate of at least twenty-five percent (25%) of its name plate design capacity for at least six (6) months after the first month for which it is eligible to receive such credit. The credit of twenty cents ($0.20) per gallon of biodiesel produced expires for production after December 31, ~~2011~~ 2013.

(d) **Excess production credit.** Any biodiesel facility eligible for the basic credit above may also receive an income tax credit in the amount of twenty cents ($0.20) per gallon of biodiesel produced in excess of the original name plate design capacity which results from expansion of the facility completed on or after July 1, 2005 and before December 31, ~~2007~~ 2008. Such tax credit shall be allowed for sixty (60)

months beginning with the first month for which production from the expanded facility is eligible to receive such tax credit and ending not later than December 31, ~~2011~~ 2013.

(e) **Credit for production after December 31, ~~2011~~ 2013.** For production of biodiesel after December 31, ~~2011~~ 2013 a biodiesel facility may receive an income tax credit in the amount of seven and one-half cents ($0.075) per gallon of biodiesel, for new production for a period not to exceed thirty-six (36) consecutive months.

(1) **"New production" defined.** For purposes of the credit for production after December 31, 2011, new production means production which results from a new facility, a facility which has not received credits prior to January 1, 2012, or the expansion of the capacity of an existing facility by at least two million (2,000,000) gallons first placed into service after January 1, 2012, as certified by the design engineer of the facility to the Oklahoma Tax Commission. For expansion of the capacity of an existing facility, new production is defined as the annual production that is in excess of twelve times the monthly average of the highest three (3) months of biodiesel production at a biodiesel facility during the twenty-four-month period immediately preceding certification of the facility by the design engineer. No credits are allowed under this subsection for expansion of the capacity of an existing facility until production is in excess of twelve times the three-month average amount determined under this subsection during any twelve-consecutive-month period beginning no sooner than January 1, 2012.

(2) **Credit approval.** The amount of a credit granted pursuant to this section that is based on new production must be approved by the Tax Commission based on the biodiesel production records as are necessary to reasonably determine the level of new production.

(f) **Limitations:** The credits allowed in this Section are subject to the limitations described in this subsection.

(1) The Credit for Biodiesel Production Facilities is only allowed for biodiesel that is produced at a plant at which all biodiesel esterification takes place.

(2) Not more than twenty-five million (25,000,000) gallons of biodiesel produced annually at a biodiesel facility shall be eligible for the basic credit or excess production credit. The credits may only be claimed by a producer for production that occurs on or before December 31, 2011.

(3) Not more than ten million (10,000,000) gallons of biodiesel produced during any twelve-consecutive-month period at a biodiesel facility shall be eligible for credit for production after December 31, 2011. The credit for production after December 31, 2011 may only be claimed by a producer for production that occurs on or before December 31, 2014.

(4) The Tax Commission may examine or cause to have examined, by any agent or representative designated for that purpose, any books, papers, records, or memoranda bearing upon such matters to ascertain the validity of the credit outlined in this section.

710:50-15-106. Credits for ethanol production

(a) **General provisions.** For tax years beginning after December 31, 2003 and before January 1, ~~2011~~ 2013, there is an income tax credit for ethanol production at certain ethanol facilities.

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

(1) **"Ethanol"** is a blend of gasoline and ethyl alcohol consisting of not more than fifteen percent (15%) ethyl alcohol by volume.

(2) **"Ethanol facility"** is a plant or facility primarily engaged in the production of ethanol or ethyl alcohol derived from grain components, coproducts, or byproducts. The facility must be located within the state of Oklahoma.

(3) **"Name plate design capacity"** means the original designed capacity of an ethanol facility. Capacity must be specified as gallons of ethanol produced per year.

(c) **Basic credit.** Any ethanol facility which is in production at the rate of at least twenty-five percent (25%) of its name plate design capacity for the production of ethanol, on or before December 31, ~~2008~~ 2010 is eligible for a credit in the amount of twenty cents ($0.20) per gallon of ethanol produced for the first sixty (60) months provided the ethanol facility maintains an average production rate of at least twenty-five percent (25%) of its name plate design capacity for at least six (6) months after the first month for which it is eligible to receive such credit. The credit of twenty cents ($0.20) per gallon of ethanol produced expires for production after December 31, ~~2010~~ 2012.

(d) **Excess production credit.** Any ethanol facility eligible for the basic credit above may also receive an income tax credit in the amount of twenty cents ($0.20) per gallon of ethanol produced in excess of the original name plate design capacity which results from expansion of the facility completed on or after the July 1, 2003 and before December 31, ~~2006~~ 2008. Such tax credit shall be allowed for sixty (60) months beginning with the first month for which production from the expanded facility is eligible to receive such tax credit and ending not later than December 31, ~~2010~~ 2012.

(e) **Credit for production after December 31, ~~2010~~ 2012.** For production of ethanol after December 31, ~~2010~~ 2012 an ethanol facility may receive an income tax credit in the amount of seven and one-half cents ($0.075) per gallon of ethanol before denaturing, for new production for a period not to exceed thirty-six (36) consecutive months.

(1) **"New production" defined.** For purposes of the credit for production after December 31, ~~2010~~ 2012, new production means production which results from a new facility, a facility which has not received credits prior to January 1, ~~2011~~ 2013, or the expansion of the capacity of an existing facility by at least two million (2,000,000) gallons first placed into service after January 1, 2011, as certified by the design engineer of the facility to the Oklahoma Tax Commission. For expansion of the capacity of an existing facility, new production is defined as the annual production that is in excess of twelve times the monthly average of the highest three (3) months of ethanol production at an ethanol facility during the twenty-four-month

period immediately preceding certification of the facility by the design engineer. No credits are allowed under this subsection for expansion of the capacity of an existing facility until production is in excess of twelve times the three-month average amount determined under this subsection during any twelve-consecutive-month period beginning no sooner than January 1, ~~2011~~ 2013

(2) **Credit approval.** The amount of a credit granted pursuant to this section that is based on new production must be approved by the Tax Commission based on the ethanol production records as are necessary to reasonably determine the level of new production.

(f) **Limitations:** The credits allowed in this Section are subject to the limitations described in this subsection.

(1) The Credit for Ethanol Production Facilities is only allowed for ethanol that is produced at a plant at which all ethanol fermentation, distillation, and dehydration takes place. No credit will be given for ethanol produced or sold for use in the production of distilled spirits.

(2) Not more than twenty-five million (25,000,000) gallons of ethanol produced annually at any single ethanol facility nor more than seventy-five million (75,000,000) gallons of ethanol produced annually at all ethanol facilities shall be eligible for the basic credit or excess production credit. The credits may only be claimed by a producer for production that occurs on or before December 31, ~~2010~~ 2012.

(3) Not more than ten million (10,000,000) gallons of ethanol produced during any twelve-consecutive-month period at any single ethanol facility nor more than thirty million (30,000,000) gallons produced annually at all ethanol facilities shall be eligible for credit for production after December 31, ~~2010~~ 2012. The credit for production after December 31, ~~2010~~ 2012 may only be claimed by a producer for production that occurs on or before December 31, ~~2013~~ 2015.

(4) The Tax Commission may examine or cause to have examined, by any agent or representative designated for that purpose, any books, papers, records, or memoranda bearing upon such matters to ascertain the validity of the credit outlined in this section.

710:50-15-107. Eligible wage and modification expenses credits

(a) **General provisions regarding credit based on wages.** Effective for tax year 2006 a credit of ten percent (10%) is available to employers based on wages paid for employees returning to work in restricted duties. The credit is based on eligible gross wages paid for a 90-day period. Eligible wages are those that are compensable under the Workers Compensation Act and are paid upon the employees return to work under restricted duty. The credit may not exceed five thousand dollars for any employee, and may not exceed twenty-five thousand dollars ($25,000) for any employer in a taxable year.

(1) **Definitions.** The following words and terms, when used regarding the eligible wage credit, shall have the following meaning, unless the context clearly indicates otherwise:

(A) **"Eligible wages"** are gross wages paid by an employer to an employee who is injured as a result of an injury which is compensable under the Workers' Compensation Act. The wages must be paid beginning when the employee returns to work with restricted duties as provided by the employee's treating physician or an independent medical examiner before the employee has reached maximum medical improvement. Wages paid after ninety (90) days or when the employee has reached maximum medical improvement are not eligible wages.

(B) **"Employee", "employer", "maximum medical improvement", "treating physician", and "wages"** shall be defined as in Section 3 of Title 85 of the Oklahoma Statutes.

(2) **Limitations.** The credit may not exceed five thousand dollars for any employee, and may not exceed twenty-five thousand dollars ($25,000) for any employer in a taxable year. This credit is not transferable.

(b) **General provisions for credit based on modification expenses.** Effective for tax year 2006 a credit of fifty percent (50%) is available for eligible modification expenses that enable an injured worker to return to work under restricted duty.

(1) **Definitions.** The following words and terms, when used regarding the credit based on modification expenses, shall have the following meaning, unless the context clearly indicates otherwise.

(A) **"Eligible modification expenses"** are expenses incurred by an employer to modify a workplace, tools or equipment or to obtain new tools or equipment which are incurred by an employer solely to enable a specific injured employee who is injured as a result of an injury which is compensable under the Workers' Compensation Act to return to work with restricted duties as provided by the employee's treating physician or an independent medical examiner before the employee has reached maximum medical improvement, and which workplace, tools or equipment are used primarily by the injured employee.

(B) **"Employee", "employer", "maximum medical improvement", "treating physician", and "wages"** shall be defined as in Section 3 of Title 85 of the Oklahoma Statutes.

(2) **Limitations.** The credit may not exceed ~~five thousand dollars ($5,000)~~ one thousand dollars ($1,000) for any employee, and may not exceed ~~twenty-five thousand dollars ($25,000)~~ ten thousand dollars ($10,000) for any employer in a taxable year. This credit is not transferable.

[OAR Docket #08-1006; filed 5-22-08]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 60. MOTOR VEHICLES

[OAR Docket #08-1007]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Registration and Licensing
Part 1. General Provisions
710:60-3-10 [AMENDED]
710:60-3-24 [NEW]
Part 5. Dealers
710:60-3-55 [AMENDED]
710:60-3-56 [AMENDED]
Part 11. Other Vehicles
710:60-3-111 [AMENDED]
Part 13. Manufactured Homes
710:60-3-134 [NEW]
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 15. Special License Plates
710:60-3-150 [AMENDED]
710:60-3-160 [AMENDED]
710:60-3-168 [AMENDED]
710:60-3-171 [AMENDED]
Subchapter 5. Motor Vehicle Titles
Part 13. Foreign Vehicles
710:60-5-130 [AMENDED]
Subchapter 7. Motor Vehicle Excise Tax
710:60-7-1 [AMENDED]
Subchapter 9. Motor Vehicle License Agents/Agencies
Part 1. General Requirements, Duties and Responsibilities of Motor License Agents
710:60-9-11 [AMENDED]
Part 9. Specific Fiscal Duties
710:60-9-90 [AMENDED]
710:60-9-92 [AMENDED]
710:60-9-95 [AMENDED]
710:60-9-97 [AMENDED]
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ANALYSIS:
Section 710:60-3-10 has been amended to clarify policy regarding the information required for registration of a vehicle.
New Section 710:60-3-24 has been added to clarify policy regarding the assessment of waste tire fees to motor vehicle registrants by the Tax Commission and motor license agents.
Sections 710:60-3-55 and 710:60-3-56 have been amended to reflect the provisions of HB 1868 which addressed the design, issuance and placement of new and used vehicle dealer temporary license plates.
Section 710:60-3-111 has been amended to reflect current federal guidelines regarding the laden weight of farm vehicles
New Section 710:60-3-134 has been added to conform to current statutory authority regarding the reinstatement of a cancelled manufactured home title.
Section 710:60-3-140 has been amended to reflect the provisions of HB 1606 which changed the definition of an all-terrain vehicle.
Sections 710:60-3-141 and 710:60-3-142 have been amended to reflect the provisions of HB 1016 which extends the mandatory titling requirement of all-terrain vehicles and off-road motorcycles to include owners that possess a valid agricultural exemption permit and clarifies the priority of liens in an all-terrain vehicle or off-road motorcycle perfected before July 1, 2005.
Sections 710:60-3-150 and 710:60-3-168 have been amended to clarify policy regarding applications for a license plate considered offensive and the renewal of Oklahoma Indian Tribal license plates by a motor license agent.
Section 710:60-3-160 has been amended to reflect the provisions of HB 2051 providing for the registration of an antique or classic vehicle for a ten-year period.
Section 710:60-3-171 has been amended to update a reference to a federal agency and clarify policy for obtaining an in-transit license plate.
Section 710:60-5-130 has been amended to clarify policy and procedure in applying for a title to a foreign vehicle.
Section 710:60-7-1 has been amended to clarify the procedure for determining the taxable value of a vehicle.
Section 710:60-9-11 has been amended to clarify policy regarding the extension of credit by a motor license agent..
Section 710:60-9-90 has been amended to reflect the provisions of SB 748 which authorizes a motor license agent to subtract from daily collections an amount necessary to match the statutorily authorized fee retention for that particular day's business.
Section 710:60-9-92 has been amended to conform to current statutory authority to include debit card payments on a motor license agent's semimonthly report.
Section 710:60-9-95 has been amended to clarify the procedure for issuing a refund when the taxpayer and the remitter of the payment are not the same person.
Section 710:60-9-97 has been amended to clarify policy regarding non toll-free telephone calls made to the Tax Commission or Department of Public Safety by a motor license agent at the request of a taxpayer.
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 JULY 1, 2008:

SUBCHAPTER 3. REGISTRATION AND LICENSING

PART 1. GENERAL PROVISIONS

710:60-3-10. General registration information

(a) **Motor vehicles to be registered; license tag required; title.** Every ~~Motor Vehicle~~ motor vehicle, except salvage and junked vehicles, vehicles on used car dealer's lots for sale and

vehicles assigned to charitable organizations licensed through the Oklahoma Secretary of State's office, is required to be registered and a license tag displayed on the rear bumper. In most cases, the tag is designed to remain on the vehicle until the Oklahoma Tax Commission authorizes a replacement and is renewed each year by means of a registration decal. The type of registration required depends on the type of vehicle and, in some cases, its use. A vehicle cannot be registered without an Oklahoma ~~Title~~ title or proof that such Oklahoma ~~Title~~ title exists and is in the name of the registrant. Proof of previous year's registration must be obtained before renewing registration on any non salvaged vehicle. A current mail-out registration notice is considered proof for either purpose.

(b) **Expiration; renewal; early renewal.** Vehicles should not be renewed before the first day of the month of expiration. However, certain circumstances may exist which would allow for early renewal. The most common of these would be a person who is leaving the state for an extended vacation before his month of expiration.

(c) **Registration and licensing of leased vehicle.** An individual leasing a vehicle may make application for any special tag or registration rate that he or she is entitled to. A copy of the lease agreement, listing the applicant as lessee, must be submitted and attached to the Oklahoma Tax ~~Commission~~ Commission's ~~copies~~ copy of the paperwork.

(d) **Information required from registrant.** Upon every application for registration of a vehicle in this state, the vehicle owner shall provide to the registering motor license agent the following information:

(1) The driver license number of the vehicle owner, if the owner is an individual; or

(2) The Federal Employer Identification Number of the owner if such owner is not an individual.

(e) **Proper entry of required information.** It shall be the duty of the registering motor license agent to properly enter the driver license number or Federal Employer Identification Number of the vehicle owner in the Motor Vehicle computer file record at time of registration of the vehicle.

710:60-3-24. Waste tire fee collection by motor license agents

Waste tire fees are to be collected by the Motor Vehicle Division and motor license agents upon the initial registration of a motor vehicle in this state. In addition to the statutorily authorized audits and reviews of motor license agent operations conducted by the Tax Commission, such collections are subject to inspection by the Department of Environmental Quality.

(1) The fee is applicable to motor vehicles, with the following exceptions:

(A) Apportioned (IRP) vehicles;

(B) All-terrain vehicles; and

(C) Off-road motorcycles.

(2) The fee is not applicable when a motor vehicle is being titled only.

(3) The fee is to be assessed per tire, including any spare tires carried in or on the vehicle, based on the tire rim size. Motor license agents retain a portion of the fee collected as their compensation, as set forth by statute.

PART 5. DEALERS

710:60-3-55. Used motor vehicle dealer ~~temporary~~ license plate

~~(a) **Design and printing of dealer temporary license plate.** The motor vehicle dealer temporary license plate shall be the responsibility of the selling dealer. The temporary license plate shall be designed in a size similar to the permanent Oklahoma license plate, but of a fibrous substance.~~

~~(b) **Applications and fees for motor vehicle dealer plates.**~~ The application for a used motor vehicle dealer license plate (OTC 795) and the license plates are issued through the Oklahoma Tax Commission, Dealer's License Section. Before accepting an application for a used motor vehicle dealer plate, the applicant must be licensed for each location by the Oklahoma Used Motor Vehicle & Parts Commission. ~~Upon issuance, the license and plates are nontransferable and expire December 31st of each year. Processing time for each application is approximately (8) weeks.~~

~~(c) **Additional plates.** If additional plates are required, an application must be completed~~

710:60-3-56. ~~Issuance and use of temporary paper license plates and permits~~ New and used vehicle dealer temporary license plate

(a) **Design and printing of dealer temporary license plate.** Acquisition of motor vehicle dealer temporary license plates shall be the responsibility of the licensed dealer. The temporary license plate shall be designed in a size similar to the permanent Oklahoma license plate, but of a weatherproof plastic-impregnated substance.

(b) **Design approval required.**

(1) Approval by the Oklahoma Used Motor Vehicle and Parts Commission is required for the used dealer temporary license plate design.

(2) Approval by the Oklahoma Motor Vehicle Commission is required for the new dealer temporary license plate design.

(3) Used commercial trailer and travel trailer dealers must comply with the design requirements approved by the Oklahoma Used Motor Vehicle and Parts Commission.

(4) New commercial trailer and travel trailer dealers must comply with the design requirements approved by the Oklahoma Motor Vehicle Commission.

(c) **Placement of dealer temporary license plate on vehicle.** The temporary license plate shall be placed on the vehicle at the location provided for the permanent license plate.

~~(a) **Temporary plate issued by selling dealer**.~~

(d) **Issuance of temporary license plate**. Upon purchase of a ~~used~~ vehicle ~~in this State,~~ from a licensed Oklahoma dealer, except by another licensed dealer, a ~~paper~~ temporary license ~~tag~~ plate is to be completed by the selling dealer and placed on the vehicle at the location provided for the permanent license plate. ~~These temporary license tags are not required when a vehicle is sold to another licensed dealer.~~

(~~b~~ e) **Time periods valid.** The temporary license plates are valid for thirty (30) days following purchase.

(~~c~~ f) **Information required to be shown on temporary license plate.** The temporary license plate will show:

(1) The license number issued to the dealer each year by the Oklahoma Tax Commission, ~~or the~~ Oklahoma Used Motor Vehicle and Parts Commission, or Oklahoma Motor Vehicle Commission;

(2) Date the ~~used~~ motor vehicle, commercial trailer, or travel trailer was purchased; and

(3) The company name of the selling dealer.

(~~d~~ g) **Use restricted.** The temporary ~~paper~~ license plates are to be used only for the purpose outlined ~~in this Section~~ by statute. Dealers must use their metal dealer plates for demonstrating, transporting or other normal business on any vehicle that does not have a current Oklahoma ~~tag~~ license plate.

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~~ 55,000 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. An optional farm trailer tag is available. These tags are for registration purposes only and a title 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 13. MANUFACTURED HOMES

710:60-3-134. Reinstatement of cancelled manufactured home title

Owner of a manufactured home upon which the certificate of title has previously been cancelled due to attachment to real estate may apply to the Oklahoma Tax Commission or a motor license agent for reinstatement and issuance of a new original certificate of title.

(1) The reinstatement application is to be completed by the owner of record. There are two (2) documentary requirements on the application for reinstatement:

(A) The homeowner must attest ownership of the manufactured home and the nonexistence of any security interest or lien of record in the manufactured home; and

(B) The homeowner shall provide a title opinion by a licensed attorney, declaring that the owner of the manufactured home has a marketable title to the real property upon which the manufactured home is located and that no documents filed of record in the county clerk's office concerning the real property contain a mortgage, recorded financial statement, judgment, or lien of record. The opinion must be signed by the issuing attorney, on his/her letterhead and be executed, or updated, within thirty (30) days of the application date.

(2) A properly completed application for reinstatement may be submitted to the Oklahoma Tax Commission or a motor license agent. Reinstatement applications submitted to a motor license agent shall be forwarded to the Oklahoma Tax Commission for approval.

(3) Upon approval by the Tax Commission, a new original certificate of title shall be issued and registration fees collected for the balance of the calendar year.

PART 14. ALL-TERRAIN VEHICLES AND OFF-ROAD MOTORCYCLES

710:60-3-140. All-terrain vehicles and off-road motorcycles

(a) **Title and registration requirement.** 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 Vehicles (ATV's).** A motorized vehicle manufactured and used exclusively for off-highway use which is ~~sixty (60)~~ forty-eight (48) inches or less in width, with an unladen dry weight of ~~one thousand five~~

~~hundred (1,500)~~ eight hundred (800) pounds or less, traveling on two or more low-pressure tires~~.~~, and having a seat designed to be straddled by the operator and handlebars for steering.

(2) **Off-Road Motorcycles (ORM's).** A motorcycle manufactured for and used exclusively off roads, highways, and any other paved surfaces. Small street or sidewalk mini-motorcycles or scooters are not included in this category.

710:60-3-141. Titling of 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 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 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.

(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 until July 1, 2008. Until that date, ~~Such~~ 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. As set forth by statute, holders of agricultural exemption permits issued pursuant to 68 O.S. § 1358.1 are no longer exempt from titling and registration requirements on ATV's or ORM's that are purchased, or change ownership, on or after July 1, 2008. Permit holders remain exempt from the assessment of excise tax on such transactions.

(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~~. Due to ATV's and ORM's owned by agricultural permit holders being exempt from titling and registration requirements until July 1, 2008, breaks in the title document chain of ownership may occur. 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~~ titling 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 the previously outlined ownership documentation. Until July 1, 2008, any lien/security interest in an ATV or ORM that was perfected before July 1, 2005, and that has not been terminated shall remain perfected, and shall take priority over subsequently perfected lien/security interest in the same ATV even if a certificate of title has been issued on the same ATV on or after July 1, 2005 with a lien recorded.

710:60-3-142. Registration of 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~~ Exception to registration.** ~~The following persons are excepted from the registration requirements of this Section~~. Holders of agricultural exemption permits issued pursuant to 68 O.S. § 1358.1 are exempt from ATV and ORM titling requirements until July 1, 2008. As set forth by statute, holders of agricultural exemption permits issued

pursuant to 68 O.S. § 1358.1 are no longer exempt from titling and registration requirements on ATV's or ORM's that are purchased, or change ownership, on or after July 1, 2008.

~~(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~~ Until July 1, 2008, as outlined above, 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 15. SPECIAL LICENSE PLATES

710:60-3-150. Special license plates

(a) **General provisions.** Applications for ordering all types of personalized and special license plates, authorized by statute, may be obtained from the Oklahoma Tax Commission or from any motor license agency.

(b) **Leased vehicles.** An eligible individual leasing a vehicle may make application for any special tag or registration rate. A copy of the lease agreement, listing the applicant as lessor, must be submitted and attached to the Oklahoma Tax Commission copies of the paperwork.

(c) **No conflict policy.** No special license plate can be issued which conflicts with the regular plate numbering system.

(d) **Non-offensive content policy.** No special license plate will be issued which may be offensive to the general public.

(e) **Fees.** Special license plate fees are set by statute and, with certain statutory exceptions, are collected in addition to annual registration fees required by the Oklahoma Vehicle License and Registration Act. If a special license plate or decal is mailed, a mailing fee for a metal plate or decal will also be collected.

(f) **Renewal.** Renewal decals may be obtained from either a ~~Motor License Agent~~ motor license agent or ~~from~~ the Oklahoma Tax Commission for all special license plates except Physically Disabled, Hearing Impaired/Deaf, Amateur Radio, ~~Indian Tribal,~~ Vintage and Municipal Official plates which may be renewed only through the Commission. Special license plates are issued on a staggered expiration system, except for amateur radio plates and vintage decals.

(g) **Discontinuance of a special license plate.** As set forth by statute, certain types of special license plates have minimum issuance requirements and provisions for the discontinuance of plate types that do not meet those requirements.

(h) **Authorization of new special license plates.** The Oklahoma Tax Commission is authorized to design and issue new special license plate types to any person that applies to the Commission for the creation of a special license plate and meets the conditions and minimum standards outlined by statute.

710:60-3-160. Antique or classic vehicles

(a) **Qualification; application; fees; renewal.** These motor vehicles are at least twenty-five (25) years old and travel on the highways of the state primarily incidental to historical or exhibition purposes only. ~~The insurance verification fee is to be included with the remittance and must accompany the application~~. Persons registering antique or classic vehicles may elect to register the vehicle either annually or for a ten (10) year period. The motor license agent registering the antique or classic vehicle for a ten (10) year period shall receive one hundred percent (100%) of the compensatory registration fees the motor license agent would have received had the antique or classic vehicle been registered on an annual basis for the ten (10) year period. Insurance verification, or a properly completed affidavit of non-use, is required at time of application.

(b) **Limited purpose use of vehicle.** If a vehicle is being driven for any other purpose besides historical or exhibition purposes, the antique or classic tag must be removed and a regular tag issued at the regular rate.

(c) **Procedure upon sale to non-qualifying purchaser.** If an antique or classic vehicle is sold to an individual who will be driving it for other than historical or exhibition purposes, the purchaser must obtain a regular license plate and pay for the remaining portion of the registration period at the applicable rate.

710:60-3-168. Indian tribal license plates

(a) **Qualification; application; renewal.** Vehicles titled in the name of a federally recognized Indian tribe only and used for the furtherance of that tribe, may be issued Indian ~~Tribal~~ tribal tags. ~~Applications~~ Initial applications ~~and renewals~~ for such ~~vehicles~~ license plates are made directly to the Oklahoma Tax Commission. Application for registration renewal of Indian tribal license plates may be made to the Oklahoma Tax Commission, or a motor license agent. Insurance verification, or a properly completed affidavit of non-use, is required at time of application. ~~The annual fee plus an insurance security verification fee must accompany application~~

(b) **Retention of tag by tribe; transfer to replacement vehicle.** When a vehicle with a ~~Tribal~~ tribal tag is sold, the tribe retains the special tag. The tag may be transferred to the

replacement vehicle. The tag cannot be transferred to another tribe.

(c) **Procedure upon sale to a non-qualifying purchaser.** When a vehicle is sold by a tribe to a purchaser not qualifying for the reduced rate, the purchaser must register the vehicle from the date of sale at the applicable fee and obtain a standard license plate.

710:60-3-171. ~~Intransit or "K" tags~~ In-transit license plates

~~"K" tags~~ In-transit license plates are ~~for persons~~ issued for qualifying vehicles engaged in the business of transporting and delivering vehicles. Manufactured home transporters are required to have ~~an Interstate Commerce Commission (I.C.C.)~~ a motor carrier number (MC#) issued by the Federal Motor Carrier Safety Administration (FMCSA) or insurance on file with the Oklahoma Corporation Commission (O.C.C.) ~~certificate~~ before ~~a "K" tag~~ an in-transit plate can be issued. If the applicant does not have a motor carrier number (MC#), the Verification of Insurance on file must be verified with the Oklahoma Corporation Commission. ~~Tags~~ In-transit plates expire on December 31st of each year. The application and license are issued through the Oklahoma Tax Commission~~, Dealer's License Section (405) 521-2467~~ Motor Vehicle Division.

SUBCHAPTER 5. MOTOR VEHICLE TITLES

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; **or** the existing foreign Certificate of Title; **and**

(2) A ~~notarized~~ legible 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 U.S. Environmental Protection Agency and 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

710:60-7-1. General provisions

(a) **Date due; penalty.** Excise ~~Tax~~ tax is due at the time of transfer of legal ownership or possession of a vehicle 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. The daily penalty will accrue until the tax is paid. However, the penalty is not to exceed the amount of the tax due.

(b) ~~**Rate of tax.**~~ **Taxable value**. On ~~new~~ vehicles, other than manufactured homes and certain commercial vehicles, excise tax is based upon the actual sales or purchase price ~~of a vehicle~~. The actual sales price, commonly referred to as "purchase price", is the actual sales price of a vehicle excluding any ~~discounts or credits~~ consideration given for a trade-in. For the purpose of vehicle taxable value computation, actual sales price is to include the cost of the vehicle, including any equipment or product affixed to, or applied upon, the vehicle. It is not to include any fee included in the sale transaction that is related to a service provided by the seller, or an outside party (i.e. documentary fee; financing fee; insurance coverage fee; maintenance agreement fee). No consideration for a vehicle trade-in, either debit or credit, is to be included in the actual sales price utilized for establishing the taxable value for the purpose of excise tax assessment. 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] ~~On new manufactured homes, excise tax is 1.625% of the actual purchase price.~~ If the actual sales price is not within that value range, the Tax Commission shall establish a taxable value as close to the actual sales price as possible while still within the prescribed value range.

(c) **Minimum tax.** The minimum excise tax on vehicles and the minimum excise tax on manufactured homes is set by statute.

SUBCHAPTER 9. MOTOR VEHICLE LICENSE AGENTS/AGENCIES

PART 1. GENERAL REQUIREMENTS, DUTIES AND RESPONSIBILITIES OF MOTOR LICENSE AGENTS

710:60-9-11. Motor license agent prohibited from extending credit

All transactions must be paid for at the time of processing. A ~~Motor License Agent~~ motor license agent shall not ~~issue tags, titles or any type of documents~~ process any transaction or release any item on credit or before the taxpayer pays the tax or fee due.

PART 9. SPECIFIC FISCAL DUTIES

710:60-9-90. Deposit of monies

(a) **Funds due the Oklahoma Tax Commission**. A 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 (designed for each agency) within one (1) banking day of collection and prepare an advice of deposit which is to be submitted to the Oklahoma Tax Commission 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.

(b) **Motor license agent fee retention.** The fees to be retained by the motor license agent as compensation shall not be deposited in the Oklahoma Tax Commission Motor License Agent Account. Should the motor license agent not have enough cash receipts to withhold the statutorily authorized agent's fee for the transactions reflected in the deposit being made, the motor license agent may designate on the Oklahoma Tax Commission Motor License Agent Account deposit slip the amount necessary to make up the difference as "Less Cash Received". Only the amount necessary to allow for the retention of the statutorily authorized motor license agent's fees for the transactions reflected in the deposit being made may be deducted from the Oklahoma Tax Commission deposit.

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, debit card and credit card remittances that apply to a specific report should be listed and totaled where indicated on the ~~Remittance Slip~~ 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~~ remittance slip.

(2) **Corrections.** A deposit correction entry may result from the depository account bank reconciliation performed by the Motor Vehicle Division.

(3) **Adjustments.** Monetary adjustments may be required in the Motor Vehicle Division audit process. Any audit adjustment will be explained in a notice to the agent. Audit notices should be reviewed upon receipt by the agent and questions or concerns directed to the Division.

(4) **Reconciliations.** The Division will complete a reconciliation of the remittance slip, summarizing total deposits versus total taxes and fees due the Commission for the period, and incorporating any Division adjustments. 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.

(b) **Procedures for common problem situations.**

(1) **Shortage resulting from failure to collect proper fees.** Upon receiving notification of a failure to collect the proper tax and/or fee amount, 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, issue the appropriate transaction receipt to the taxpayer as proof of payment and notify the Division of the collection.

(2) **Shortage resulting from inadequate documentation.** Upon receiving notification of failure to provide ~~the~~ proper supporting documentation for a reduced or special rate, 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.

710:60-9-95. Procedures for refunds to taxpayer

(a) **Refund procedures.** All possible vehicle/boat/outboard motor related refund situations are to be referred to the Motor Vehicle Division of the Oklahoma Tax Commission. To initiate a refund under the noted circumstances the taxpayer must make a refund request, submitting the appropriate documentation and/or information. The following is normally required to initiate a refund, under the noted circumstances:

(1) **Overcharge on registration.** A refund request with appropriate documentation confirming the registration fee remitted. The original registration receipts reflecting the overcharge may also be required.

(2) **Duplicate registration for the same vehicle.** A refund request with appropriate documentation confirming both registration remittances, as well as the duplicate registration decal and/or license plate last issued.

(3) **Registration of a vehicle no longer owned.** A refund request with appropriate documentation confirming the registration remittance, as well as the registration decal and/or license plate issued and proper evidence of the disposition of the vehicle. Such evidence may be a copy of a sales or trade-in contract, a photocopy of the assigned certificate of title, or a notarized affidavit signed by the refund applicant, stating that the vehicle has been sold and identifying the vehicle by serial number and listing the date sold and to whom.

(4) **Excise tax paid in error or overcharge.** A refund request with appropriate documentation confirming the excise tax remittance and documentation or information confirming the overcharge or excise tax exemption.

(5) **Wrong registration classification.** A refund request with appropriate documentation confirming the incorrect registration and re-registration at the correct classification. The improper license plate and/or registration decal must be returned, as well. The registering motor license agent may be required to submit a notarized statement of error for a refund to be allowed. (This is not

to be confused with the process of changing registration classification during a registration period).

(b) **No refund for change in type of registration.** When the type of registration is being changed no refund is due (as in non-commercial registration to farm registration).

(c) **Refund for change of laden weight of a commercial vehicle.** The only circumstance under which the registration for a commercial vehicle's weight can be reduced is when the error is made by the motor license agent. In order to issue a refund in this instance, both original registrations and a notarized statement signed by the motor license agent showing that the error was made in their office must be submitted.

(d) **Refunds payable to taxpayer.** Refund vouchers will be issued payable to the taxpayer for whom the payment was remitted, not payable to the remitter of the payment, if different.

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~~ toll-free), made at the request of a taxpayer, may be charged back to 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.

[OAR Docket #08-1007; filed 5-22-08]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 65. SALES AND USE TAX

[OAR Docket #08-1004]

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PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
710:65-1-2 [AMENDED]
710:65-1-5 [AMENDED]
710:65-1-7 [AMENDED]
710:65-1-9 [AMENDED]
Subchapter 3. Reports and Returns; Payments and Penalties; Records
Part 3. Records and Recordkeeping
710:65-3-30 [AMENDED]
Subchapter 7. Duties and Liabilities
710:65-7-6 [AMENDED]
710:65-7-8.1 [NEW]
710:65-7-9 [AMENDED]
710:65-7-11 [AMENDED]
710:65-7-13 [AMENDED]
710:65-7-15 [AMENDED]
710:65-7-17 [AMENDED]
710:65-7-19 [NEW]
Subchapter 9. Permits
710:65-9-1 [AMENDED]
710:65-9-6 [AMENDED]
710:65-9-8 [AMENDED]
710:65-9-10 [AMENDED]
Subchapter 13. Sales and Use Tax Exemptions
Part 1. Advertising in Media
710:65-13-1 [AMENDED]
Part 3. Agricultural Transactions
710:65-13-17 [AMENDED]
Part 5. Items Subject to Other Taxes
710:65-13-30 [AMENDED]
710:65-13-31 [REVOKED]
Part 7. Churches
710:65-13-33 [AMENDED]
Part 9. Computers; Data Processing; Telecommunications
710:65-13-51 [AMENDED]
710:65-13-52 [AMENDED]
710:65-13-54 [AMENDED]
Part 10. Coal
710:65-13-55 [AMENDED]
Part 11. Containers
710:65-13-60 [AMENDED]
Part 12. Aircraft
710:65-13-63 [AMENDED]
Part 16. Electronic Goods - Refitting, Refurbishing or Repairing [NEW]
710:65-13-85 [NEW]
Part 17. Export
710:65-13-90 [AMENDED]
Part 19. County, District and State Fairs
710:65-13-100 [AMENDED]
Part 21. Food Stamps
710:65-13-110 [AMENDED]
Part 23. Gas and Electricity
710:65-13-123 [AMENDED]
Part 25. Governmental Entities
710:65-13-132 [AMENDED]
Part 29. Manufacturing
710:65-13-150.1 [AMENDED]
710:65-13-153 [AMENDED]
710:65-13-155 [AMENDED]
710:65-13-156 [AMENDED]
Part 31. Medicine, Medical Appliances, and Health Care Entities and Activities
710:65-13-169 [AMENDED]
710:65-13-170 [AMENDED]
710:65-13-171 [AMENDED]

710:65-13-172 [AMENDED]
710:65-13-173 [AMENDED]
710:65-13-175 [AMENDED]
Part 33. Motor Fuels
710:65-13-180 [AMENDED]
Part 35. Newspapers; Periodicals; Programs; Media
710:65-13-192 [AMENDED]
710:65-13-194 [AMENDED]
Part 39. Schools and Higher Education
710:65-13-210 [AMENDED]
710:65-13-211 [RESERVED]
710:65-13-212 [RESERVED]
710:65-13-213 [RESERVED]
710:65-13-214 [RESERVED]
710:65-13-215 [RESERVED]
710:65-13-216 [RESERVED]
710:65-13-217 [RESERVED]
710:65-13-218 [RESERVED]
710:65-13-219 [RESERVED]
710:65-13-220 [NEW]
Part 43. Social, Charitable and Civic Organizations and Activities
710:65-13-330 [AMENDED]
710:65-13-331 [AMENDED]
710:65-13-332 [AMENDED]
710:65-13-333 [AMENDED]
710:65-13-335 [AMENDED]
710:65-13-337 [AMENDED]
710:65-13-338 [AMENDED]
710:65-13-339 [AMENDED]
710:65-13-340 [AMENDED]
710:65-13-354 [NEW]
710:65-13-355 [NEW]
710:65-13-356 [NEW]
Part 51. Sales Tax Holiday [NEW]
710:65-13-510 [RESERVED]
710:65-13-511 [NEW]
710:65-13-512 [NEW]
Subchapter 18. Sourcing Pursuant to the Streamlined Sales and Use Tax Administration Act
710:65-18-3 [AMENDED]
710:65-18-5 [AMENDED]
Subchapter 19. Specific Application and Examples
PART 1. "A"
710:65-19-6 [AMENDED]
PART 5. "C"
710:65-19-45 [AMENDED]
710:65-19-51 [AMENDED]
710:65-19-55 [AMENDED]
710:65-19-56 [AMENDED]
PART 9. "E"
710:65-19-89 [AMENDED]
PART 31. "P"
710:65-19-260 [AMENDED]
710:65-19-268 [AMENDED]
PART 39. "T"
710:65-19-330 [AMENDED]
PART 41. "U"
710:65-19-341 [AMENDED]

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68 O.S. §§ 203, 1354.18; Oklahoma Tax Commission

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Superseded Rules:
Subchapter 13. Sales and Use Tax Exemptions
Part 51. Sales Tax Holiday [NEW]
710:65-13-510 [RESERVED]
710:65-13-511 [NEW]
710:65-13-512 [NEW]
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07-1344

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n/a

ANALYSIS:
As part of the Commission's ongoing review of its rules, many proposed amendments to the existing Sales Tax rules have been made to implement recent legislation. All legislative references are to the 51st Legislature, 1st Regular Session (2007).

New Section 710:65-7-8.1 has been added and Section 710:65-13-90 has been amended to implement the provisions of Section 4 of Senate Bill 806 which places the responsibility for providing the documentation on the sale of tangible goods and products for export by a vendor on a purchaser in certain circumstances. **[68:1352(2)(c)]**

Section 710:65-7-15, dealing with vendor liability has been amended to reflect the exempt status of sales to certain child care centers providing pre-kindergarten instruction and 501(c)(3) organizations which shelter abused, neglected, or abandoned children. **[68:1361]**

New Section 710:65-7-19 has been added to Subchapter 7. Duties and Liabilities to reflect the exempt status of sales to qualifying organizations providing services to developmentally disabled persons. **[68:1361]**

Section 710:65-9-8 dealing with special event permits has been amended according to the provisions of Section 7 of Senate Bill 806 which modifies the definition of special event to exclude any event sponsored by a 501(c)(3) church organization and to update contact information for the application process. **[68:1364.2]**

Sections 710:65-13-1 has been amended in conformity with the provisions of Section 5 of Senate Bill 806 which exempts the sale of advertising in travel brochures and promotional materials produced at the direction of the Oklahoma Tourism and Recreation Department. **[68:1356]**

Section 710:65-13-30 has been amended to conform with the provisions of House Bill 1094 which creates a new exemption for sales of charity games equipment to a group home for mentally disabled individuals which is exempt from taxation pursuant to 501(c)(3) of the Internal Revenue Code. **[68:1355].**

Section 710:65-13-123 dealing with the sales tax exemption for certain sales of electricity used on enhanced recovery projects in oil production has been amended to reflect the provisions of Section 2 of HB 1544, which deleted certain exemption qualification language. **[68:1357]**

Section 710:65-13-172 has been amended to clarify the exemption application process for Community Mental Health Centers. **[68:1357]**

Sections 710:65:13-169, 710:65-13-170, 710:65-13-171 and 710:65-13-173 have been amended to delete obsolete language and to clarify the categories of qualifying exempt purchases for purposes of the exemption for sales to Medicare and Medicaid recipients and for sales of prosthetic devices to individuals. **[68:1357.6 and 68:1357(22)]**

Part 39 of Subchapter 13 has been amended to include child care centers and a new section 710:65-13-220 have been added to note the provisions of Section 5 of Senate Bill 806 which provides for an exemption for sales to certain child care centers providing on-site universal pre-kindergarten education to four-year-old children through a contractual relationship with a public school. **[68:1356]**

A New Part 16 dealing with the refitting or refurbishing of certain electronic goods has been added to Subchapter 13. New Section 710:65-13-85 has been added to reflect the provisions of Section 1 of House Bill 1544 which exempts sales of tangible personal property and services to repairers of

certain electronic goods when purchased from the original manufacturer for refurbishing and subsequent sale. **[68:1357]**

Several new Sections have been added to Part 43 consistent with the provision of Section 5 of Senate Bill 806 which provides for new statutory exemptions: Section 710:65-13-354 dealing with sales to certain 501(c)(3) organization providing training and education to and promoting unity among developmentally disabled individuals and educating the community about the rights, abilities and strengths of these individuals; Section 710:65-13-355 dealing with sales to a 501(c)(3) organization which is a shelter for abused, neglected, and abandoned children from birth to age twelve; and Section 710:65-13-356 dealing with sales to a 501(c)(3) organization known as the Blue Star Mothers of America which sends personal property to United States Military personnel overseas serving in a combat zone.

A New Part 51, dealing with a Sales Tax Holiday has been added to Subchapter 13. New Sections 710:65-13-510 through 710:65-13-512 have been adopted to set forth the provisions of Sections 2-6 of Senate Bill 861 which provide for a sales tax exemption for sales of clothing and footwear priced at less than $100.00 for a three day period in August and for reimbursement of lost tax revenue to the cities and counties. **[68:1353, 1357.10, 1370 1377& 2701]**

Additional sections have been revised in accordance with the statutory amendments made in House Bill 1076 for Streamlined Sales Tax compliance purposes; Section 710:65-1-2, provides a definition of bundled transaction and an amended definition of gross receipts and sale for resale; **[68:1352],** Sections 710:65-19-330 dealing with telecommunications provides a revised definition of telecommunication services, clarifies treatment of certain transactions and exempts nonrecurring charges not associated with a retail customer sale; 710:65-18-5 sets forth a revised definition of post paid calling services, defines prepaid wireless calling services and clarifies the sourcing of various telecommunications services; **[68:1354],** 710:65-1-9 references the revised definition of gross receipts; Section 710:65-18-3 notes destination sourcing applicable to florists 1/1/09 instead of 1/1/08 **[68:1354.27],** and 710:65-7-6 extends relief from liability to certified service providers and vendors that timely accept fully completed exemption certificates-later determined to be erroneous-within 90 days of the date of sale. **[68:1361.1]**

Section 710:65-19-45 has been amended to reflect language deleted from 710:65-13-170 regarding the sales tax exemption for chiropractic sales of vitamins, minerals, and supplements. **[68:1357(37)]**

Section 710:65-19-89 dealing with merchandise returns has been amended for clarification consistent with the Commission's policy regarding treatment of restocking fees.

Section 710:65-19-260 dealing with commercial photographers has been amended deleting obsolete and unnecessary language.

In addition, other rule changes will be made to improve readability, correct scrivener's errors, remove obsolete language, update statutory citation, and insure accurate internal cross-references.

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.

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 TAX COMMISSION, TAX POLICY AND RESEARCH DIVISION, 2501 NORTH LINCOLN 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):

A detailed summary of the rules can be found in the Analysis section, as published above in this document. The full text of the rules may be obtained from the Oklahoma Tax Commission, Tax Policy and Research Division, 2501 N. Lincoln Boulevard, Oklahoma City, OK 73194, and from the Secretary of State's Office of Administrative Rules.

[OAR Docket #08-1004; filed 5-22-08]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 90. WITHHOLDING

[OAR Docket #08-1015]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Returns and Payments
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Section 710:90-3-11 has been amended to reflect recent internal changes within the Tax Commission. The duties and responsibilities of the Audit Division have been transferred to the Compliance Division.
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 JULY 1, 2008:

SUBCHAPTER 3. RETURNS AND PAYMENTS

710:90-3-11. Income tax withholding for pass-through entities

(a) **General provisions.** Generally, any pass-through entity that makes a distribution to a non-resident member is required to deduct and withhold Oklahoma income tax from distributions of taxable income being made with respect to Oklahoma source income.

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

(1) **"Member"** means:

(A) A shareholder of an S-Corporation;

(B) A partner in a general partnership;

(C) A partner in a limited partnership;

(D) A partner in a limited liability partnership;

(E) A member of a limited liability company; or,

(F) A beneficiary of a trust.

(2) **"Non-resident"** means an individual who is not a resident of, or domiciled in, this state; a business entity which does not have a commercial domicile in this state; or a trust which is not organized in this state.

(3) **"Pass-through entity"** means:

(A) A corporation that is treated as an S-Corporation under the Internal Revenue Code;

(B) A general partnership;

(C) A limited partnership;

(D) A limited liability partnership;

(E) A trust; or,

(F) A limited liability company that is not taxed as a corporation for federal income tax purposes. [68 O.S. § 2385.29]

(4) **"Pass-through entity"** does not include an entity which is disregarded for income tax purposes under the Internal Revenue Code.

(c) **S-Corporations; general, limited, or limited liability partnerships; limited liability companies.** In the case of S-Corporations; general, limited, or limited liability partnerships; and limited liability companies, withholding of five percent (5%) is required on the Oklahoma portion of the taxable income distributed to each non-resident member. In the case of S-Corporations paying the tax on behalf of non-resident shareholders (68 O.S. § 2365) or partnerships filing composite returns on behalf of non-resident partners, the non-resident members withholding can be claimed on the return filed by the S-Corporation or the partnership.

(d) **Trusts.** For trusts, withholding of five percent (5%) is required on the Oklahoma portion of the taxable income distributed to each beneficiary of the trust.

(e) **Non-resident members not subject to withholding.** The following persons and organizations are not subject to required withholding by a pass-through entity:

(1) Persons, other than individuals, who are exempt from federal income tax;

(2) Organizations granted an exemption under Section 501(c)(3) of the Internal Revenue Code;

(3) Insurance companies subject to the Oklahoma Gross Premiums Tax and therefor exempt from Oklahoma income tax pursuant to 68 O.S. § 2359(c); and

(4) Non-resident members who have submitted an affidavit (OTC Form OW-15) to the pass-through entity and which pass-through entity has submitted the affidavit information on behalf of the member to the Tax Commission. In the affidavit, the non-resident member agrees to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, together with any related interest and penalties. See (k) of this Section for the procedure to be followed in filing the affidavit.

(A) For non-resident partners included in a composite partnership return under *OAC* 710:50-17-17 and filing OTC Form OW-15, the inclusion of the partners' income within the composite partnership return will satisfy the requirements contained in the affidavit.

(B) For non-resident shareholders filing OTC Form OW-15, and electing not to file Oklahoma income tax returns under 68 O.S. § 2365, inclusion of the non-resident shareholder's income in the Subchapter S corporate income tax return will satisfy the requirements contained in the affidavit.

(C) For non-resident beneficiaries included in a trust return and filing OTC Form OW-15, the inclusion of the beneficiary's income within the trust return will satisfy the requirements contained in the affidavit.

(f) **When pass-through entities are not required to withhold.** Withholding is not required in the following instances:

(1) When an entity is not required to file a federal income tax return, or properly elects out of such duty;

(2) When a pass-through entity is making distributions of income not subject to Oklahoma income tax;

(3) When a pass-through entity has withheld tax on royalty interest income pursuant to 68 O.S. § 2385.25 et seq.;

(4) When a pass-through entity is making distributions to another pass-through entity. Provided however, the exception set out in this paragraph does not relieve the lower-tiered pass-through entity from the duty to withhold on distributions it makes which are not otherwise exempt;

(5) When a pass-through entity is a publicly traded partnership, as defined by Section 7704(b) of the Internal Revenue Code, and is treated as a partnership for purposes of the Internal Revenue Code. Provided the publicly traded partnership has agreed to file an annual information return reporting the name, address, taxpayer identification number, and other information requested by the Tax Commission of each unit-holder with an income in the state in excess of Five Hundred Dollars ($500.00); or,

(6) When a distribution made by a pass-through entity has been determined to be not subject to the provisions of this Section by the Commission.

(g) **Due dates for payment of pass-through entity withholding.** Pass-through entities that withhold income tax on distributions of taxable income to non-resident members are required to remit the amount of tax withheld from each non-resident member on or before the due date of the pass-through entity's income tax return, including extensions. Any pass-through entity that can reasonably expect the total amount of income tax withheld from all non-resident members to exceed Five Hundred Dollars ($500.00) for the taxable year **must** make quarterly estimated tax payments. OTC Form OW-9-EW is to be used to remit the quarterly estimated tax payments. The required estimated tax payments are due on or

before the last day of the month after the end of the calendar quarter and must be made in equal quarterly installments. The total of the required quarterly estimated tax payments is the lesser of seventy percent (70%) of the withholding tax that must be withheld for the current taxable year, or one hundred percent (100%) of the withholding tax withheld for the previous taxable year. Any pass-through entity that can reasonably expect the total amount of tax withheld from all non-resident members to be less than Five Hundred Dollars ($500.00) for the taxable year may, *at their option*, make quarterly estimated tax payments.

(h) **Required reports.** The pass-through entity is required to provide non-resident members and the Oklahoma Tax Commission an annual written statement showing the name of the pass-through entity, to whom the distribution was paid, the amount of taxable income distributed, and the amount of Oklahoma income tax withheld. Further, the statement must also furnish the non-resident member's name, address, and social security number or Federal Employer Identification Number. To accomplish this:

(1) Each pass-through entity must provide non-resident members with Oklahoma Tax Commission Form 500-B, (OTC Form 500-B), on or before the due date of the pass-through entity's income tax return, including extensions. Copies of OTC Form 500-Bs, along with OTC Form 501, must be sent to the Oklahoma Tax Commission by the same date.

(2) Each pass-through entity must file with the Oklahoma Tax Commission the appropriate income tax withholding return (OTC Form OW-9-C) on or before the due date of the pass-through entity's income tax return, including extensions.

(3) Each non-resident member must enclose a copy of OTC Form 500-B to the Oklahoma income tax return as verification for this withholding.

(i) **Non-resident members entitled to credit, or refund, from Oklahoma income taxes paid.** Any non-resident member 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 member will be entitled to a refund of the amount of the overpayment.

(j) **Pass-through entities must register.** Pass-through entities that make distributions subject to Oklahoma withholding must register with the Oklahoma Tax Commission.

(k) **Affidavit filing procedures.** Non-resident members who elect to file an affidavit (OTC Form OW-15) agreeing to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, and any related interest and penalties, must remit the affidavit to the appropriate pass-through entity. The pass-through entity is to retain the affidavit and file the following information with the Oklahoma Tax Commission by the due date of the required annual tax return of the pass-through entity.

(1) **Content.** The name, address, and social security number or federal identification number of the non-resident member having a signed OTC Form OW-15. All pass-through entities are required to file the non-resident member affidavit information on a diskette or CD with the Oklahoma Tax Commission - ~~Audit~~ Compliance Division.

(2) **Format.** The format for filing the diskette or CD will be in either a spreadsheet format (i.e. Lotus 1-2-3 or Excel) or a database format (i.e. dbf or Access).

(3) **Waiver.** Pass-through entities may obtain a waiver from the diskette or CD filing requirement if the pass-through entity can demonstrate that a hardship would result if it were required to file on a diskette or CD. Direct waiver requests to the Oklahoma Tax Commission - ~~Audit~~ Compliance Division.

[OAR Docket #08-1015; filed 5-22-08]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 95. MISCELLANEOUS AREAS OF REGULATORY AND ADMINISTRATIVE AUTHORITY

[OAR Docket #08-1008]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Waste Tire Recycling
710:95-5-3 [AMENDED]
710:95-5-11 [AMENDED]
710:95-5-13 [REVOKED]
710:95-5-14 [REVOKED]
710:95-5-15 [REVOKED]
710:95-5-16 [REVOKED]
710:95-5-17 [REVOKED]
710:95-5-18 [REVOKED]
710:95-5-19 [NEW]
710:95-5-20 [REVOKED]
710:95-5-21 [REVOKED]
710:95-5-22 [REVOKED]
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Subchapter 5. Waste Tire Recycling
710:95-5-3 [AMENDED]
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710:95-5-13 [REVOKED]
710:95-5-14 [REVOKED]
710:95-5-15 [REVOKED]
710:95-5-16 [REVOKED]
710:95-5-17 [REVOKED]
710:95-5-18 [REVOKED]
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710:95-5-21 [REVOKED]
710:95-5-22 [REVOKED]
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ANALYSIS:
Sections 710:95-5-13 through 710:95-5-18 and 710:95-5-20 through 710:95-5-22 pertaining to administration of the Waste Tire Recycling Indemnity Fund (which has been transferred from the Tax Commission to the DEQ pursuant to Senate Bill 747 [51st Legislature, 1st Regular Session]), are being revoked. Section 710:95-5-3 is amended to reduce the fee on a tire rim greater than 17 $\frac{1}{2}$" but less than or equal to 19 $\frac{1}{2}$" and Section 710:95-5-11 changes the due date for filing and remitting fees from the 15th of every month to the 20th. New Section 710:95-5-19 pertains to compliance and collection of waste tire fees.
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 JULY 1, 2008:

SUBCHAPTER 5. WASTE TIRE RECYCLING

710:95-5-3. ~~Applicability of the waste~~ Waste tire recycling fee

(a) **Applicability of the fee.** The fee levied by the Oklahoma Waste Tire Recycling Act is assessed in the following instances:

(1) All sales of tires for motor vehicles, whether used on or off road, except "implements of husbandry" as defined by Section 1-125 of Title 47 of the Oklahoma Statutes.

(2) All first registrations of motor vehicles required to be registered, except those registered under a proportional registration plan, as provided by 47 O.S. § 1120.

(b) **Amounts.** The amount of the fee due will be determined based upon the size of the tire rim or use of the tire, as follows:

(1) $1.00 per tire, where the tire rim diameter is less than or equal to seventeen and one-half (17 $\frac{1}{2}$") inches;

(2) ~~$3.50~~ $2.50 per tire, where the tire rim diameter is greater than seventeen and one-half (17 $\frac{1}{2}$") inches~~; or~~ but less than or equal to nineteen and one-half (19 $\frac{1}{2}$") inches.

(3) $3.50 per tire, where the tire rim diameter if greater than nineteen and one-half (19 $\frac{1}{2}$") inches.

(4) $1.00 per tire, for tires to be used on motorcycles, minibikes, motor-driven cycles, or motorized bicycles.

(c) **Report.** The Commission shall provide a report, on a monthly basis, to the DEQ of the fees remitted by each tire dealer and motor license agent.

(d) **Payments.** Upon receipt of monthly reports from the DEQ, the Commission will issue payments from the Fund to qualified applicants.

710:95-5-11. Reporting and remitting

Tire sales must be reported and the fees remitted to the Oklahoma Tax Commission by the ~~15th~~ 20th of the month following the month in which the sales are made.

710:95-5-13. Procedure to be used by waste tire facilities and "TDF facilities" to request compensation for the collection and transportation of waste tires and either the processing and sale of processed waste tires or the use of the tires as fuel or for the manufacture of new products [REVOKED]

~~(a) **General provisions.** In order to be compensated from the Waste Tire Recycling Indemnity Fund, a properly permitted waste tire facility must make application to the Commission, no more often than monthly, on forms prescribed for that purpose.~~

~~(b) **Magnetic media requirements.** A magnetic media file, containing the information required to be filled in on the Waste Tire Reimbursement Manifest, must be submitted with the application.~~

~~(c) **Required supporting documentation.** Until the Commission authorizes otherwise in writing, a data sheet must be submitted, to which are attached copies of manifests showing the information described in (1) through (3) of this subsection:~~

~~(1) **Identification of tires.** The data sheet must state the date acquired, number, and size of tires;~~

~~(2) **Sources of tires.** The name and the location of the source from which discarded tires were obtained, whether they were collected and transported by the waste tire facility or not, must be provided. Sources may include:~~

~~(A) Tire dealers;~~

~~(B) Persons making voluntary payments pursuant to 710:95-5-12;~~

~~(C) Priority clean-up sites;~~

~~(D) Community-wide clean-up events; or~~

~~(E) Automotive dismantlers and parts recyclers.~~

~~(3) **Signature from source required.** The signature of the owner, manager, or the person responsible for the location where the tires were obtained, or the signature of the person who brought the tires to the facility, if they were~~

~~not collected and transported by the facility, must be submitted on the manifest, data sheets, or on supporting documentation.~~

~~(d) **Accuracy of manifests and tire weights.** The manifests required by this Section must be complete and accurate in all details and must be accompanied by weight tickets from certified scales which show the poundage of the load collected and transported or accepted for processing by the waste tire facility.~~

~~(e) **Inaccurate, incomplete, or insufficient manifest.** The Commission shall not compensate waste tire facilities for tires which are processed where the manifests for those tires are incomplete, unreadable, not accompanied by a weight ticket, or in any other respect cannot be relied upon to show that the tires were collected, transported and processed pursuant to the Waste Tire Recycling Act.~~

~~(f) **Reimbursable processing of tires limited to those discarded in Oklahoma.** The compensation request shall also state that the processor making the request is in compliance with and has successfully processed vehicle tires which were discarded by the consumer in Oklahoma, not some other state.~~

~~(g) **Other required information.** Additional documentation or information may be required by the Commission.~~

~~(h) **Sworn signature required.** The application must be signed by an officer, owner, or partner of the processor, stating under penalty of perjury, that all the information contained in the request is true and correct.~~

710:95-5-14. Procedure to be used by businesses that utilize waste tires to request compensation [REVOKED]

~~(a) **Qualification.** Businesses that utilize waste tires shall be qualified to apply for compensation, not to exceed the total amount invested in capital equipment necessary to utilize processed waste tires, pursuant to this Section.~~

~~(b) **Limitations.** The following limitations shall apply to compensation paid pursuant to this Section.~~

~~(1) The compensation shall be payable each month for an amount equal to $20.00 per ton of waste tires used.~~

~~(2) The total amount a business may receive in compensation is an amount not in excess of One Hundred percent (100%) of its capital investment in equipment necessary to utilize waste tires, provided no compensation shall be payable for capital investment in equipment which was purchased before January 1, 1995.~~

~~(3) If the funds available for any month are not sufficient to fully pay all requests for compensation, the available funds will be awarded on a proportionate share of the funds available and based on the relative amount of tons of waste tires utilized.~~

~~(4) If the balance of the monies remaining which have been allocated for the purpose of compensating businesses that manufacture new products or which derive energy benefits from processed waste tires is insufficient to fully compensate all claimants for a particular month, they shall be compensated in the manner set out in (b)(3) of this Section and no further compensation shall be granted in the future for the processed waste tires on which compensation was previously requested.~~

~~(c) **Application process.** All persons who believe that they do qualify or will qualify for compensation shall file an application/intent to request compensation with the Commission on forms to be provided by the Commission and shall include as attachments, specification of the operation that utilizes waste tires, a listing of the equipment and the capital investment therein which is necessary to utilize processed waste tires which they believe qualifies to be included in the amount on which compensation will be based, and copies of purchase invoices which show the cost of the equipment listed.~~

~~(d) **Review.** The application will be reviewed upon receipt for completeness and compliance with the requirements contained in 27A O.S. §2-11-401.4. An on-site review will be conducted by personnel of the Commission if it is deemed necessary to determine that the equipment is necessary to the utilization of processed waste tires. The applicant will be notified of any action taken in regard to the application, and if approved, will be given a list of the capital equipment and the costs which the Commission has determined to be eligible for compensation.~~

710:95-5-15. Review and determination of requests for compensation; protest procedure following denial of compensation request [REVOKED]

~~(a) **Review and determination of requests for compensation.** Upon receipt of a proper request for compensation, the Oklahoma Tax Commission shall review the request and determine whether the application reflects compliance with the statutory requirements of the Waste Tire Recycling Act and all applicable rules pertaining thereto promulgated by the DEQ, the Commission, and the ODH. Further, the Commission shall verify that the applicant is not in violation of any tax laws of the State of Oklahoma. The applicant shall be notified in writing of the Commission's determination, and the reasons therefore.~~

~~(b) **Protest procedure.** The following procedure shall apply when a request for compensation is denied by the Commission:~~

~~(1) Any applicant whose request for compensation is denied may, within thirty (30) days after the mailing of the denial by the Commission, file a protest under oath, signed by the applicant or a duly authorized agent, setting out:~~

~~(A) A statement of denial as determined by the Commission;~~

~~(B) A statement of the applicant's disagreement with such denial, and~~

~~(C) Supporting documentation relied on by the applicant in support of the request for compensation.~~

~~(2) The protest shall be filed with the Commission at its main offices at 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma.~~

~~(c) **Failure to timely protest.** 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.~~

~~(d) **Determination of protest and appeal procedure.** The following practice and procedure shall apply to the hearing of a protest of the denial of a request for compensation and appeal therefrom:~~

~~(1) Applicants filing a protest to the denial of a request for compensation 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 was erroneous is on the applicant. The applicant can present testimony, evidence and argument in support of the requested compensation.~~

~~(2) 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 the 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 simultaneously filing a petition in error with the Clerk of the Supreme Court of the State of Oklahoma, and a designation of the record with the Secretary of the Commission. [**See:** 68 O.S. § 225]~~

710:95-5-16. Required procedures for monthly certification to the Commission by DEQ [REVOKED]

~~(a) Prior to approving compensation to any waste tire facility or to any entity using waste tires for erosion control, bank stabilization, or other approved conservation project, the Commission must receive monthly certification from the DEQ, certifying that the applicant for compensation meets the qualification criteria set out in this Section:~~

~~(1) If the applicant is a waste tire facility, it must have a valid permit as a solid waste disposal site, be in good standing, and be in compliance with the requirements of the permit, including the requirements set out in OAC 252:520-21-5:~~

~~(A) The facility's fire protection plan must be currently approved;~~

~~(B) The facility must maintain the fifty (50) foot fire lane around the perimeter of each tire pile and the shredder;~~

~~(C) The buffer zone must be maintained;~~

~~(D) Visual screening must be developed;~~

~~(E) Vector control must be effective, as shown by the latest mosquito monitoring reports received by the local office of the DEQ; and~~

~~(F) No water must have been discharged off the site without the consent of the owner of the sewer system, unless pursuant to a discharge permit issued by the DEQ.~~

~~(2) If the entity is requesting compensation for utilizing waste tires in erosion control, bank stabilization, or other approved conservation project:~~

~~(A) The entity must have obtained a permit or other authorization for the utilization of wastes tires for purposes of erosion control, bank stabilization, or other conservation project from either the United States Army Corps of Engineers or a local Conservation District, as the landowner, or on behalf of the landowner to provide these services on the property of the landowner.~~

~~(B) The entity must have been evaluated by the DEQ within the last three (3) years and must be certified as being authorized to receive reimbursement pursuant to 27A O.S. §2-11-407.1.~~

~~(C) The DEQ must not have received any information which would indicate that the entity has not successfully processed discarded vehicle tires of rim diameter greater than 17-$\frac{1}{2}$' inches, in accordance with the written plan filed in connection with the permit or authorization described in (A) of this paragraph.~~

~~(b) The facility must, by the 10th of the following month, have submitted to the local office of the DEQ, the report required by OAC 252:520-21-6, giving the number of tires received.~~

~~(c) There must be no indication that the facility has exceeded the restrictions found in OAC 252:520-21-6, concerning volume, segregation, shape, and size of tire and processed material piles.~~

~~(d) The facility must have filed narrative descriptions of its development and operations, its intended use of processed materials, and a secondary plan of disposal, and such plans must have been approved by the DEQ.~~

~~(e) The DEQ must have no information which indicates that the facility has not successfully processed discarded vehicle tires pursuant to the Waste Tire Recycling Act.~~

~~(f) For compensation requests for collection and transportation, the applicant must satisfy DEQ that it is regularly engaged in the collection, transportation, and delivery of waste tires on a statewide basis and from each county of the state.~~

~~(g) DEQ's review of facilities must establish:~~

~~(1) That the applicant has not accumulated more processed material than the amount for which they have provided financial assurance under their solid waste permit or the amount accumulated from three years of operation, whichever is less; and~~

~~(2) That the applicant has been evaluated within the last three years and has provided for, in addition to the processing of tires, the recycling, reuse or energy recovery from waste tires as these terms are defined in OAC 252:520-21-2.~~

710:95-5-17. Documentation to be provided to the Commission [REVOKED]

~~In order to facilitate the administration of the Waste Tire Recycling Act, the following documentation, along with any update which may occur, will be provided by the DEQ to the Commission:~~

~~(1) A copy of any priority enforcement list or information on any authorized community-wide clean up event;~~

~~(2) A copy of the Statewide Collection Plan of each waste tire facility;~~

~~(3) A copy of the narrative description of the processor's design, development, and operational plan; an example of the approved daily log; and a copy of the intended use and secondary plan of disposal narratives, as required by OAC 252:520-21-6 for each waste tire facility;~~

~~(4) A copy of the waste tire processing facility permit;~~

~~(5) A copy of any progress reports which must be filed by the facility;~~

~~(6) A copy of any permit or other authorization from either the United States Army Corps of Engineers or a local Conservation District, approving a written plan for utilizing waste tires for the purpose of erosion control, bank stabilization, or other conservation project.~~

~~(7) The Monthly Certification and Authorization to Compensate Waste Tire Facilities or Entities utilizing waste tires for erosion control, bank stabilization, or other conservation project.~~

710:95-5-18. Transfers between tire dealers using reimbursement manifest [REVOKED]

~~(a) Transfers of waste tires between tire dealers using a reimbursement manifest will not require additional payment of waste tire fees by the transferee when they are sold, so long as the tires being transferred were generated as a result of a transaction on which the proper fee has been paid.~~

~~(b) Use of the reimbursement manifest by the transferee conveys the right to have the number and type of waste tires shown on the form picked up by the waste tire facility from the transferee's locations.~~

~~(c) The properly completed DEQ reimbursement manifest will be accepted by the Commission as evidence that the waste tire fees have been paid on the used tires which are sold by used tire dealers.~~

710:95-5-19. Compliance

Upon receipt of a determination from the DEQ that a tire dealer or motor license agent has demonstrated a flagrant or repeated disregard of Section 2-1-401.2 of Title 27A, the Tax Commission will commence proceedings to collect finally established waste tire fee liabilities in accordance with the recommendations of the DEQ. The Tax Commission will, in a timely manner, report the results of the proceedings to the DEQ.

710:95-5-20. Procedures to request compensation for use by entities which process and utilize waste tires in erosion control, bank stabilization or other conservation projects [REVOKED]

~~(a) **General provisions.** To be eligible for reimbursement pursuant to 27A O.S. §2-11-401.7(c)(3), the entity seeking reimbursement must give notice to the Commission and make application, no more often than monthly on forms, or in the format, prescribed for those purposes.~~

~~(b) **Notice of intent to file compensation request.** The applicant must file a "Notice of Intent to File Waste Tire Indemnity Fund Compensation Request" to which is attached, a copy of the permit issued by the United States Army Corps of Engineers or a local Conservation District and the written agreement of the landowner in which the landowner agrees to plant trees or other vegetation in accordance with a planting plan developed in conjunction with the state Department of Agriculture, Food and Forestry.~~

~~(c) **Contents of required affidavit.** The applicant must file an affidavit setting out:~~

~~(1) The number of tires having a rim diameter greater than 17 1/2" inches which were collected, transported and used in the approved project.~~

~~(2) The number of tires having a rim diameter of 17 1/2" inches or less which were collected, transported and used in the approved project.~~

~~(3) A sworn statement that five percent (5%) of the tires used in the project were collected from tire dumps or landfills listed on the "Priority Cleanup List" defined at 27A O.S. §2-11-401.1, or collected from community-wide cleanup events approved by DEQ.~~

~~(4) A sworn statement that collection and transportation of waste tires which were used in the project were collected on a statewide basis, from each county of the state, at no cost to the tire dealers.~~

~~(5) A statement that the tires for which reimbursement is being claimed have actually been used at the approved site in accordance with a written plan approved by the United States Army Corps of Engineers.~~

~~(6) A statement that the applicant is in compliance with the requirements promulgated by DEQ pursuant to the Oklahoma Environmental Quality Code regarding the storage, transportation and disposal of waste tires.~~

~~(7) A statement that the applicant is in compliance with all tax laws of the state of Oklahoma.~~

~~(8) A statement that the compensation shall be payable only for tires actually utilized in conformity with the purposes of the Oklahoma Waste Tire Recycling Act.~~

~~(9) The total amount of compensation requested.~~

~~(d) **Supporting documentation.** Copies of complete, accurate, and legible Oklahoma Waste Tire Tracking Manifests showing the types, amounts, and source of the tires utilized, for which reimbursement is being requested, must accompany the affidavit.~~

~~(e) **Other information may be required.** Additional documentation may be required by the Commission.~~

~~(f) **Sworn signature required.** The affidavit required by (b) of this Section must be signed by an owner, officer, or partner of the processor, stating, under penalty of perjury, that all the information contained in the affidavit and request is true and correct.~~

~~(g) **Compensation.** Compensation pursuant to this paragraph shall be payable only for the tires collected and utilized in accordance with the purposes of the Oklahoma Waste Tire Recycling Act and as authorized by the Department. During the course of the erosion control project, the Department may determine the amount of and authorize partial compensation, as tires are utilized in accordance with the written plan.~~

~~(h) **Reimbursement.** Any entity deemed eligible for reimbursement under the provisions of this paragraph shall be liable~~

~~for the erosion control project for a period of five (5) years. During the five year period, if additional cleanup or remediation of an erosion control project is required due to failure or negligence on the part of the original contractor, the original contractor shall be responsible for cleanup costs and shall not be eligible for any additional compensation from the Fund for costs related to that erosion control project.~~

710:95-5-21. Procedure to be used by units of local or county government to request compensation for tires that are baled and used in approved engineering projects [REVOKED]

~~(a) **General provisions.** In order to be compensated from the Waste Tire Recycling Indemnity Fund, a unit of local or county government must make application to the Commission, no more often than monthly, on forms prescribed for that purpose. The application for compensation shall provide the information described in (1) through (7) of this subsection.~~

~~(1) Number of tires covered by the application;~~

~~(2) Total number of tires baled;~~

~~(3) Total amount of compensation requested for processing, equal to the total number of tires baled times Fifty Cents ($ .50);~~

~~(4) A description of the engineering project, a statement that the project has been approved by DEQ, and the location thereof; and,~~

~~(5) A statement that none of the tires for which compensation is being requested has been obtained from manufacturers, retailers, wholesalers, retreaders, or parts dismantlers.~~

~~(b) **Other required information.** Additional documentation or information may be required by the Commission.~~

~~(c) **Sworn signature required.** The application must be signed by an employee of the government agency who has knowledge of the number of tires baled and of the approved engineering project, stating under penalty of perjury, that all the information contained in the application is true and correct.~~

710:95-5-22. Apportionment of funds among claimants [REVOKED]

~~(a) **General provisions.** The apportionment of funds in the waste tire indemnity fund shall be made in the following manner:~~

~~(1) Four and one-half percent (4.5%) to the Oklahoma Tax Commission and three and one-half percent (3.5%) to the Department of Environmental Quality for the purpose of administering the requirements of the Oklahoma Waste Tire Recycling Act.~~

~~(2) Fifty Thousand Dollars ($50,000.00) per audit to the State Auditor and Inspector for the purpose of conducting audits of the Oklahoma Waste Tire Recycling Program pursuant to Section 2-11-401.6 of Title 27A.~~

~~(3) Up to ten percent (10%) for capital investment reimbursement to waste tire facilities and TDF facilities for the purchase of equipment necessary to utilize waste tires. Only equipment purchased on or after January 1, 1995, shall be eligible. The facilities are eligible for compensation at a rate of Twenty Dollars ($20.00) per ton of waste tires used. Total reimbursement shall not exceed one hundred percent (100%) of the capital investment in eligible equipment. The facilities may apply for compensation monthly to the Commission, and shall supply any information required by the Commission.~~

~~(4) After the allocations in the three paragraphs above are made, the balance of monies in the Fund shall be available for compensation pursuant to the provisions of the Oklahoma Waste Tire Recycling Act as follows:~~

~~(A) Compensation to waste tire facilities for waste tire processing, at the rate of Fifty-four Dollars ($54.00) per ton of processed tire material. For compensation the following conditions shall apply:~~

~~(i) facilities that process waste tires by altering the form of the waste tires but do not produce crumb rubber shall not receive compensation until the facility documents the sale and movement of the processed tire material off-site to a third party,~~

~~(ii) facilities shall report and certify tire processing activity in terms of weight. The facility shall by sworn affidavit provide to the Commission sufficient information to verify that the facility has processed tires and sold processed tires for actual recycling or reuse in accordance with the purposes of the Oklahoma Waste Tire Recycling Act, and~~

~~(iii) to be eligible for compensation, a facility shall not have accumulated more processed material than the amount for which the facility has provided financial assurance under its solid waste permit or the amount accumulated from three (3) years of operation, whichever is less;~~

~~(B) Compensation to waste tire facilities or TDF facilities at the rate of Fifty-three Dollars ($53.00) per ton of whole waste tires for the collection and transportation of waste tires from Oklahoma tire dealers, automotive dismantlers and parts recyclers, solid waste landfill sites, and dumps certified by the Department priority cleanup list, and delivering the tires to a waste tire facility or TDF facility. The collection and transportation of waste tires shall be provided by the waste tire facility or TDF facility at no additional cost to the tire dealer or automotive dismantler and parts recycler or to the Fund. The waste tire facility or TDF facility shall collect from any location at which there are at least three hundred waste tires.~~

~~(i) Compensation under paragraph B of subsection 4 shall not be payable until the waste tires have been actually processed according to the solid waste permit for the facility or actually used for energy or fuel recovery. A TDF facility that collects and transports whole waste tires shall be eligible for compensation under this paragraph only for those whole waste tires consumed by that facility.~~

~~(ii) No tire dealer shall charge any customer any additional fee for the management, recycling,~~

~~or disposal of any waste tire upon which the waste tire recycling fee has been remitted to the Commission. For customers who choose not to leave a waste tire upon which the waste tire recycling fee has been remitted to the Commission, the tire dealer shall issue a receipt which entitles the customer to deliver the waste tire to the dealer at a later date.~~

~~(iii) To be eligible for compensation pursuant to paragraph B of subsection 4, the waste tire facility or TDF facility shall:~~

~~(I) demonstrate to the satisfaction of the Department that the facility is regularly engaged in the collection, transportation and delivery of waste tires to a waste tire facility or to a TDF facility, on a statewide basis, and from each county of the state,~~

~~(II) provide documentation to the Commission, signed by a dealer at the time of collection, which certifies by sworn affidavit the total amount of waste tire recycling fees, itemized by month, remitted by the dealer since the date the waste tires of the dealer were last collected, and~~

~~(III) annually demonstrate that at least five percent (5%) of the tires were collected from tire dumps or landfills on the Department priority cleanup list or community wide cleanup events approved by the Department.~~

~~(iv) In lieu of proof of remitted tire recycling fees, the waste tire facility or TDF facility shall accept proof of purchase of a salvage vehicle registered in Oklahoma by an automotive dismantler and parts recycler, licensed pursuant to the Automotive Dismantlers and Parts Recycler Act, for the collection and transportation of up to five waste tires per salvage vehicle purchased on or after January 1, 1996~~

~~(C) Compensation to a person, corporation or other legal entity who has obtained a permit or other authorization from the United States Army Corps of Engineers or a local Conservation District to provide services for erosion control projects. Compensation shall be at the rate of Two Dollars and eighty cents ($2.80) per tire for waste tires having a tire rim diameter of greater than seventeen and one half (17 1/2) inches, and eighty cents ($0.80) per tire for tires having a rim diameter less than or equal to seventeen and one half (17 1/2) inches. The application for reimbursement shall comply with the provisions of Section 710:95-2-20.~~

~~(D) Compensation to a unit of local or county government. The application for reimbursement from the fund shall be in accordance with the provisions of Section 710:95-2-21.~~

~~(5) If the Fund contains insufficient funds in any month to satisfy the eligible reimbursements under paragraph (4), the Commission shall apportion the payments among the qualified applicants under paragraph (4) according to the percentage of waste tires processed, collected and transported, or utilized.~~

~~(6) After the allocations under paragraph (4) are made, any remaining monies in the Fund shall be available for TDF facilities and waste tire facilities that produce crumb rubber for compensation at the rate of Twenty-nine Dollars ($29.00) per ton of processed or whole waste tires used for energy or fuel recovery or the production of crumb rubber.~~

~~(A) The production of crumb rubber shall be considered a compensable event separate from and in addition to any compensation for waste tire processing under subsection C of this section.~~

~~(B) TDF facilities and waste tire facilities authorized to receive reimbursement under this subsection shall report and certify tire material used by weight.~~

~~(C) The facilities shall by sworn affidavit provide to the Commission sufficient information to verify that the facility has used the tires in accordance with the purposes of the Oklahoma Waste Tire Recycling Act.~~

~~(D) If the Fund contains insufficient funds in any month to satisfy the eligible reimbursements under this subsection, the Commission shall apportion the payments among the qualified applicants according to the percentage of waste tires used for energy or fuel recovery or the production of crumb rubber.~~

~~(7) After the allocations under paragraphs (3), (4) and (6) are made, any remaining monies in the Fund shall be disbursed as additional compensation to waste tire facilities or TDF facilities for the collection and transportation of waste tires from Oklahoma tire dealers, automotive dismantlers and parts recyclers, solid waste landfill sites, and dumps certified by the Department priority cleanup list, and delivering the tires to a waste tire facility or a TDF facility. The Commission shall apportion the payments under this subsection among the qualified applicants according to the percentage of waste tires collected and transported.~~

~~(b) **Compliance with Oklahoma Waste Tire Recycling Act required.** Waste tire facilities, TDF facilities, or persons, corporations or other legal entities authorized by the provisions of the Oklahoma Waste Tire Recycling Act to receive reimbursement shall demonstrate that the facilities or legal entities have successfully complied with the requirements of the Oklahoma Waste Tire Recycling Act through the filing of appropriate applications, reports, and other documentation that may be required by the Commission and the Department. [68 O.S. 27A Sections 2-11-401.1 et seq.]~~

[OAR Docket #08-1008; filed 5-22-08]

TITLE 725. OKLAHOMA TOURISM AND RECREATION DEPARTMENT CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #08-1031]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
725:1-1-4. General provisions for meetings of the Oklahoma Tourism and Recreation Commission [AMENDED]
AUTHORITY:
Oklahoma Tourism and Recreation Commission to make rules pursuant to Title 74, Section 2204 (2005) of the Oklahoma Statutes.
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INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Existing Subchapter 1 has been amended conform to the Oklahoma Open Meetings Act.
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 26, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

725:1-1-4. General provisions for meetings of the Oklahoma Tourism and Recreation Commission

(a) All meetings of the Commission will be held and conducted in accordance with the Open Meeting Act, 25 O.S., Sections 301 through 304.
(b) The chairman of the Commission may call special or emergency meetings.
(c) Special or emergency meetings may be called at the written request of a majority of the Commission.
(d) A quorum of the members of the Commission must be present to transact any business.
(e) An affirmative vote from a majority of the members present is required to adopt or approve motion by the Commission.
(f) Members of the general public ~~are~~ may be granted the opportunity to make public comment at meetings of the Commission, however, requests for Commission action must be submitted in accordance with OAC 725:1-9-1.

[OAR Docket #08-1031; filed 5-23-08]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 11. USED MOTOR VEHICLE REBUILDERS

[OAR Docket #08-907]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Licensing Qualifications, Procedures and Fees
765:11-1-2 [AMENDED]
Subchapter 3. Authority
765:11-3-1 [AMENDED]
765:11-3-2 [AMENDED]
765:11-3-4 [REVOKED]
Subchapter 5. Assessment of Fine or Denial, Suspension, or Revocation of License
765:11-5-1 [AMENDED]
765:11-5-2 [AMENDED]
AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission
47 O.S. Section 582(E)(1)
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Subchapter 3. Authority
765:11-3-1 [AMENDED]
765:11-3-2 [AMENDED]

765:11-3-4 [REVOKED]
Subchapter 5. Assessment of Fine or Denial, Suspension, or Revocation of License
765:11-5-1 [AMENDED]
765:11-5-2 [AMENDED]

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07-1485

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
Modification of the Rules relating to used motor vehicle rebuilders is required by legislation affecting 47 O.S. S. 591.11. The rules reflect the broadening of authority granted to rebuilders. Rebuilders are now authorized to buy a broader range of wrecked vehicles and to dispose of them in different manners than before.

CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A),WITH AN EFFECTIVE DATE OF JUNE 26, 2008:

SUBCHAPTER 1. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

765:11-1-2. Definitions

The following words or terms, when used in this Chapter, shall have the following meaning:

"~~Class A~~ Buyer's Identification Card", hereinafter ~~Class A~~ BID

Card, means the ~~Buyer's Identification card~~ certificate issued to a rebuilder pursuant to 47 O.S. Section 591.5, as amended.

"Rebuilder" shall be defined as set forth in 47 O.S. Section 581, as amended.

"Rebuilder's certificate" shall be the license granted by the Used Motor Vehicle and Parts Commission to a qualified rebuilder.

"Rebuilding" shall be defined as the process of reconstructing and repairing a repairable motor vehicle to roadworthy condition, including the completion of cosmetic or aesthetic repairs.

"Repairable motor vehicle" shall include damaged vehicles with an original or salvage certificate of title, but shall not include vehicles for which a junked title has been issued; or which meet the statutory definition of a junked vehicle; or which is sold without a certificate of title; or is sold on a bill of sale or Affidavit of Ownership; or other document which indicates the vehicle is being sold for the sole purpose of dismantling the vehicle or for parts only.

SUBCHAPTER 3. AUTHORITY

765:11-3-1. Authority of a rebuilder

(a) A rebuilder who has been issued a rebuilder's certificate and ~~Class A~~ BID card pursuant to 47 O.S. Section 591.5, shall be authorized to purchase repairable motor vehicles at salvage pools or salvage disposal sales for the purpose of rebuilding those vehicles. A rebuilder shall also be authorized to buy wrecked vehicles for the purpose of using the parts thereof to repair or rebuild the rebuilder's own vehicles.

(b) The holder of a rebuilder's certificate shall not have the authority to act as an automotive dismantler.

~~(c) The holder of a rebuilder's certificate shall not have the authority to purchase vehicles at salvage pools or salvage disposal sales for the purpose of using the parts to rebuild another vehicle or to purchase vehicles with "junked" branded titles.~~

~~(d) The holder of a rebuilder's certificate shall not have the authority to purchase vehicles for another to rebuild or to sell repairable vehicles in an unrepaired condition.~~

765:11-3-2. Authority of a ~~Class A~~ BID card holder

~~(a) A Class A BID card shall authorize only the holder thereof entry into salvage pools or salvage disposal sales and shall not be used by anyone other than the licensee~~.

~~(b)~~ A ~~Class A~~ BID card holder shall not be required to meet the licensing requirements of 47 O.S. Section 591.1 et seq. or the rules enacted by this Commission relating to automotive dismantler and parts recyclers in order to obtain a ~~Class A~~ BID card.

765:11-3-4. Verification by salvage pools [REVOKED]

~~(a) Salvage pools and salvage disposal sales shall be required to verify that a rebuilder has the appropriate Class A BID card before allowing the rebuilder to enter said pool.~~

~~(b) Salvage pools and salvage disposal sales shall be required to monitor their sales in order to insure that Class A BID card holders bid on and purchase only repairable motor vehicles.~~

SUBCHAPTER 5. ASSESSMENT OF FINE OR DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

765:11-5-1. Grounds

(a) A rebuilder's certificate may be denied, suspended, or revoked for the following reasons:

(1) Any of the grounds enumerated in 47 O.S. Section 584 for which a used motor vehicle dealer's license may be denied, suspended, or revoked.

(2) Committing any of the following acts may be deemed grounds for denial, suspension, or revocation of a rebuilder's certificate or assessment of fines pursuant to 47 O.S. Section 584(6)(d) and/or 47 O.S. Section 584(6)(e):

(A) Failure of the rebuilder to disclose in writing to the purchaser of the vehicle that the vehicle has been rebuilt;

(B) Failure of the rebuilder to disclose in writing to the purchaser of the vehicle that the vehicle has a rebuilt certificate of title;

(C) Selling a rebuilt vehicle on a salvage certificate of title;

(D) Failing to obtain a rebuilt vehicle inspection and/or obtain a rebuilt certificate of title prior to the sale of the rebuilt vehicle.

~~(E) Selling a wrecked vehicle purchased from a salvage pool or salvage disposal sale prior to it being rebuilt.~~

~~(F) Using a wrecked vehicle purchased at a salvage pool or salvage disposal sale for the purpose of using the parts to rebuild another vehicle.~~

(b) The Commission may in addition to any other sanction or penalty assessed, impose a fine as authorized by law.

765:11-5-2. Grounds for denial, suspension, or revocation of a ~~Class A~~ BID Card

(a) A ~~Class A~~ BID card may be denied, suspended or revoked for any reason enumerated in 47 O.S. Section 591.9 or 47 O.S. Section 591.11 except those reasons specifically relating to the operation of an automotive dismantler and parts recycling business.

(b) A ~~Class A~~ BID card may be denied, suspended, or revoked pursuant to 47 O.S. Section 591.9(6) for operating as an automotive dismantler and parts recycler without a license.

[OAR Docket #08-907; filed 5-15-08]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 12. SALVAGE POOLS AND SALVAGE DISPOSAL SALES

[OAR Docket #08-908]

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PERMANENT final adoption
RULES:
Subchapter 1. Licensing Qualifications, Procedures and Fees [NEW]
765:12-1-1 [NEW]
765:12-1-2 [NEW]
765:12-1-3 [NEW]
765:12-1-4 [NEW]
Subchapter 3. [RESERVED]
Subchapter 5. Permitted Buyers [NEW]
765:12-5-1 [NEW]
765:12-5-2 [NEW]
Subchapter 7. Reports [NEW]
765:12-7-1 [NEW]
765:12-7-2 [NEW]
765:12-7-3 [NEW]
Subchapter 9. Payments to the Commission [NEW]
765:12-9-1 [NEW]
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75 O.S. Section 307
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Subchapter 1. Licensing Qualifications, Procedures and Fees [NEW]
765:12-1-1 [NEW]
765:12-1-2 [NEW]
765:12-1-3 [NEW]
765:12-1-4 [NEW]
Subchapter 5. Permitted Buyers [NEW]
765:12-5-1 [NEW]
765:12-5-2 [NEW]
Subchapter 7. Reports [NEW]
765:12-7-1 [NEW]
765:12-7-2 [NEW]
765:12-7-3 [NEW]
Subchapter 9. Payments to the Commission [NEW]
765:12-9-1 [NEW]
Gubernatorial approval:
October 2, 2007
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25 OkReg 362
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
A new chapter relating to salvage pools and salvage disposal sales is required by legislation affecting 47 O.S. S. 591.11. A new regulatory scheme relating to reporting and payment of fees to the Commission requires the Commission to implement the new rules to define what sales of vehicles require pools and disposal sales to pay fees to the Commission, when reports are due and the format for those reports.
CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JUNE 26, 2008:

SUBCHAPTER 1. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

765:12-1-1. Purpose

The rules of this Chapter have been adopted for the purpose of complying with the provisions of 75 O.S. Section 250 et. seq. and 47 O.S. Section 582 (E). This chapter will provide

a description of the qualifications for obtaining a used motor vehicle dealer's license for the purpose of conducting salvage disposal sales and/or sales by salvage pools.

765:12-1-2. Fees

The fees required for an application or renewal of a used motor vehicle dealer's license for the purpose of conducting salvage disposal sales and/or sales by salvage pools shall be the same as those paid by used motor vehicle dealer applicants. An application fee will be returned to the applicant in the event the license is denied.

765:12-1-3. Applicant

Any person or business which regularly conducts a salvage disposal sale or acts as a salvage pool shall be licensed as a used motor vehicle dealer.

765:12-1-4. Bond and insurance

(a) **Dealer bond.** A salvage pool or salvage disposal sale shall be required to obtain and maintain the used motor vehicle dealer surety bond required for a used motor vehicle auction.

(b) **Liability insurance.** A salvage pool or salvage disposal sale shall be required to obtain and maintain liability insurance as required for a used motor vehicle dealer.

SUBCHAPTER 3. [RESERVED]

SUBCHAPTER 5. PERMITTED BUYERS

765:12-5-1. Qualifications

Sales at a salvage pool or salvage disposal sale shall be open only to any person who is a resident of the state of Oklahoma, a company representative of a business that is based in this state, or any person who may legally purchase salvage vehicles in his or her home state or country.

765:12-5-2. Verification

It shall be the duty of the owner, manager or person in charge of any salvage pool or salvage disposal sale to prohibit bidding by, and refuse to sell to, any person who is not qualified to purchase salvage vehicles as provided by Oklahoma statute or the Rules of this Commission.

SUBCHAPTER 7. REPORTS

765:12-7-1. Reports of salvage vehicle sales transactions

(a) A salvage pool or salvage disposal sale shall provide a register or report to the Commission of all salvage vehicle sales transactions. Said register or report shall be provided to the Commission without cost or charge. The register or report shall be provided by electronic transmission in a form compatible to the Commission so that said report may be accessed and reviewed by Commission personnel without substantial modification or reformatting.

(b) The register or report shall contain the year, make, model, style and vehicle identification number of each vehicle sold in a salvage vehicle sales transaction and the name and addresses of the seller and the purchaser. The register or report shall be in alphabetical order by purchaser. If more than one person purchases vehicles using the name of a company, business or other entity, the register or report shall list the name of the company, business or other entity followed by the name of the individual.

(c) Submission of the information required in said report or register shall not relieve the salvage pools or salvage disposal sales from any of the record keeping requirements of a used motor vehicle dealer or producing said records for Commission personnel as requested.

(d) The report shall be submitted to the Commission within seven (7) working days of the sale of the salvage vehicle sales transaction.

765:12-7-2. Pre-sale information

When offering a vehicle for sale for an insurance company, a salvage pool or salvage disposal sale must provide on its web site the full seventeen-digit vehicle identification number (VIN) of the vehicle and the name of the insurance company selling the vehicle.

765:12-7-3. Post sale information

After completion of bidding on a salvage vehicle offered for sale by an insurance company, the salvage pool or salvage disposal sale shall show the identifying or registration number of the winning bidder on any sale that takes place on the Internet or by on-line bidding.

SUBCHAPTER 9. PAYMENTS TO THE COMMISSION

765:12-9-1. Fees Report

Salvage pools or salvage disposal sales shall remit to the Commission a fee of Two Dollars ($2.00) for each salvage vehicle sales transaction. Said fee shall be paid by the tenth of each month following the month in which the salvage vehicle sales transaction occurred. A summary report of all salvage vehicle sales transactions for the previous month shall accompany said remittance.

[OAR Docket #08-908; filed 5-15-08]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 13. TEMPORARY LICENSE PLATES

[OAR Docket #08-953]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. APPLICATION [NEW]
765:13-1-1 [NEW]
Subchapter 3. DESIGN [NEW]
765:13-3-1 [NEW]
765:13-3-2 [NEW]
765:13-3-3 [NEW]
765:13-3-4 [NEW]
765:13-3-5 [NEW]
AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission
47 O.S. Section 582(E)(1)
75 O.S. Section 302(A)(1)
75 O.S. Section 307
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Failure of the Legislature to disapprove the rules resulted in approval on April 17, 2008. *[**Note:** On May 15, 2008, the Governor signed House Joint Resolution 1107, disapproving certain language in 765:13-3-3(c) and (d). The resolution deleted language which did not entirely reflect the intent of the Oklahoma Legislature. The disapproved language has been removed from the text being promulgated herein.]*
Final adoption:
April 17, 2008
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Subchapter 1. APPLICATION [NEW]
765:13-1-1 [NEW]
Subchapter 3. DESIGN [NEW]
765:13-3-1 [NEW]
765:13-3-2 [NEW]
765:13-3-3 [NEW] *[**Note:** None of the disapproved permanent language proposed for 765:13-3-3 was in the emergency rule, and the resulting permanent rule approved for 765:13-3-3 was identical to, and will supersede, the emergency rule.]*
765:13-3-4 [NEW]
Gubernatorial approval:
October 2, 2007 (effective November 1, 2007)
Register publication:
25 Ok Reg 3613
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
A new chapter of Rules relating to temporary license plates is required because of legislation enacted in 2007 affecting 47 O.S. S. 1137.1.E. The Commission is charged with approving the type of material for the new temporary license plates and develop requirements to discourage illegal duplication and use of the plates. The rules set forth the information the plates should contain and the relative prominence of various features of the plates.
CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF JUNE 26, 2008:

SUBCHAPTER 1. APPLICATION

765:13-1-1. Application

The rules enacted herein regarding temporary license plates shall apply only to dealers regulated by the Used Motor Vehicle and Parts Commission and shall not apply to dealers in non-motorized vehicles or trailers regulated by another agency.

SUBCHAPTER 3. DESIGN

765:13-3-1. Purpose

The rules of this Chapter have been adopted for the purpose of complying with the provisions of 75 O.S. Section 250 et. seq. and 47 O. S, Section 1137.1, as amended. This chapter will provide a description of the design and use of the temporary license plate for used motor vehicle sales.

765:13-3-2. Form and substance of the temporary license plate

(a) The temporary license plate for all used motor vehicles except motorcycles shall be 11 1/2 inches in length and 6 inches in height.
(b) A temporary license plate for a motorcycle shall be 7 inches in length and 4 inches in height.
(c) The temporary license plate shall be of a weatherproof non-glare plastic-impregnated white substance with ink absorbing characteristics capable of withstanding continual exposure to the natural elements such as water, mud and wind without loss of form or content for a period in excess of thirty (30) days.
(d) Fastener holes for placing the temporary license plate to the vehicle shall be at an appropriate location for use of the factory installed mounting holes on the vehicle on which the temporary license plate shall be placed.

765:13-3-3. Content of the temporary license plate

(a) There shall be two rectangular shaped blocks for the month, two rectangular shaped blocks for the day of the month, and two rectangular shaped blocks for the year indicating the date of the sale of the vehicle. The blocks shall be of a size of at least 1 3/4 inches in height and 1 1/2 inches in width and pale

or light toned green in color. The rectangular blocks for the motorcycle temporary license plates shall be 1 inch in height and 3/4 inch in width. Preprinted below the two blocks on the left shall be the words "SOLD MONTH"; below the middle two blocks shall be the words "SOLD DAY"; and below the two blocks on the right shall be "SOLD YEAR".

(b) Any writing on the temporary license plate not preprinted shall be applied by an instrument using indelible black ink. The ink marker for writing in the date blocks should be capable of making a mark of at least 1/4 inch in width.

(c) The temporary license plate shall have the following preprinted language: The selling dealer's company name, the word "Oklahoma" or "Okla" , and the words "30 Day Temporary Tag" and a line with the words "Vehicle Year", "Make", "Model", below the line.

(d) In addition to the preprinted information recited in paragraphs (a) and (c), the temporary license plate shall have preprinted a sequential number of no fewer than six digits, approximately one inch in height. The height of the preprinted unique sequential number for a motorcycle temporary license plate shall be no less than 1/2 inch. The dealer shall record the temporary license plate's unique sequential number on the front of the vehicle's bill of sale in a conspicuous location. A dealer shall not issue more than one unique sequentially numbered temporary license plate for the same vehicle sale.

(e) The name of the purchaser shall be written on the temporary license plate or in lieu of the name of the purchaser the words "see bill of sale" may be used. If the term "see bill of sale" is used, the purchaser shall retain the bill of sale in the vehicle at all times until the vehicle has been registered in the purchaser's name.

765:13-3-4. Location of the temporary license plate

Upon the sale of a used motor vehicle, the temporary license plate shall be placed on the vehicle at the location provided for the permanent license plate.

765:13-3-5. Records

The dealer shall maintain a record of temporary license plates issued. The record shall include the unique sequential number, the date issued, the name of the purchaser and the year, make, model and vehicle identification number of the vehicle for which the temporary license plate was issued. The record shall be available to Commission and law enforcement personnel upon request.

[OAR Docket #08-953; filed 5-16-08]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 30. BUYER'S IDENTIFICATION CARDS [REVOKED]

[OAR Docket #08-909]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Licensing Qualifications, Procedures and Fees [REVOKED]
765:30-1-1 [REVOKED]
765:30-1-2 [REVOKED]
765:30-1-3 [REVOKED]
765:30-1-4 [REVOKED]
765:30-1-5 [REVOKED]
765:30-1-6 [REVOKED]
765:30-1-7 [REVOKED]
Subchapter 3. Assessment of Fine or Denial, Suspension, or Revcation of Bid Card [REVOKED]
765:30-3-1 [REVOKED]
765:30-3-2 [REVOKED]
Subchapter 5. Reciprocity [REVOKED]
765:30-5-1 [REVOKED]
Subchapter 7. Salvage Pools and Salvage Disposal Sales [REVOKED]
765:30-7-1 [REVOKED]
765:30-7-2 [REVOKED]
765:30-7-3 [REVOKED]

AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission
47 O.S. Section 582(E)(1)
75 O.S. Section 302(A)(1)
75 O.S. Section 307

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765:30-1-2 [REVOKED]
765:30-1-3 [REVOKED]
765:30-1-4 [REVOKED]
765:30-1-5 [REVOKED]
765:30-1-6 [REVOKED]
765:30-1-7 [REVOKED]
Subchapter 3. Assessment of Fine or Denial, Suspension, or Revcation of Bid Card [REVOKED]
765:30-3-1 [REVOKED]
765:30-3-2 [REVOKED]
Subchapter 5. Reciprocity [REVOKED]
765:30-5-1 [REVOKED]
Subchapter 7. Salvage Pools and Salvage Disposal Sales [REVOKED]
765:30-7-1 [REVOKED]
765:30-7-2 [REVOKED]
765:30-7-3 [REVOKED]
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October 2, 2007
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25 OkReg 364
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07-1489

INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Because HB 2118 eliminated buyer's identification cards for all practical purposes, there is no need for rules relating to them.
CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2008:

SUBCHAPTER 1. LICENSING QUALIFICATIONS, PROCEDURES AND FEES [REVOKED]

765:30-1-1. Purpose [REVOKED]

~~The rules of this Chapter have been adopted for the purpose of complying with the provisions of 75 O.S. Section 250 et seq. and 47 O.S. Section 582 (E). This Chapter will provide a description of the qualifications for obtaining a Buyer's Identification Card, the grounds for denial, suspension, or revocation of said Card, terms of reciprocity with other states, the salvage pools and salvage disposal sales, and the duties related to the proper conduct of the salvage pools and disposal sales.~~

765:30-1-2. Fees [REVOKED]

~~The fees for a Buyer's Identification card, hereinafter BID card, are recited in 47 O.S. Section 591.11.~~

765:30-1-3. Applicant [REVOKED]

~~The Commission, in determining the qualifications and eligibility of an applicant for a BID card, will base its determination upon the following factors:~~

~~(1) The applicant's business integrity, based upon the applicant's experience in the same or similar businesses, his business history, whether such applicant will devote full or part time to the business, and whether such applicant is a resident of the state in which he is employed.~~

~~(2) A BID card will not be issued, renewed, or endorsed until the employing automotive dismantler is licensed and has certified that the applicant for said card is in his employ and a resident of the state of said employment.~~

765:30-1-4. Issuance of BID card [REVOKED]

~~(a) **Form.** License numbers and/or identification numbers to bid or buy at salvage pools or salvage disposal sales shall be issued by the Commission on a form prescribed by it which shall include, but not limited to, the name, address driver's license number, physical description and signature of the applicant, and the name and address of the employer of the applicant.~~

~~(b) **Limit.** All BID cards will be sent to the dismantler for distribution to the respective applicants. There shall be no more than three (3) BID cards per business.~~

~~(c) **Information.** The BID card shall include the name and driver's license number of the applicant, name and address of the employer of the applicant, the signature of the applicant, and the dismantler's number prefixed with BID, followed by the current year (BID-0000-90).~~

~~(d) **Use.** The BID card shall be carried upon the cardholder's person and same displayed to owner, manager, or person in charge of any salvage pool or salvage disposal sale. Physical description and signature of cardholder must be compared with cardholder's driver's license for valid identification by owner, manager, or person in charge of any salvage pool or salvage disposal sale. It shall be the duty of the owner, manager, or person in charge of any salvage pool or salvage disposal sale to refuse to sell to any person any wrecked or repairable motor vehicle if such person does not display a valid BID card.~~

~~(e) **Certificate.** A certificate will be issued by the Commission to be retained by the employing dismantler as evidence that its Buyer Identification cardholder is properly licensed. Upon termination of employment, the certificate will be returned by the dismantler to the office of the Oklahoma Used Motor Vehicle and Parts Commission within ten (10) days.~~

765:30-1-5. Renewal of BID card [REVOKED]

~~The BID card shall be renewable by January 1st of each year, accompanied by the appropriate fees.~~

765:30-1-6. Changes [REVOKED]

~~(a) **Notice.** The dismantler will notify the Commission when a Buyer's Identification cardholder's employment is terminated by returning the Buyer's Identification cardholder's certificate as set out above.~~

~~(b) **Card.** Each Buyer's Identification cardholder shall surrender his BID card to the Commission for endorsement of change of employer, before again engaging in business for another dismantler or as a dismantler and recycler.~~

765:30-1-7. Foreign buyers [REVOKED]

~~(a) **Definition.** A foreign buyer shall be a Buyer's Identification Cardholder person residing outside the boundaries of the fifty states of the United States and having the authority to engage in the automotive dismantling business legally purchase salvage vehicles in the country of the buyer's residence.~~

~~(b) **Application.** All applications for a Buyer's Identification Card shall be submitted in English. All foreign buyer applicants shall submit a copy of a photo identification issued by the governmental authority of the nation in which they reside.~~

~~(c) **Limitation.** Buyer's Identification Cards for foreign buyers shall not be issued to an address within the boundaries of the fifty states of the United States.~~

SUBCHAPTER 3. ASSESSMENT OF FINE OR DENIAL, SUSPENSION, OR REVOCATION OF BID CARD [REVOKED]

765:30-3-1. Grounds [REVOKED]

~~(a) The BID card may be refused, cancelled, revoked, or a fine assessed for the same reasons's a license under The Automotive Dismantler and Parts Recycler's Act may be refused, cancelled, or revoked, or a fine assessed. Any person whose BID card is refused, cancelled, revoked, or has a fine assessed shall enjoy the same review and appeal procedures as a person whose license is refused, cancelled, revoked, or is assessed a fine.~~

~~(b) The Commission is authorized to refuse to issue a BID card to any person, firm, or corporation who does not meet the requirements of 47 O.S. 591.1 et seq., or the requirements of these regulations; to cancel the BID card of any licensee for willful failure to continue to meet such requirements of The Automotive Dismantler and Parts Recycler's Act ; is authorized to refuse, cancel, or revoke a BID card for a felony conviction for violation of a state or federal law involving theft or for violation of the Oklahoma Certificate of Title Law or similar laws of other states, by an applicant, a licensee, a partner for the applicant or licensee, or director or manager in the case of a corporate applicant or licensee; and is authorized to assess a fine for any violation of the Automotive Dismantler and Parts Recycler's Act.~~

765:30-3-2. Procedure [REVOKED]

~~If the Commission cancels or revokes a BID card or assesses a fine, the holder of such BID card shall be given notice and an opportunity to be heard in the manner as set out in 47 O.S. Section 591.1 et seq. Or these rules and regulations. If the Commission denies a BID card, the applicant shall be given notice and an opportunity to be heard in accordance with the procedures in 47 O.S. Sections 591.9 and 591.10. Where there is a conflict between the applicable law and the Rules of this Commission, the applicable law shall prevail.~~

SUBCHAPTER 5. RECIPROCITY [REVOKED]

765:30-5-1. Eligibility [REVOKED]

~~(a) **License.** Dismantlers licensed in other states shall be permitted to buy at a salvage pool or salvage disposal sale provided that those out of state dismantlers are licensed as dismantlers in states which have a dismantler license law that includes the inspection and control by the respective state of salvage disposal sale records.~~

~~(b) **Card.** Nothing herein shall prohibit salvage dealers licensed in other states from buying at a salvage pool or salvage disposal sale, provided that the state in which they are licensed reciprocates in the same manner to salvage dealers licensed under Oklahoma law and provided that they obtain a BID card as required under 47 O.S. Section 591.11.~~

SUBCHAPTER 7. SALVAGE POOLS AND SALVAGE DISPOSAL SALES [REVOKED]

765:30-7-1. Bidding privileges [REVOKED]

~~(a) **Limitation.** Sales at a salvage pool or salvage disposal sale shall be opened only to persons possessing a current, legal BID card to buy at a salvage pool or salvage disposal sale. Only Buyers Identification Card holders shall be allowed at salvage pool sales on the date of the sale. Visitors shall not be allowed in the sales areas.~~

~~(b) **Verification.** It shall be the duty of the owner, manager, or person in charge of any salvage pool or salvage disposal sale to prohibit the bidding by any person who does not display his BID card, and further, to refuse to sell to any person any wrecked or repairable motor vehicle if such person does not display a valid BID card. The BID card shall be carried upon the cardholder's person and same displayed to owner, manager, or person in charge of any salvage pool or salvage disposal sale. Physical description and signature of cardholder must be compared with cardholder's driver's license for valid identification by owner, manager, or person in charge of any salvage pool or salvage disposal sale. It shall be the duty of the person in charge of any salvage pool or salvage disposal sale to refuse to sell to any person any wrecked or repairable motor vehicle if such person does not display a valid BID card.~~

~~(c) **Internet bidding.** It shall be the duty of the owner, manager or person in charge of any salvage pool or salvage disposal sale to initiate appropriate procedures to comply with paragraph (b) above when the salvage disposal sale is conducted in whole or in part by internet bidding. Identification of a bidder on the internet may include, but not limited to, issuance of a unique identifying number or password to each individual BID cardholder.~~

~~(d) **Bidder's responsibility.** It shall be the responsibility of the BID cardholder to secure and maintain the secrecy and integrity of the unique identifying number and password issued to the cardholder by the salvage pool. Use of the unique identifying number or password by any person other than the cardholder shall be deemed an unauthorized use and may be grounds for revocation of the BID card.~~

765:30-7-2. Copies of BID cards [REVOKED]

~~Bids at salvage pools or salvage disposal sales shall be verified as licensed dismantler bids by attaching a copy of the dismantler's BID card or identifying number to each bid sheet accepted for sale of salvage vehicles.~~

765:30-7-3. Sales to foreign buyers [REVOKED]

~~Sales of vehicles to foreign Buyer's Identification Cardholders shall be reported to the Oklahoma Tax Commission, Motor Vehicle Division, on the prescribed form within five (5) calendar days of the sales of said vehicle.~~

[OAR Docket #08-909; filed 5-15-08]

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

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 13. PRINTING AND PUBLICATIONS

780:1-13-1. Publications Clearinghouse; cost information

(a) **Publications Clearinghouse.** Information published for the Department, regardless of the source of funds, will be deposited with the Publications Clearinghouse, with a minimum of 25 copies of non-curriculum products and 2 copies of curriculum products. Such information includes that which is intended for distribution to the public and that which is reproduced solely to meet the internal operating needs of the agency, its divisions and/or units of government that have a direct relationship to the state agency in regard to its ability to carry out its responsibilities.

(b) **Cost information.**

(1) **Inclusion of costs paragraph.** The Department shall list cost information on each state publication issued, whether the printing is accomplished by the agency internally or through an outside public or private entity. Cost information will be set forth in a separate paragraph within the document and will conform to the following format: This publication is printed and issued by the Oklahoma Department of Career and Technology Education as authorized by 70 O.S. 1991, §14-103, as amended. _____ copies have been prepared and distributed at a cost of $_____. Copies have been deposited with the Publications Clearinghouse of the Oklahoma Department of Libraries.

(2) **Location of bibliographic information.** To achieve bibliographic control of state government publications and to assure that the identity of a publication can be ascertained in terms of the issuing authority, author, and subject matter sufficient to distinguish it from other publications, the following information shall be included on the title page or other suitable place near the beginning of each state publication required to be deposited with the Publications Clearinghouse:

(A) Full name of the issuing agency, including the division or subdivision responsible for publication, and the parent body;

(B) Name of any personal author to whom credit is intended to be given;

(C) Title of the publication;

(D) Date and place of publication;

(E) Frequency of issue, if a periodical is weekly, monthly, etc.;

(F) Volume and number of issue, if appropriate; and,

(G) Date, or month and year of issue, if appropriate.

(3) **Publications officer.** The Department has designated the ~~Manager of the Creative Services Division~~ Printing Plant Administrative Assistant as the Publications Officer. The Publications Officer shall have the duties to provide copies of all state publications of the agency, to compile and forward required semiannual lists of the state publications of the agency, and to provide other related information as may be requested by the Publications Clearinghouse.

[OAR Docket #08-1059; filed 5-23-08]

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

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SUBCHAPTER 3. STATE TECHNICAL ASSISTANCE, SUPERVISION, AND SERVICES

780:10-3-2. Career guidance and counseling, career information, disability services, integrated academics, innovation support services, essential skills and career development

(a) **Career guidance to technology centers.** The Department shall provide coordination and leadership for career guidance and counseling to area technology centers and other entities whose primary purpose is the delivery of career guidance and counseling. Technology center districts shall have an identifiable guidance program in place, implemented and administered by an adequate number of credentialed staff and coordinated by staff with experience in delivering or supervising student services that addresses the career development needs of all students. Technology centers shall provide all students with information and advisement about career and educational options, administer assessment instruments such as interest inventories, aptitude tests, and achievement tests or acquire the results of such assessments prior to enrollment to provide guidance in program selection and placement, and provide support for students to help them be successful in their career pathway.

(b) **Career Information.** The Department shall provide technical assistance to schools, institutions, and agencies for career development software and career information materials

(c) **Financial Aid Services.** The Department shall represent the Oklahoma career and technical education system by performing a liaison function with the Student Financial Aid Office (SFA) of the US Department of Education. As such, the Department will determine the in-service needs of technology center financial aid personnel and arrange for knowledgeable individuals, from SFA or other professional organizations, to conduct workshops and training sessions. The purpose of these in-service opportunities is to strengthen financial aid programs at technology centers ensuring adherence to current state and federal regulations governing the administration of financial aid programs. This operational unit shall collect all statistical data related to financial aid activities at technology centers and report this information where appropriate. This operational unit shall also administer the Oklahoma GI Bill program which provides tuition assistance to qualified Vietnam-era veterans.

~~(d) **Career Specialists.** Career Specialists shall provide on-site and in-service activities to local education agencies or technology centers to develop and/or implement career programs including career guidance, career information, career resource centers and assistance in the use and implementation of materials and services provided by the Department to the local education agency or technology center. Career Specialists shall operate in regions designated by the Department. The local education agency or technology center shall request the assistance and shall designate a local career development liaison to coordinate the services to be delivered.~~

(d) **Innovation Support Services.** The department shall provide support for the alignment of Oklahoma education innovation and improvement initiatives through the services of the Innovation Support Services Liaisons. The Innovative Support Services Liaisons shall provide technical assistance and services focused on the High Schools That Work ten key practices, guidance and instruction for improved student achievement along with leadership to create a culture of high expectations to local education agencies or technology centers for school improvement with raised student achievement. The ISS Division/Liaisons shall accomplish its purpose by providing:

(1) Support for education innovation.

(2) Lead and participate in technical assistance visits and provide technical review visitswith follow-up.

(3) Assist in locating and using resources and materials.

(4) Provide guidance for implementing career pathways, plans of study, improved instruction, and services supported by the Department.

(5) ISS Liaisons shall serve local education agencies or technology centers designated by the Department. The local education agency or technology center shall request the assistance and shall designate a local administrator,

counselor, or instructor to coordinate the services to be delivered.

(e) **Disabilities services.** The Department shall coordinate and provide technical assistance to assure appropriate services and program accessibility for individuals with disabilities and other members of special populations in technology centers and in *Career*Tech programs in local education agencies. The Department will also provide guidance and assistance for the field to assist students with transition from high school to a technology center as well as transition from technology centers to postsecondary education and/or work.

(f) **Integrated academics and essential skills.** The Department shall coordinate developmental activities and provide technical assistance to technology centers and skills centers for education enhancement, career assessment, and employability skills development.

780:10-3-3. Instructional materials development and dissemination

(a) **Purpose.** The Curriculum and Instructional Materials Center (CIMC) and the Testing Division shall develop, warehouse, and disseminate instructional materials.

(b) **In-state sales.** The Department curriculum and instructional materials shall be made available for purchase in state upon request according to the prices designated in the CIMC catalog or online catalog. All prices are subject to change without notice.

(c) **Out-of-state sales.** The Department will review the Out-of-State Pricing Policy annually and establish a pricing structure for selling the instructional materials developed by the agency.

(d) **Ordering.** Orders for CIMC materials shall be made using the catalog order form, by telephone, fax, or Internet. All orders for Testing Division products will be filled following standard CIMC ordering procedures.

(1) **Mail orders.**

(A) **Inclusion of item number and title in orders.** When using the order form in the CIMC catalog, both the item number and the title shall be included to avoid processing errors.

(B) **Payment.** All school and other institutional orders shall be accompanied by an official purchase order number, credit card number, or personal check.

(2) **Telephone orders.**

(A) **Placing an Order.** Telephone orders may be placed by calling the Curriculum Customer Service Division of the Oklahoma Department of Career and Technology Education.

(B) **Order confirmation.** An authorized purchase order or credit card number shall be available when the order is placed.

(3) **Fax orders.** All fax orders shall contain items to be purchased and a purchase order
or credit card number.

(4) **Internet orders.** All orders taken from the CIMC home page Internet catalog should be mailed, e-mailed, or faxed to Curriculum Customer Service

(e) **Shipping charges.** Shipping charges shall be included in the invoice statement for all materials.

(f) **Payments.**

(1) **Invoices and payments.** All orders with an authorized purchase order number shall be invoiced within five (5) working days after the materials have been shipped. Payment of materials shall be upon receipt of invoice.

(2) **Individual and for-profit company purchases.** Individual and for-profit company purchases shall be shipped upon receipt of a check, credit card, or money order for the amount of purchase plus sales tax (only if Oklahoma customer) plus shipping.

(3) **Acceptable currency.** Checks shall be drawn upon a United States bank and payable in United States currency.

(4) **Credit card purchases.** Any purchase can be shipped upon authorization of the following credit cards: VISA, MasterCard, and Discover.

(5) **International orders.** All orders received from out of the continental United States shall be shipped upon receipt of a valid credit card number or United States money order for the amount of purchase plus 20 percent for shipping.

(6) **Online Curriculum.** Payment for curriculum delivered through the CTLN or other online partners will be in accordance with the published payment policies of CIMC.

(7) **Online testing.** Access to the department's online testing system will be free to in-state CareerTech programs. Access to this system will be available to all other users at established rates upon receipt of an official purchase order number, credit card number, or personal check.

(g) **Authorization to return materials.**

(1) **In-state return.** In-state customers shall request authorization to return materials. Upon approval, the materials shall be returned prepaid, in resalable condition, within 90 days from the invoice statement date.

(2) **Out-of-state return.** Out-of-state customers shall request authorization to return materials. Upon approval the materials shall be returned prepaid, in resalable condition, within 30 days from the invoice statement date.

(3) **Stipulations for full credit.** The following stipulations apply to all in-state and out-of-state returns:

(A) **Authorization.** After authorized returned goods are received, full credit will be issued for current editions of materials that are unmarked and in resalable condition. Items returned to the CIMC that are not in resalable condition, are not within the approved return period, or are not authorized for return will be returned to the purchaser without credit.

(B) **Shipping costs.** Original shipping costs must be paid by purchaser on all returns unless there was an error by CIMC customer service or warehouse.

(C) **Shipping guidelines.** After receiving authorization, the materials should be shipped to Oklahoma Department of Career and Technology Education,

Instructional Materials Warehouse, 1201 North Western, Stillwater, Oklahoma 74074.

(D) **Invoice number.** The invoice number on which the materials were billed should be included with the returned materials.

(E) **Restocking fee.** Materials returned outside the stipulations for full credit and authorization will be assessed a 15% restocking fee.

(h) **Damaged materials.**

(1) **Credit.** For credit to be authorized, Curriculum Customer Service shall receive notification of damaged materials within five days of receipt of materials. Credit for goods in defective condition will be 100 percent of invoice price or free replacement.

(2) **Damage incurred in transit.** If materials were damaged in shipment, claims must be filed against the carrier. The CIMC is not responsible for damage incurred in transit.

SUBCHAPTER 3. STATE TECHNICAL ASSISTANCE, SUPERVISION, AND SERVICES

780:10-3-11. Career Resource Network (CRN) [REVOKED]

~~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.~~

780:10-3-12. Systems design and computer services

(a) **Responsibilities.** The Systems Design and Computer Services Division (SDCS) and Educational Technology Resources (ETR) shall be responsible for the following:

(1) Design, develop, secure, and implement information and communications technology (ICT) systems.

(2) Design, maintain, secure, and support the network infrastructure.

(3) Ensure the availability of the Department's ICT resources in a 24/7 format.

(4) Deliver software training, technical assistance, and help desk services.

(5) Procure, administer, and be accountable for Department owned, leased, and/or rented ICT assets (hardware and software) and administer lease and/or license agreements.

(6) Design, develop, and deliver e-learning services and other digital content.

(7) Provide videoconferencing, video production, broadcast, and on-site conference/workshop services.

(8) Maintain the agency's technology systems in compliance with the state's Information Security policy.

(9) Protect confidential records stored or transmitted using the agency's technology systems.

(10) Ensure accessibility of the agency's information technology resources.

(b) **Information security.** The Systems Design and Computer Services Division (SDCS) shall have responsibility to develop and ensure that the agency's implementation of the State of Oklahoma Information Security Policy, Procedures, and Guidelines is compliant as issued by the Office of State Finance. SDCS shall have authority to engage with appropriate state and federal authorities to address and resolve any unauthorized breach of information security.

(c) **Confidential records.** The System Design and Computer Services Division (SDCS) shall have responsibility to maintain and ensure the security of all confidential records as defined in Section 780:1-19-1 that are stored and transmitted on the agency's technology systems. SDCS is required to ensure access to confidential records stored on the agency's technology systems is limited to employees acting in their official capacities only.

(d) **Information Technology (IT) Accessibility.** The Systems Design and Computer Services Division (SDCS) shall have responsibility to ensure the agency's technology systems, websites, IT purchasing, and IT reporting are compliant with the State of Oklahoma Information Technology Accessibility Standards as issued by the Office of State Finance to adhere to HB 2197 (2004) signed by the governor.

SUBCHAPTER 9. SERVICE CONTRACTS AND EQUIPMENT GUIDELINES

780:10-9-1. Contracted services, boards, and commissions

(a) **Agreements and contracts.** The Department may enter into agreements and contracts with other agencies and entities as may be necessary or feasible for the furtherance of career and technology education. Such contracts and agreements shall be in accordance with state and federal laws and internal agency rules and procedures.

(b) **Housing and other support.** The Department may, through contractual arrangements, provide housing and support services to other entities whose primary purpose is delivery of career and technology education (such as ~~the Mid-America Vocational Curriculum Consortium~~ MAVCC-Multi-State Academic and Vocational Curriculum Consortium).

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

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SUBCHAPTER 3. TECHNOLOGY CENTERS EDUCATION

780:15-3-1. Rationale; corporation status; taxing authority

(a) **Clientele.** The concept of technology centers, embraces ~~training~~ career and technology education for all who ~~need it and want it~~ can benefit. Specifically, the Carl D. Perkins Vocational Education Act of 1984 (PL98-524) and subsequent amendments thereto provide training for high school students; persons who have completed or left high school; persons employed but who need training or retraining to achieve stability or advancement in employment; and for persons who are academically or socioeconomically disadvantaged or who have physical or mental disabilities. Admission to the technology center or to specific programs shall not be contingent upon any single measure but upon a combination of factors including but not limited to achievement levels, aptitude, interest, work history, and ability to benefit in terms of employment.

(b) **Establishment.** Technology center districts may be established through criteria and procedures established by the State Board and shall be operated in accordance with the rules and regulations of the State Board [70 O.S. 1988, §14-104 and Section 9B, Article X, Oklahoma Constitution].

(c) **Official name-technology centers.** *Its official name shall be designated by the State Board of Career and Technology Education, in which name it may sue and be sued, and be capable of contracting and being contracted with, and holding real and personal estate* [70 O.S. 1988, §14-108(B)]. The State Board shall authorize local area school districts to utilize unofficial names for marketing purposes. The State Board recognizes the term Technology Center. Any exceptions must be approved by the State Board.

(d) **Corporation status.** *A technology center district shall be a body corporate and shall possess the usual powers of a corporation for public purposes* [70 O.S. 1988, §14-108(B)].

(e) **Operational mill levy.** Constitutional authorization has been granted to vote up to five mills on the dollar valuation of the taxable property in a technology center district for operational purposes. If approved by the majority of the voting electors, it needs to be voted only once, unless there is a need to increase or decrease a millage levy currently under five mills. If the existing millage levy is less than five mills, and it is necessary to increase the millage, the question to be voted should be on the increased millage only and not on the total millage, and should be so specified on the voting ballot.

(f) **Building fund levy.** Authorization has been granted to vote up to five mills on the dollar valuation of the taxable property in a technology center district for building purposes pursuant to the provisions of 70 O.S.Supp.1995, Section 1-118.1. Any millage levy voted is effective for one year. If a building fund levy is needed for multiple years, it shall be voted upon each year.

(g) **Local incentive levy.** Authorization has been granted to vote up to five mills local incentive levy on the dollar valuation of the taxable property in a technology center district. This levy may be used for operational or capital needs purposes. This levy, when approved, shall be made each fiscal year thereafter until repealed by a majority of the electors of the technology center district voting on the question at an election called for that purpose. If the existing millage levy is less

than five mills, and it is necessary to increase the millage, the question to be voted should be on the increased millage only and not on the total millage, and should be so specified on the voting ballot.

(h) **Capital outlay bonds.** Authorization has been granted to vote for capital improvements (such as land, buildings, and equipment) that are financed by the issuance of the technology center district's general obligation bonds. Bonds so voted upon and approved by a majority of the votes cast, once issued, shall not cause the technology center district to become indebted in an amount, including existing indebtedness, in the aggregate exceeding five percent of the valuation of the taxable property in the technology center district.

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 campuses.** The State Board shall approve the location of a site for an official campus of a technology center district. If the campus is able to provide a minimum of five full-time programs, then it may be recognized as an official campus and will be eligible for 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.

(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. A second election must be requested by the technology center board and approved by the State Board.

(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~~ instruction. 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~~ instruction 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 assigning appropriate administrative personnel to evaluate the technology center's certified faculty and determining that such persons have a technology center administrator's credential. 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 Career Tech teacher, supervisor, or administrator ~~of an approved *Career*Tech program~~. Third, the technology center superintendent shall hold a valid Oklahoma *Career*Tech teaching certificate. Fourth, the technology center superintendent shall have a Technology Center Administrator's Credential. ~~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~~3) **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~~4) **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.~~

(A) **Standard Technology Center Administrator's Credential.** A person who has a superintendent's certificate or a secondary principal's certificate and at least five years of experience as a CareerTech teacher, supervisor, or administrator and has a valid Oklahoma *Career*Tech teaching certificate shall be issued a standard technology center administrator's credential.

(B) **Provisional technology center administrator's credential.** A person with a superintendent's certificate or a secondary principal's certificate and a valid Oklahoma teaching certificate and at least five years of experience as a CareerTech teacher, supervisor, or administrator 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 eight semester hours specified below to meet 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 certificate 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 to meet the requirements for a standard technology center administrator's credential. 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:

(i) History and Philosophy of Career and Technology Education;

(ii) Technology Center Finance;

(iii) Curriculum for Career and Technology Education; and,

(iv) Career and Technology Education Program Planning Development and Evaluation.

(l) **Other actions necessary to establish a new technology center.**

(1) **Funding for buildings and equipment.** The elected board may submit a building fund levy proposal or a capital outlay bond proposal to finance new buildings and equipment after a study has been made and professional help has been employed.

(2) **Election guidelines.** The building fund levy election or capital outlay bond election shall be conducted in accordance with the prescribed election rules and regulations.

(m) **Approval of capital improvement projects.** After local board approval, 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~~ appropriate staff 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. In addition all capital improvement projects must comply with local building codes and be reviewed by the local and/or state fire ~~marshall~~ marshal and the State Department of Education.

(n) **State Board approval of capital improvement projects.** 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~~ education 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.

780:15-3-4. Financial management procedures for technology centers

(a) **Annual "Estimate of Needs. "** The board of education of a technology center district shall file an "Estimate of Needs" annually with the county excise board of the county in which the technology center site of the district is located or is to be located. If the district has, or is to have, more than one technology center site, the "Estimate of Needs" shall be filed with and approved by the county excise board designated by the technology center board of education.

(b) **Preliminary "Estimate of Needs. "** Only when an election is called to increase or decrease the levy shall a preliminary "Estimate of Needs" be published. The date of publication must be at least ten days before the election. Such elections may be called by the board of education whenever it determines it to be in the best interest of the district to do so.

(c) **Response to levy petition.**

(1) **Operating levy.** It shall be mandatory for the board of education to call an election upon receiving a petition relative to the operating levy millage bearing the signatures of a majority of the qualified technology center electors of the district. The petition shall be filed with the clerk of the board of education. The election shall be held at the next annual election as prescribed by law.

(2) **Incentive levy.** It shall be mandatory for the board of education to call an election to decrease the local incentive levy upon receiving a petition from the electors of the technology center district. Such petition shall be signed by at least fifty (50) percent of the number of technology center district electors who voted in the last school board election in the technology center district. The election shall be held at the next annual election as prescribed by law.

(d) **Preparation of the budget.** The "Estimate of Needs," or budget, shall be prepared, published, and filed at the same times specified for independent school districts, and shall include such financial statements, estimates, and information as may be prescribed by the State Board.

(e) **Duties of county assessor; distribution of tax monies.** After approving the "Estimate of Needs," the county excise board shall certify the required levies to the county assessor of each county having property within the boundaries of the area district. The county assessor shall include the levies on the tax rolls for collection by the county treasurer. The taxes collected by the county treasurer shall be apportioned and remitted to the treasurer of the technology center district in the same manner as that provided by law for tax collections accruing to the benefit of independent school districts.

(f) **Alternate system of accounting.** All technology center districts are authorized to use the alternate system of accounting set forth in 70 O.S. Supp. 1990, §5-135.

(g) **Guidelines.** As a general rule all technology centers will adhere to the **State Board of Education Policies and Procedures for Implementation of the Oklahoma Cost Accounting System (OCAS) and School Finance** in the areas that are not covered by the technology center rules and regulations.

(h) **Classification of funds, cash accounts, expenditures and receipts.**

(1) **Coding of revenue.** All technology center districts are required to maintain an ongoing record of income that will ensure a complete and accurate income report as required by the Department. All income will be identified in separate categories for local, state, and federal funds. Effective July 1, 1993, for FY 1994, all technology center districts will be required to use the Oklahoma cost accounting system for coding revenue.

(2) **Coding of expenditures.** All technology center districts will be required to use the Oklahoma cost accounting system for coding expenditures.

(3) **Final expenditure report.** All technology center districts are required to file a completed "Cost Per Program Report" using guidelines furnished by the Department on or before October 1 of each year.

(i) **Management of and Responsibilities for the Activity Fund (70 O. S. Supp. 1990, §5-129).** All technology center districts shall adhere to the State Board of Education's Policies and Procedures for Implementation of the Oklahoma Cost Accounting System (OCAS) and School Finance section entitled "School Activity Fund."

(j) **Factors in determining the allocation formula for technology centers.**

(1) **Formula allocation plan.** The State Board will approve allocation of funds to Technology Centers.

(2) **Finance of operations ~~operational programs~~.** The State Board shall provide state funds to technology centers based on a formula developed by the Oklahoma Department of Career and Technology Education.

(3) **Formula factors.** Factors considered in determining the formula may include enrollment capacity, local funding resources, ~~program count~~ incentive for maximum local support and allowable general fund balance.

(4) **Annual approval of ~~programs~~ Career Majors.** ~~Programs~~ Career Majors to be offered at the technology centers shall be approved each year in order:

(A) That high school credit may be given to the students enrolled;

(B) To ensure that accreditation factors are in proper form; and,

(C) For the State Board to participate in the funding.

(k) **Audit resolution process.**

(1) **Independent audits.** The Department shall be responsible for ensuring that audits are performed by independent auditors in a timely manner and are in accordance with OMB Circular A-133 and the Single Audit Act.

(2) **Audits from technology centers.** Upon receipt of an independent audit from a technology center, the Department will review and categorize any audit exceptions, comments or findings.

(A) **Notification of findings.** The Department shall notify the technology center of the findings and will request a letter of commitment of corrective action for procedural finding(s) and finding(s) involving questioned costs.

(B) **Assurance of settlement.** In the case of a legal requirement, the technology center shall supply written documentation that the issue has been settled.

(C) **Response to letter of commitment.** If the commitment from the technology center is satisfactory as determined by the Department, the school will be notified of the decision.

(D) **Return of funds.** If the commitment is determined to be unsatisfactory, the Department may request the return of funds connected with the questioned cost(s) or the questioned procedure(s).

(E) **Disallowed costs.** If the finding involves disallowed costs, the Department will request the refund of funds for the questioned costs.

780:15-3-6. 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 sufficient evidence that he/she is participating in a home-schooled education plan in accordance with 70 O.S. 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 may attend ~~attending~~ a technology center ~~may spend~~ up to one-half day pursuing a high school diploma or GED and up to one-half day completing a *Career*Tech ~~program~~ Career Major 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~~ Career Majors in the technology centers may be offered to secondary students. Students who are on an Individualized Education Program may ~~participate in the~~ attend a 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~~ courses at the technology center ~~or short-term classes~~ which may be held any time during the day or night 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~~courses, regardless of lawful immigration status, as any other in-district student. These students may enroll in an appropriate ~~program~~ Career Major 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~~ courses 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~~ postsecondary students. ~~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~~ a technology center 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~~ complete the course or Career Major in which they are enrolled.

(c) ~~Programs~~ **Education and Services 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. If there is a Reciprocity Agreement between technology center districts, the provisions of the Reciprocity Agreement shall be followed. 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~~ courses 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~~ instruction offered at both institutions;

(4) Increased student employability; and,

(5) Consistency with goals and objectives of *Career*Tech education in Oklahoma.

(e) **Live Work Policy.** The live work policy adopted by the State Board of Career and Technology Education in February 2004 shall be incorporated into all technology center policies and procedures. ~~The policies developed by the technology centers will become an item for review during all standard accreditation visits or audit/reviews. This policy will take effect July 1, 2004.~~ Live work is work performed by students in a laboratory, classroom, shop, or in a field setting under written contract and under the direction of the ~~program~~ instructor. The process by which all live work projects will be approved should be outlined in the live work policy. Live work projects should be chosen on the basis of merit in relation to the instructional objectives ~~of the individual program~~ as well as the determined value of the project to allow students to achieve a desired level of competency. 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~~ them. 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~~ items for review during all standard accreditation visits or audit/reviews conducted by the Oklahoma Department of Career and Technology Education. ~~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 policies developed by the technology centers will become items for review during all standard accreditation visits or audit/reviews conducted by the Oklahoma Department of Career and Technology Education. 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~~ revenue, expenditures, cost per student, economic impact of ~~programs~~ education and services, completion rates, sending school ~~secondary~~ service rate, ~~positive~~ placement of completers, percentage of completers who attain an industry-recognized 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~~h) **Review of the ~~Policy and Procedures manual~~ Rules for Career and Technology Education.** The **Rules for Career and Technology Education** ~~**Policy and Procedures manual**~~ approved by the State Board should be reviewed in connection with developing *Career*Tech ~~training programs~~ courses, Career Majors and services.

780:15-3-8. Calculation of administrative costs

Administrative Cost for technology centers shall be calculated annually in accordance with the definition of administrative cost provided by the National Center for Educational Statistics. Administrative cost expressed as a percentage of the total program expense for each technology center will be used as a measurement to determine if the administrative cost is within acceptable limits. Should administrative cost for a technology center exceed acceptable limits penalties will be assessed by the state agency to the funding formula dollars of the technology center on a dollar for dollar basis.

(1) Acceptable administrative cost is outlined as follows:

(A) If total ~~program expense~~ instruction and services expenditures are ~~is~~ less than $3,000,000, the administrative cost limit is 8%.

(B) If total ~~program expense~~ instruction and services expenditures are ~~is~~ $3,000,001 to $5,000,000, the administrative cost limit is 6%.

(C) If total ~~program expense~~ instruction and services expenditures are ~~is~~ $5,000,001 to $10,000,000, the administrative cost limit is 5%.

(D) If total ~~program expense~~ instruction and services expenditures are ~~is~~ more than $10,000,001, the administrative cost limit is 3%.

(2) Changes to the acceptable administrative amounts may be made by the State Agency staff and approved by the director when necessary.

[OAR Docket #08-1061; filed 5-23-08]

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

[OAR Docket #08-1062]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
780:20-1-2 [NEW]
Subchapter 3. Secondary, Full-Time and Short-Term Adult *Career*Tech Programs
780:20-3-1 [AMENDED]
780:20-3-2 [AMENDED]
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Oklahoma State Board of Career and Technology Education; 70 O.S. Supp. 2007, § 14-103, 70 O.S. 2001 § 14-104 and 70 O.S. Supp. 2007, § 14-108, as amended.
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CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

780:20-1-2. Instructional Framework for full-time programs

All full-time instructional offerings will be based on the Career Clusters Model and be in accordance with the new Instructional Framework. The state approved Instructional Framework is organized by Cluster, Pathway, Career Major and Course.

SUBCHAPTER 3. SECONDARY, FULL-TIME AND SHORT-TERM ADULT *CAREER*TECH PROGRAMS

780:20-3-1. Administration and supervision

(a) **Advisory committee.** Each full-time *Career*Tech program must have an occupational advisory committee that is formally organized and meets at least once annually. The membership of the advisory committee must be diversified with the majority of membership representative of occupations for which the program is training.

(b) **Civil rights compliance.** In order to receive federal funds, local administrators must comply with all civil rights procedures and prohibitions that include, but are not limited to, the following:

(1) **Annual public notification.** All recipients offering *Career*Tech programs shall, at the beginning of the school year, advise parents, employees, students, and the general public that all occupational opportunities will be offered without regard to race, color, national origin, sex, age, or disability.

(2) **Employment.** Recipients offering *Career*Tech programs shall not engage in any employment practice that discriminates on the basis of race, color, national origin, sex, age, or disability.

(3) **Accommodations for individuals with disabilities.** Students with disabilities shall be placed in the regular educational environment of any career and technology education program unless it can be demonstrated that the education of the individual with a disability, even with the use of support services, cannot be achieved satisfactorily.

(A) **Support services.** Support services ~~include curriculum modification, equipment modification, classroom modification, supportive personnel, and instructional aids devices, and other services deemed necessary by the IEP team. Documentation shall exist as to the types of support services that were considered and reasons why they were rejected.~~ are considered on a case-by-case basis and depend on the functional impact of the individual student's disability on learning and which laws pertain to the student's education. Decisions on what type of support services are to be utilized are a team decision. The team is made up of persons knowledgeable of the student, their disability, the course requirement as well as the local policy and laws.

(B) **Individual needs.** When students with disabilities are enrolled in any career and technology

education program, evidence must exist as to how the student's individual needs are being met.

(C) **Participation in and review of IEP.** A representative of the area technology center shall be on the IEP team when enrollment in a career and technology education program is considered to be an appropriate part of the student's IEP. Career and technology education instructors, whether teaching in an area technology center or in a comprehensive school program, shall have access to a copy of the IEP before the identified student enters the program. State accreditation standards: Part I, Standard VI, Student Services, 210:35-11-51 (b). Guidance and counseling services; Part II, Standard VI, Student Services, 210:35-13-74 (e).

(D) **Accommodation plans.** Students who have provided appropriate documentation of a disability, who have been determined under Section 504 of the Rehabilitation Act or the Americans with Disabilities Act as a qualified individual with a disability in relation to the career and technology education program, and who require necessary accommodations in order to participate in and benefit from career and technology education will have an accommodation plan in place. This plan will be developed by a group of persons knowledgeable about the student, including the student, and will specify the agreed upon services necessary for the student to participate in and benefit from career and technology education.

(E) **Staff Development.** Regular staff development shall include instruction in maintaining confidentiality, modifying instruction, and reviewing and interpreting special needs documents.

(4) **Apprenticeship.** Agreements entered into for the provision or support of apprenticeship training shall not discriminate on the basis of race, color, national origin, sex, age, or disability, and should so state.

(5) **Comparable facilities.**

(A) **Facilities.** Changing rooms, showers, and other facilities provided for *Career*Tech students of one sex shall be comparable to those provided to *Career*Tech students of the other sex.

(B) **Nondiscrimination.** *Career*Tech facilities may not be located, constructed, modified, or renovated in a manner that creates, maintains, or increases student segregation on the basis of race, color, national origin, sex, age, or disability.

(6) **Financial assistance.** Financial assistance in the form of loans, grants, scholarships, special funds, subsidies, compensation for work, or prizes shall be provided to *Career*Tech students without regard to race, color, national origin, sex, age, or disability, except where necessary to overcome the effects of past discrimination.

(7) **Printed materials.** Counseling and other printed materials shall be provided to *Career*Tech students for program selection recruitment, career/employment selection, and promotional activities without regard to race, color, national origin, sex, age, or disability.

(8) **Work-site learning.**

(A) **Nondiscrimination.** Work-site learning opportunities shall be made available to *Career*Tech students without regard to race, color, national origin, sex, age, or disability.

(B) **Nondiscrimination on the job.** All written agreements between school and employer must contain an assurance from the employer that students will be accepted and assigned to jobs and otherwise treated without regard to race, color, national origin, sex, age, or disability.

(c) **Local administration supervision.** The school administration shall provide program supervision and coordinate the *Career*Tech program activities as an integral part of the overall educational program in the school.

(d) **Local teacher supervision.** Each *Career*Tech teacher shall be responsible for providing appropriate activities that will contribute to the development of each *Career*Tech student according to the student's occupational objective and for conducting and reporting student follow-up upon exit from or completion of the program.

(e) **Cooperative programs.**

(1) **Cooperative education.** The cooperative method of education is a joint effort between the school system and business and industry.

(2) **Supervision of students.** Schools offering cooperative *Career*Tech programs shall provide adequate time for teacher-coordinators to supervise and coordinate the activities of student learners. Adequate time shall be determined by applying the following formula:

(A) 0-25 cooperative students - 1 period (hour) per day

(B) 26-50 cooperative students - 2 consecutive periods (hours) per day

(3) **Exemption of planning period.** The one-hour planning period shall not be considered coordination time.

(4) **Responsibilities of the teacher-coordinator.**

(A) **Responsibilities.** The teacher-coordinator shall have the responsibility of coordinating classroom instruction, on-the-job activities or hands-on experience, and placement of students.

(B) **Training station visits.** The teacher-coordinator shall make a minimum of one (1) on-site visit per grading period to each training station employing cooperative *Career*Tech students. The purpose of these visits shall be to document and coordinate the learning experiences of the students. Training station visits shall be documented and put on file in the teacher's classroom.

(C) **Student files.** A "Memorandum of Training" and a training plan shall be on file for each cooperative student, and a copy shall be sent to the employer and parents.

(D) **Employer evaluation.** Each employer shall complete a written evaluation of the student's progress at least one time per grading period, and a copy of this evaluation shall be on file in the teacher's office. Employers are also required to have proof of age on file

and a work permit if the employee is under 18 years of age.

(5) **Scholastic credit.**

(A) **Credit for on-the-job training/internship.** Additional units of credit may be added to the unit(s) earned in the classroom for being employed in an occupationally appropriate training station during the school year by applying the following:

(i) an average of 10 periods (hours) per week for a minimum of 30 weeks of on-the-job training under the supervision of a teacher-coordinator = 1 unit;

(ii) an average of 20 periods (hours) per week for a minimum of 30 weeks on-the-job training under the supervision of a teacher-coordinator = 2 units;

(iii) in the case of block schedules, where a student completes the requirements for a unit of class work in one semester, a student could also earn an additional $\frac{1}{2}$ unit for 10 hours per week for 15 weeks of on-the-job training under the supervision of a teacher-coordinator, or

(iv) a student could earn an additional 1 unit for 20 hours per week for 15 weeks of on-the-job training under the supervision of a teacher-coordinator.

(v) Employers or their representatives shall complete a written evaluation of the cooperative students worksite performance for each grading period. The teacher is responsible for converting the employer's evaluation into the appropriate letter grade for the student's on-the-job grade. Not to be confused with the pass/fail or satisfactory/unsatisfactory grade sometimes given to students participating in a work release program.

(B) **Documentation of work hours.** Teachers must maintain, in the school files, documentation of the number of hours each cooperative student works.

(C) **Extra assignments.** If extenuating circumstances exist, and the student is not employed, the teacher must document extra assignments equal to one hour of classroom instruction per day for every hour under the required 10 hours per week of employment.

(D) **School release time.** A student who is employed in accordance to 5(A) above and is receiving credit for a supervised cooperative work experience may be released up to two hours per day from the normal six-hour school day.

(E) **Classroom credit only.** If the teacher cannot document extra assignments and/or hours worked, the student shall receive only credit for the classroom activities.

(f) **Records and reports.** Each local education agency or eligible recipient shall submit student accounting and other required reports on the specified due date.

(g) **Maintenance of confidential records.** Each technology center shall develop and implement a local policy regarding the confidentiality of all personally identifiable information and education records. This policy shall meet the requirements of the Individuals with Disabilities Act (IDEA) CFR 300.560-300.574 and the Family Educational Rights and Privacy Act (FERPA) 34 CFR 99.1-99.67 concerning collection, storage, disclosure, and destruction of confidential student records.

(h) **Career practicum.** A career practicum is defined as a planned program of worksite learning experiences that are relevant to the student's career major, coordinated with the academic/school-based curriculum, and includes work-site mentoring. Units for a career practicum may be granted when the following guidelines are met:

(1) The career practicum shall:

(A) be based upon a student's plan of study or career pathway

(B) be based on a written plan of identified progressive work site experiences or work processes which are coordinated with the academic/school-based curriculum.

(C) require regular contact through work-site visits and other communication, and

(D) measure progress made toward the attainment of identified career practicum competencies.

(2) A school site contact must hold a secondary license/certificate to coordinate the career practicum.

(3) Every student participating in a career practicum shall be assigned a trained, work site mentor. Mentors will be oriented to the purpose and goals of the career practicum, will facilitate the attainment of competencies, will be responsible for evaluating the student's performance, and will consult with the school site coordinator and employer.

(4) The career practicum shall conform to applicable safety, child labor, labor standards, and equity laws.

(5) A career practicum agreement will be developed which outlines the responsibilities of the student, school site coordinator, parent/guardian, mentor and employer.

(6) A student must be 16 years of age and enrolled in grade eleven or twelve.

(7) One unit may be granted for the career practicum when all of the above guidelines are met, and the student is involved in a work site learning experience an average of 10 hours per week during the school year or the student is involved in a work site learning experience a minimum of 300 hours during the school year.

(8) Not more than two (2) units earned may be granted for a career practicum and applied toward high school graduation. Units may be granted for work site learning experiences as part of a career practicum in an accredited summer high school program.

(i) Career guidance and counseling for secondary and full time programs. Technology centers shall have an identifiable guidance program in place that addresses the career development needs of all students. Technology centers shall provide all students with information and advisement about career and educational options, administer assessment instruments such as interest inventories, aptitude tests, and achievement tests or acquire the results of such assessments to provide guidance

in program selection and placement, and provide support for students to help them be successful in their career pathway. This includes but is not limited to:

(1) All students in accredited program have developed and on file, an individual career plan for assessment, guidance, program placement and other services to be provided for maximized program success and employability.

(2) All students are enrolled or placed in a technology center program on the basis of their documented interest and ability to benefit from training, work history, IEP provisions, accommodation plans, and/or their plans of study developed at the sending school or on cooperation with other agencies.

(3) The technology center guidance staff coordinates all services with guidance and counseling staff from sending schools, higher education institutions and other agencies through regularly planned informational meetings and/or correspondence.

(4) Counselors shall be appropriately certified and credentialed for the grade levels to which they are assigned. School counselors shall hold a valid Oklahoma School Counselor Certificate appropriate to grade levels to which they are assigned. (State accreditation standards: 210:35-9-45) The title of counselor should only be applied to those staff with appropriate certifications and/or credentialing.

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. These programs are designed to carry on technological concepts and problem-solving methods learned in the lower grade programs (i.e.: Intergrating Concepts and Lessons, Missions curriculum, The Block Academy, Airbase). The programs also tie to Agriculture Education, Business Education, FACS Education, Health Education, Marketing Education, and Trade and Industrial Education in the upper grades at comprehensive high schools and technology centers. These programs give hands-on projects based core curriculum supported through the occupational areas.

(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)). For schools on non-traditional schedules, teachers shall have the equivalent of a minimum of 90 minutes per day for planning and supervision of students. 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),~~ Career Transitions Education, 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. In the case of a non-funded agriculture education program, the program must follow state policy and guidelines to remain in good standing and be able to utilize the *Career*Tech student organization, FFA.

(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.** 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 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.~~ Introduction to Agricultural Science 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 25 students per marketing management teacher-coordinator. A maximum of 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~~ career transitions programs, which may have 50 students per ~~ICE~~ career transitions 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.

[OAR Docket #08-1062; filed 5-23-08]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 10. SPORT FISHING RULES

[OAR Docket #08-937]

RULEMAKING ACTION:
PERMANENT Final Adoption
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 3. Methods of Taking
800:10-3-3. Additional definitions [AMENDED]
STATUTORY AUTHORITY:
Title 29 O.S., Sections 3-103, 4-101, 4-110, 5-401, 6-301, 6-302, 6-303; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.
DATES:
Comment period:
December 3, 2007 through January 11, 2008.
Public Hearings:
Date: January 7, 2008
Time: 7:00 p.m.
Ada - Pontotoc County Technology Center - 601 W. 33rd
Jenks - Tulsa Technology Center, 801 East 91st Street
Lawton - Lawton Public Library, 110 SW 4th
Oklahoma City - OK Dept. Of Wildlife Conservation Auditorium, 1801 N. Lincoln Blvd
Date: January 8, 2008
Time: 7:00 p.m.
Clinton - City Hall, 415 Gary Blvd
Durant - Durant Fish Hatchery Meeting Room, 2021 Caddo Hwy, Caddo, OK
Enid - Central Fire Stations, 410 W. Garriott
Date: January 9, 2008
Time: 7:00 p.m.
Miami - Miami Civic Center, 129 5th Ave NW
Date: January 10, 2008
Time: 7:00 p.m.
Guymon - OSU Extension Center, 301 N. Main
Hugo - Kiamichi Tech Center, 107 South 15th St.
Okmulgee - East Central Electric Co-op, 2001 S. Wood Drive (U.S. Hwy 75)
Adoption:
March 10, 2008
Submitted to Governor:
March 11, 2008
Submitted to House:
March 11, 2008
Submitted to Senate:
March 11, 2008
Gubernatorial approval:
April 17, 2008
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 6, 2008.
Final adoption:
May 6, 2008
Effective date:
July 1, 2008
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 1. Harvest and Possession Limits
800:10-1-5. Bag limits on fish [AMENDED]
Gubernatorial approval:
October 18, 2007
Register publication:
25 Ok Reg 288
Docket number:
07-1476
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
800:10-1-4 Size limits on fish
1. These rules would define the Illinois River as the area from the confluence of Baron Fork Creek downstream to the Horseshoe Bend boat ramp and clarify boundaries on the McClellan-Kerr Arkansas River Navigation System in an effort to assist Law Enforcement Division with enforcement of regulations.
2. This rule would exempt spotted bass from length limits statewide except for certain streams which should provide additional angling opportunity for this overabundant species.
800:10-1-5 Bag limits on fish
1. This rule would remove spotted bass bag limits statewide except for certain streams which should provide additional angling opportunity for this overabundant species and improve overall fishing quality.
2. This permanent rule (emergency rule effective 10-18-07) would require paddlefish anglers to attach their paddlefish permit number to the fish and require paddlefish viscera to be removed before leaving the state which will aid paddlefish management and enforcement efforts.
3. This rule would require anglers who are fishing for paddlefish to have a free annual permit which will be used as part of a paddlefish research and management plan related to the caviar program.
4. The alligator gar rules were modified after public hearings to define the closed area, shorten the period of closure and restrict all angling methods.
800:10-3-3 Additional Definitions
1. This rule, suggested by anglers, would allow the use of non-metallic materials where natural materials do not exist for attaching limblines.
CONTACT PERSON:
Barry Bolton, 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, 2008:

SUBCHAPTER 1. HARVEST AND POSSESSION LIMITS

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 bass~~)~~ 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 bass ~~and spotted bass~~ only), Heyburn, Hudson, Hugo, Kaw, Keystone, Oologah, Optima, Overholser (including tailwaters and downstream to NW 10th St. bridge), Pine Creek, Sardis, Skiatook, 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, Robert S. Kerr, Sandy Sanders, Spavinaw, Stringtown, ~~the Blue River Public Fishing Area~~ and all ponds and lakes in the Ouachita National Forest.

(D) Lower Illinois River below Tenkiller Dam, including the old river channel.

(2) All ~~black bass (~~largemouth~~, spotted~~ and smallmouth bass~~)~~ 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 bass~~)~~ 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).

~~(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.~~

(~~9~~8) 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 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.

(~~10~~9) 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.

(~~11~~10) 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.

(~~12~~11) 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,~~Horseshoe Bend boat ramp, 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.

(~~13~~12) 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.

(13) All black bass (largemouth, spotted and smallmouth) less than fourteen (14) inches in total length must be returned unharmed immediately after being taken from the Blue River Public Fishing Area.

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~~,~~or 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), largemouth, smallmouth or spotted bass or five in aggregate, at Lake Konawa, McGee Creek Lake, Lake Nanih Waiya, Dripping Springs Lake, Lake Raymond Gary and Crowder Lake (Washita County) where 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~~ at Baron Fork Creek, Flint Creek, Illinois River upstream from the ~~Baron Fork Creek confluence,~~ Horseshoe Bend boat ramp, Lee Creek, and Little Lee Creek where the limit is six (6) largemouth, smallmouth or spotted bass or six in aggregate~~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 limit is six (6) largemouth, smallmouth, or spotted bass or six in aggregate ~~aggregate limit is six (6),~~ of which only three (3) may be smallmouth bass~~.~~,and at the Blue River Public Fishing Area where the limit is six (6) largemouth, smallmouth or spotted bass or six in aggregate.

(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 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 paddlefish permit number. ~~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. All paddlefish must have all viscera (internal organs) removed from the paddlefish before leaving the state. 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) It shall be unlawful for any person, regardless of residency, age or disability, to fish for paddlefish or be in possession of paddlefish parts without having first secured from the Department of Wildlife Conservation or its authorized agency, an annual paddlefish permit. This permit must be carried on their person while fishing and/or in possession of paddlefish or parts and be produced for inspection upon the demand of any Oklahoma citizen or game warden.
(~~18~~19) 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).
(20) One (1) alligator gar (Atractosteus spatula) per day, statewide, except during the period of May 1 through May 31 when angling for alligator gar by all angling methods is prohibited on Lake Texoma between the Highway 99 bridge upstream to the I-35 bridge. The catch and release of alligator gar is permitted year round, except during the closure referenced above, by use of rod and reel, trotline and throwlines. Alligator gar must be released immediately unless kept for the daily limit. Persons fishing trotlines or throwlines must release all alligator gar on their lines except the one alligator gar held in possession for their daily limit, before leaving the trotline or throwline. Alligator gar taken by bow and arrow, gigs, spears or spearguns shall not be released. Alligator gar caught and placed on a stringer or otherwise held in possession cannot be released (no culling). Anglers must cease snagging when they have taken their daily limit of alligator gar into possession.
(~~19~~21) Other fish do not have bag or possession limits.

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 one (1) point with no more than four (4) barbs.

"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, or non-metallic manmade pole 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.

[OAR Docket #08-937; filed 5-16-08]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 15. COMMERCIAL HARVEST RULES; AQUATIC SPECIES

[OAR Docket #08-938]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
Subchapter 11. Commercial Aquatic Production
800:15-11-2. List of restricted aquatic species [AMENDED]
STATUTORY AUTHORITY:
Title 29 O.S., Sections 3-103, 7-502, 7-503, 7-602 and 7-801; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.
DATES:
Comment period:
December 3, 2007 through January 11, 2008.
Public Hearings:
Date: January 7, 2008
Time: 7:00 p.m.
Ada - Pontotoc County Technology Center - 601 W. 33rd
Jenks - Tulsa Technology Center, 801 East 91st Street
Lawton - Lawton Public Library, 110 SW 4th
Oklahoma City - OK Dept. Of Wildlife Conservation Auditorium, 1801 N. Lincoln Blvd
Date: January 8, 2008
Time: 7:00 p.m.
Clinton - City Hall, 415 Gary Blvd
Durant - Durant Fish Hatchery Meeting Room, 2021 Caddo Hwy, Caddo, OK
Enid - Central Fire Stations, 410 W. Garriott
Date: January 9, 2008
Time: 7:00 p.m.
Miami - Miami Civic Center, 129 5th Ave NW
Date: January 10, 2008
Time: 7:00 p.m.
Guymon - OSU Extension Center, 301 N. Main
Hugo - Kiamichi Tech Center, 107 South 15th St.
Okmulgee - East Central Electric Co-op, 2001 S. Wood Drive (U.S. Hwy 75)
Adoption:
March 10, 2008
Submitted to Governor:
March 11, 2008
Submitted to House:
March 11, 2008
Submitted to Senate:
March 11, 2008
Gubernatorial approval:
April 17, 2008
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 6, 2008.
Final adoption:
May 6, 2008
Effective date:
July 1, 2008
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
These rules would tighten restrictions on possession, importation, culture, sale and use of invasive Asian carp and blueback herring which have been shown to adversely impact native fish populations. These rules are necessary to minimize adverse impacts of aquatic nuisance species on native aquatic resources.
CONTACT PERSON:
Barry Bolton, 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, 2008:

SUBCHAPTER 11. COMMERCIAL AQUATIC PRODUCTION

800:15-11-2. List of restricted aquatic species

The following is a list of restricted aquatic species which shall not, in whole or in part, be propagated or offered for sale, trade, or profit, in commercial aquatic production operations licensed by the Oklahoma Department of Agriculture:

(1) Bighead carp (Hypophthalmichthys molitrix).
(2) Silver carp (Aristichthys nobilis).
(3) Black carp (Mylopharyngodon piceus).
(4) Alewives (Aloso pseudoharengus).
(5) Rainbow smelt (Osmerus mordax).
(6) Rudd and rudd hybrids (Scardinius spp.).
(7) Paddlefish (Polyodon spathula)
(8) Alligator snapping turtle (Macroclemys temminckii)
(9) American Alligator (Alligator mississippiensis)
(10) Blueback herring (Alosa aestivalis)
(~~10~~11) All other state and/or Federal endangered or threatened species, or species of special concern.

[OAR Docket #08-938; filed 5-16-08]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 20. RESTRICTION ON AQUATIC SPECIES INTRODUCTION

[OAR Docket #08-939]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
Subchapter 1. Restricted Exotic Fish
800:20-1-2. List of restricted exotic species [AMENDED]
Subchapter 3. Noxious Aquatic Plants
800:20-3-2. List of declared noxious aquatic plant species [AMENDED]
STATUTORY AUTHORITY:
Title 29 O.S., Sections 3-103, 7-502, 7-503, 7-602 and 7-801; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.
DATES:
Comment period:
December 3, 2007 through January 11, 2008.
Public Hearings:
Date: January 7, 2008
Time: 7:00 p.m.
Ada - Pontotoc County Technology Center - 601 W. 33rd
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Date: January 8, 2008
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Date: January 9, 2008
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Miami - Miami Civic Center, 129 5th Ave NW
Date: January 10, 2008
Time: 7:00 p.m.
Guymon - OSU Extension Center, 301 N. Main
Hugo - Kiamichi Tech Center, 107 South 15th St.
Okmulgee - East Central Electric Co-op, 2001 S. Wood Drive (U.S. Hwy 75)

Adoption:
March 10, 2008
Submitted to Governor:
March 11, 2008
Submitted to House:
March 11, 2008
Submitted to Senate:
March 11, 2008
Gubernatorial approval:
April 17, 2008
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 6, 2008.
Final adoption:
May 6, 2008
Effective date:
July 1, 2008
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
800:20-1-2.
These rules would tighten restrictions on possession, importation, culture, sale and use of invasive Asian carp and blueback herring which have been shown to adversely impact native fish populations.
800:20-3-2.
This rule would allow the Oklahoma Wildlife Commission to add/delete aquatic plants from the Species to Watch list and eliminate the need to modify the promulgate Title 800 rules each year.
These rules are necessary to minimize adverse impacts of aquatic nuisance species on native aquatic resources.
CONTACT PERSON:
Barry Bolton, 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, 2008:

SUBCHAPTER 1. RESTRICTED EXOTIC FISH

800:20-1-2. List of restricted exotic species

(a) Until such time as is necessary for the Department of Wildlife Conservation to obtain adequate information for the determination of other harmful or potentially harmful exotic species, the importation into the State and/or the possession of the following exotic fish or their eggs is prohibited:

(1) Walking Catfish: The Walking Catfish, (Clarius batrachus) and other members of the exotic catfish family Claridae, including but not limited to species of the genera Clarias, Heteropneustes, Gymnallables, Channallabes, and Heterobranchus are prohibited. Any live specimens of Walking Catfish or other Claridae species within the boundaries of the State of Oklahoma are contraband and subject to seizure by the Department of Wildlife Conservation.

(2) Grass carp: Release of grass carp, also known as white amur or Chinese carp (Ctenopharyngodon idella) or their hybrids into public waters is prohibited in accordance with 29 O.S., Section 6-504. Importation, possession and introduction of grass carp or their hybrids for the purpose of stocking private waters is permitted.

(3) Boney-tongue group: Osteoglossum spp., and Arapaima spp.

(4) Piranha group: Serrasalmus spp., Pygocentrus spp., Rooseveltiella spp., Catoprion spp., Hydrocynus spp., and Salminus spp.

(5) Electric Eel (Electrophorus electricus).

(6) Electric catfish (Malapterus electricus).

(7) Gar-pike topminnow (Belonesox belizanus).

(8) Snakehead groups: Opicephalus spp., and Channa spp.

(9) Pavon or Peacock Bass (Chichla temensis and Chichia ocellaris).

(10) Parasitic South American Catfish group (Candiru), genera & species of the Trichomycteridae family. Vandellia spp., Tridens spp., and Pyqidium spp.

(11) Freshwater Stingray group: Paratrygon spp., Potomotrygon spp., and Disceus spp.

(12) Houri (from South America): Macrodon spp., and Hoplias spp.

(13) Rudd and rudd hybrids (Scardinius spp.).

(14) Bighead carp (Hypophthalmichthys molitrix).

(15) Silver carp (Aristichthys nobilis).

(16) Black carp (Mylopharyngodon piceus).

(17) Alewives (Aloso pseudoharengus).

(18) Rainbow smelt (Osmerus mordax).

(19) Blueback herring (Alosa aestivalis).

~~(b) The following species shall be permitted by application and written letter of authorization from the Department of Wildlife Conservation for research purpose only:~~

~~(1) Bighead carp (Hypophthalmichthys molitrix).~~

~~(2) Silver carp (Aristichthys nobilis).~~

~~(3) Black carp (Mylopharyngodon piceus).~~

~~(4) Alewives (Aloso pseudoharengus).~~

~~(5) Rainbow smelt (Osmerus mordax).~~

(~~c~~b) Tilapia:

(1) The sale and use of all Tilapia species as bait is prohibited.

(2) The stocking of all Tilapia species in any heated-water reservoir including Sooner, Konawa and Boomer Reservoirs is prohibited.

(3) This shall not interfere with the sale of dead and/or processed Tilapia for human food or the sale or transport of Tilapia species for the purpose of aquatic vegetation control in privately owned ponds.

SUBCHAPTER 3. NOXIOUS AQUATIC PLANTS

800:20-3-2. List of declared noxious aquatic plant species

(a) Pursuant to 29 O. S., Section 6-601, the following plants, seeds or plant parts are hereby declared to be noxious:

(1) Azolla pinnata - Mosquito Fern (aka - Water Velvet, Water Fern)

(2) Caulerpa taxifolia - Caulerpa (aka - Mediterranean Clone of Caulerpa)

(3) Eichhornia azure - Anchored Water Hyacinth (aka - Rooted Water Hyacinth, Blue Water Hyacinth, Saw-petal Water Hyacinth)

(4) Hydrilla verticillata - Hydrilla (aka - Florida Elodea, Star Vine, Oxygen Plant, Oxygen Weed)

(5) Hygrophila polysperma - Hygro (aka - Miramar Weed, Green Hygro, Oriental Ludwigia, East Indian Hygrophila)

(6) Ipomoea aquatica - Water Spinach (aka - Swamp Morning Glory, Chinese Water Spinach, Water Bindweed, Aquatic Morning Glory)

(7) Lagarosiphon major - African Elodea (aka - Oxygen Weed)

(8) Limnophila species - Ambulia (aka - Asian Marshweed, Limno, Red Ambulia, Indian Ambulia)

(9) Lythrum salicaria - Purple Loosestrife (aka - Loosestrife)

(10) Marsilea quadrifolia - Marsilea (aka - European Waterclover, Four-leaf Clover Fern, Water Fern, Water Clover, Hairy Pepperwort)

(11) Marsilea mutica - Australian Waterclover (aka - Varigated Water-clover, Nardoo)

(12) Marsilea minuta - Waterclover

(13) Melaleuca quinquenervia - Paperbark Tree (aka - Melaleuca, Cajeput, Punk)

(14) Monochoria hastata - Cat's Claw (aka - Monochoria)

(15) Ottellia alismoides - Duck Lettuce

(16) Sagittaria sagittifolia - Japanese Arrowhead (aka - Hawaiian Arrowhead, Common Arrowhead, Chinese Arrowhead)

(17) Salvinia spp. - all giant and common salvinia species - (aka - Salvinia, Butterfly Fern, Water Fern, Water Moss, Water Velvet, Karibaweed, Koi Kandy, Water Spangles, Floating Fern, South American Pond Fern)

(18) Alternanthera spp. - Alligatorweed and congeneric species (aka - Alligator-weed, Chaff Flower, lilacina, roseafolia)

(19) Solanum tampicense - Wetland Nightshade

(20) Sparganium erectum - Exotic Bur-reed

(21) Glossostigma diandrum - Mud Mat

~~(b) The following species are classified as "Species to Watch" and are not currently listed as noxious aquatic plants. However, they are aquatic plants whose impact on the Oklahoma environment is presently unknown, and therefore, may be considered for inclusion on the noxious aquatic plant list (above) as additional information becomes available to, and as deemed necessary by, the Department of Wildlife Conservation:~~

~~(1) Colocasia esculenta - Wild Taro (aka - Green Taro, Elephant Ear, Taro, Dasheen)~~

~~(2) Egeria densa - Brazilian Waterweed (aka - Common Waterweed, Brazilian Elodea, Anacharis, Oxygen Weed, Elodea)~~

~~(3) Eichhornia crassipes - Floating Water Hyacinth (aka - Water hyacinth)~~

~~(4) Hydrocleys nymphoides - Water poppy (aka - Hydrocleys, Hydrocleis)~~

~~(5) Iris pseudacorus - Yellow Iris (aka - Yellow Flag, Yellow Flag Iris)~~

~~(6) Ludwigia hexapetala - Uruguay Seedbox (aka - Water Primrose)~~

~~(7) Myriophyllum spicatum - Eurasian Watermilfoil (aka - European Watermilfoil, Watermilfoil, Fox Tail)~~

~~(8) Myriophyllum aquaticum - Parrotfeather (aka - Parrot's Feather, Watermilfoil, Golden Myriophyllum)~~

~~(9) Najas minor - Brittle Naiad (aka - Slender Naiad, Spiny leaf Naiad)~~

~~(10) Nymphoides peltata - Yellow Floating Heart (aka - Floating Heart)~~

~~(11) Panicum repens - Torpedo Grass (aka - Torpedo grass)~~

~~(12) Pistia stratiotes - Water Lettuce~~

~~(13) Spirodela punctata - Dotted Duckweed (aka - Punctate Duckweed, Spotted Duckweed, Giant Duckweed)~~

~~(14) Trapa natans - Water Chestnut (aka - European Water Chestnut)~~

(b) Aquatic plants assigned to the "Species to Watch" list by the Oklahoma Department of Wildlife Conservation shall be displayed in the annual Oklahoma Fishing Guide.

[OAR Docket #08-939; filed 5-16-08]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 25. WILDLIFE RULES

[OAR Docket #08-940]

RULEMAKING ACTION:
PERMANENT Final Adoption

RULES:
Subchapter 7. General Hunting Seasons
Part 13. Deer
800:25-7-51. Deer - archery [AMENDED]
800:25-7-52. Deer-primitive firearms (muzzleloading) [AMENDED]
Part 19. Seasons on Areas Owned or Managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service
800:25-7-86. Broken Bow WMA [AMENDED]
800:25-7-108.1. Honobia Creek WMA [AMENDED]
800:25-7-116. Keystone WMA [AMENDED]
800:25-7-117. Lexington WMA [AMENDED]
800:25-7-132. Ouachita WMA - LeFlore Unit [AMENDED]
800:25-7-133.1. Ouachita WMA - McCurtain Unit [AMENDED]
800:25-7-143. Skiatook WMA [AMENDED]
800:25-7-149.1. Three Rivers WMA [AMENDED]
Subchapter 9. Controlled Hunts
Part 1. Guidelines

800:25-9-3. Applications and instructions [AMENDED]
800:25-9-4. Categories [AMENDED]
Subchapter 17. Black Footed Ferrets and Prairie Dogs
800:25-17-4. Poisons [AMENDED]
800:25-17-5. State school lands [REVOKED]
Subchapter 37. Nuisance Wildlife Control Programs
Part 1. Nuisance Wildlife Control Operators Program
800:25-37-1. Purpose [AMENDED]
800:25-37-2. Permit requirements [AMENDED]
800:25-37-4. Reporting procedures [AMENDED]
800:25-37-5. Procedures and guidelines [AMENDED]
Part 3. Wildlife and Feral Hog Nuisance and Depredation Rules [NEW]
800:25-37-11. Purpose [NEW]
800:25-37-12. General Provisions [NEW]
800:25-37-13. Exemptions [NEW]
800:25-37-14. Specific Provisions [NEW]
800:25-37-15. Penalties [NEW]

STATUTORY AUTHORITY:
Title 29 O.S., Sections 3-103 and 5-401; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

DATES:
Comment period:
December 3, 2007 through January 11, 2008.
Public Hearings:
Date: January 7, 2008
Time: 7:00 p.m.
Ada - Pontotoc County Technology Center - 601 W. 33rd
Jenks - Tulsa Technology Center, 801 East 91st Street
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Date: January 9, 2008
Time: 7:00 p.m.
Miami - Miami Civic Center, 129 5th Ave NW
Date: January 10, 2008
Time: 7:00 p.m.
Guymon - OSU Extension Center, 301 N. Main
Hugo - Kiamichi Tech Center, 107 South 15th St.
Okmulgee - East Central Electric Co-op, 2001 S. Wood Drive (U.S. Hwy 75)
Adoption:
March 10, 2008
Submitted to Governor:
March 11, 2008
Submitted to House:
March 11, 2008
Submitted to Senate:
March 11, 2008
Gubernatorial approval:
April 17, 2008
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 6, 2008.
Final adoption:
May 6, 2008
Effective date:
July 1, 2008
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 17. Black-Footed Ferrets and Prairie Dogs
800:25-17-4. Poisons [AMENDED]
800:25-17-5. State school lands [REVOKED]
Gubernatorial approval:
October 18, 2007
Register publication:
25 Ok Reg 290
Docket number:
07-1475
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
These proposed rule amendments: 1) allow archery hunters to harvest a deer of either sex during the period January 1 to January 15; 2) increase the bag limit for archery season from four to six; 3) redefine legal firearms for muzzleloading season by allowing the current technology of electronic ignition and other technological changes for muzzleloading firearms to be legal for deer; 4) allow those persons certified to use crossbows to use a devise that permits a bow to be held mechanically at full or partial draw; 5) open deer gun season on Honobia Creek, Three Rivers, Ouachita, and Broken Bow WMA's to same as statewide season dates; 6) reduce the antlerless bag limit on Keystone and Skiatook WMAs; 7) allow harvest of antlerless deer on Lexington WMA; 8) clarify requirements for persons who can apply for disability controlled hunts and allow those persons and youth to draw more than one controlled hunt; 9) make permanent existing emergency rule as applied to the poisoning of prairie dogs on public land;10) simplify language for NWCO certification; 11) require the NWCO (Nuisance Wildlife Control Operator) permittee to submit an annual summary for permit renewal; 12) adds armadillos, coyotes, bobcats, mountain lions and river otters to the list of animals that can be legally controlled by NWCOs; 13) adds alligators, antelopes, big horn sheep, endangered and threatened species to the list that NWCOs cannot control; 14)allows permittees to sell the hides from coyotes and beavers caught doing control work on a complaint; 15) require permittees to post 'trap' signs, attach their name and permit number to their traps and run their traps every 24 hours; 16) require that the game warden in that county be notified prior to night shooting for beavers.

The Wildlife and Feral Hog Nuisance and Depredation Rules are new language that will; 17) establish rules for issuing permits to landowners, lessees or their designated agents and to any entity of local government to control nuisance wildlife or feral hogs as authorized in statute (29:4-135.); 18) streamline the issuance of the permit by allowing the area game warden or wildlife employee to immediately respond to a complaint and upon verification of the problem, issue a permit immediately for an appropriate time period up to 1 year; 19) allows for the person doing the authorized control work to sell coyotes and beaver with proper documentation.

These rule amendments are needed to increase hunting opportunity, to standardize, clarify, and simplify regulations, make emergency rules permanent, and to better manage the wildlife resources, especially antlerless deer.

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, 2008:

SUBCHAPTER 7. GENERAL HUNTING SEASONS

PART 13. DEER

800:25-7-51. Deer - archery

The following hunting dates, open areas, bag limits and legal means of taking apply to hunting deer with archery:

(1) **Dates.** The dates for the deer archery season shall be October 1 through January 15. ~~During the period from January 1 - January 15 antlerless deer are the only legal deer.~~

(2) **Open areas.** The season is open statewide.

(3) **Bag Limit.** ~~Four (4)~~Six (6) deer including no more than two (2) antlered deer. A separate tag is required for each deer to be hunted or harvested. All deer taken are included in the combined season statewide bag limit.

(4) **Legal means of taking.** The legal means of taking deer with archery shall be as follows:

(A) Legal bows. A legal bow is any bow, except the crossbow, of forty pounds or more draw weight.

(B) Legal arrows for deer shall be fitted with broadhead hunting type points not less than 7/8 inches wide and not less than 1 $\frac{1}{2}$ inches long.

(C) Any device that permits a bow to be held mechanically at full or partial draw is prohibited.

(D) Laser sights are prohibited.

(E) Hand-held releases are permitted.

(F) No person shall carry or use any firearm in conjunction with any bow and arrow during the archery deer season while hunting deer with bow and arrow, except under the provisions of the Oklahoma Self-Defense Act, or whenever the archery season is concurrent with any deer gun or deer primitive season and the hunter has the appropriate licenses and legal firearms and clothing requirements to participate in the said gun or primitive season.

(G) Crossbows. A crossbow is defined as having a draw weight of 100 pounds. Bolts must be equipped with broadhead hunting type points not less than 7/8 inches wide and bolts must be a minimum of 14 inches in length. Crossbows must be equipped with safety devices. Laser sights are prohibited. Leverage gaining devices are permitted. No crossbow may be transported in a motorized vehicle unless uncocked or disassembled.

800:25-7-52. Deer - primitive firearms (muzzleloading)

The following hunting dates, open areas, bag limits and legal means of taking apply to deer hunting with primitive firearms:

(1) **Dates.** The dates for the deer primitive firearms seasons shall be the fourth Saturday in October continuing nine days through Sunday.

(2) **Open areas.** The season is open statewide.

(3) **Bag limit.** The bag limit shall be one antlered deer and on designated days and areas, two antlerless deer. Antlerless areas and days will be determined annually and published in the Hunting Regulation brochure. No more than one antlered and two antlerless deer may be taken, and only with the appropriate tags. A separate antlerless tag is required to hunt for each antlerless deer on all designated days and in all designated areas, except an unfilled buck tag may be used to harvest an antlerless deer in designated areas on the last day of the primitive season.

(4) **Legal means of taking.** The legal means of taking deer with primitive firearms shall be as follows:

~~(A) Muzzleloading firearms forty caliber or larger fired by flintlock or percussion cap with single slug or ball. Smoothbore muzzleloading shotguns of 20 gauge or larger firing a single projectile are also legal.~~

~~(B) Metallic or optical sights are permitted.~~

~~(C) Black powder or equivalent only.~~

~~(D) Black powder firearms loaded from the breech are illegal.~~

~~(E) Muzzleloading pistols (single shot or revolver) with characteristics as described for firearms are permissible.~~

(A) Muzzleloading rifles, shotguns and pistols: 40 caliber or larger rifle or pistol, or 20 gauge or larger shotgun, firing a single slug or ball that is loaded from the muzzle.

(~~F~~B) Archery equipment described as legal for the deer archery season may be used during the primitive firearms season. The hunter shall have the option of hunting with a primitive tag or an archery tag. If hunting with a primitive tag, the bag limit is one antlered deer, except as otherwise provided.

(~~G~~C) Persons hunting with archery equipment with either archery or primitive tags are required to wear either the upper garment or head covering as described in 800:25-7-3(c).

PART 19. SEASONS ON AREAS OWNED OR MANAGED BY THE OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION AND THE U.S. FISH AND WILDLIFE SERVICE

800:25-7-86. Broken Bow WMA

The following hunting and trapping seasons apply to the Broken Bow WMA:

(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; either-sex.

(B) Gun: Closed season.

(5) Turkey-Spring: Same as statewide season dates. Two tom season limit.

(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.

(7) Rabbit: Same as statewide season 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 season dates, except closed during first nine days of deer gun season.

(12) Woodcock: Same as statewide season 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 last seven days~~.

(16) Trapping: Same as statewide season dates.

(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.
(19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

800:25-7-108.1. Honobia Creek WMA

The following hunting and trapping seasons apply to the Honobia Creek WMA:

(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; either-sex.
(B) Gun: Closed season.
(5) Turkey - Spring: Same as statewide season dates. Two tom season limit.
(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide season 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 season dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide season 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 last seven days of deer gun season~~.
(16) Trapping: Same as statewide season dates.
(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.
(19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

800:25-7-116. Keystone WMA

The following hunting and trapping seasons apply to the Keystone WMA:

(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, either-sex, except closed during deer gun season.
(B) Gun: Same as statewide season dates; one tom limit.
(5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
(8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide season 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, bag limit of one antlered and one antlerless deer.
(15) Deer - gun: Same as statewide season dates, except open to ~~either sex hunting the first Saturday of deer gun season, with the remainder of season buck only hunting. Cottonwood Creek Wetland Unit lands closed to deer hunting during deer gun season.~~antlerless hunting on opening day only, bag limit of one antlered and one antlerless deer, and Cottonwood Creek Wetland Development Unit lands are closed.
(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.

800:25-7-117. Lexington WMA

The following hunting and trapping seasons apply to the Lexington WMA:

(1) Quail: Same as statewide season dates, except open the Monday following the close of the 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: Same as statewide season dates, 1 tom limit.
(6) Squirrel: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
(7) Rabbit: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.

(8) Crow: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
(9) Dove: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
(10) Rail and gallinule: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
(11) Common snipe: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
(12) Woodcock: Same as statewide dates, except open the Monday following the close of the first nine days of deer gun season.
(13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.
(14) Deer - primitive firearms: Same as statewide season dates, except closed to antlerless ~~hunting.~~harvest the first 7 days.
(15) Deer - gun: Controlled hunts only.
(16) Trapping: Closed season.
(17) Pursuit with hounds: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.
(18) Predator/furbearer calling: Same as statewide dates, except closed from opening day of archery season through the first nine days of deer gun season.
(19) Waterfowl: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.

800:25-7-132. Ouachita WMA - LeFlore Unit

The following hunting and trapping seasons apply to the Ouachita WMA - LeFlore Unit:
(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; either-sex.
(B) Gun: Closed season.
(5) Turkey - Spring: Same as statewide season dates. Two tom season limit.
(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide season 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 season dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide season 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 last seven days of deer gun season~~.
(16) Trapping: Same as statewide season dates.
(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, except closed during deer gun season.

800:25-7-133.1. Ouachita WMA - McCurtain Unit

The following hunting and trapping seasons apply to the Ouachita WMA - McCurtain Unit:
(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; either-sex.
(B) Gun: Closed season.
(5) Turkey - Spring: Same as statewide season dates. Two tom season limit .
(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide season 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 season dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide season 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 last seven days of deer gun season~~.
(16) Trapping: Same as statewide season dates.
(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.
(19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

800:25-7-143. Skiatook WMA

The following hunting and trapping seasons apply to the Skiatook WMA:
(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, either-sex, except closed during first nine days of deer gun season.
(B) Gun: Same as statewide season dates, one bird of either-sex.
(5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide season 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, bag limit of one antlered and one antlerless deer.
(15) Deer-gun: Same as statewide season dates, bag limit of one antlered and one antlerless deer.
(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.

800:25-7-149.1. Three Rivers WMA

The following hunting and trapping seasons apply to the Three Rivers WMA:
(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: Closed season.
(5) Turkey - Spring: Same as statewide season dates. Two 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 last seven days of deer gun season~~.
(16) Trapping: Same as statewide season dates.
(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.
(19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

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 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.~~Only persons who hold either a non-ambulatory or motor vehicle permit may apply for the Persons with Disability Category.

800:25-9-4. Categories

(a) The categories for controlled hunts will be determined by the Oklahoma Department of Wildlife Conservation. The deer category for controlled hunts will include all the deer archery, deer primitive firearms, and deer gun hunts pooled together.

(~~1~~b) No one individual will be drawn for more than one big game hunt (elk, antelope, and deer) per year, except persons drawn for a Disabilities Deer Hunt or Youth Deer Hunt are eligible to be drawn in another category. Permits in the elk category will be filled first, followed by the antelope category permits, then the deer category permits.

SUBCHAPTER 17. BLACK FOOTED FERRETS AND PRAIRIE DOGS

800:25-17-4. Poisons

The following restrictions apply to the use of poisons in prairie dog control:

(1) Prairie dog control with poisons shall not be permitted in any area until adequate determinations by qualified personnel are made that black-footed ferrets do not exist within a five mile radius of the proposed control area.

(2) Permits for the use of poisons may not be issued by the Wildlife Department to reduce prairie dogs in any county to fewer than 1000 prairie dogs.

~~(3) Killing of prairie dogs with poisons shall not be permitted on public lands.~~

800:25-17-5. State school lands [REVOKED]

~~(a) Permits for the total or partial control of prairie dogs on the State School Lands may be issued by the Director of the Oklahoma Department of Wildlife Conservation.~~

~~(b) Prior to issuing such permits, the Commissioners of the Land Office shall advise the Oklahoma Department of Wildlife Conservation of the sites to be included in their annual program. Each site shall be evaluated for the presence of endangered, threatened or otherwise unique or uncommon wildlife species and the potential adverse impact which might be caused by a control program. Permits will be conditioned as necessary to assure that the control efforts do not threaten the continued existence of other species of concern which may be found in association with prairie dog towns.~~

SUBCHAPTER 37. NUISANCE WILDLIFE CONTROL PROGRAMS

PART 1. NUISANCE WILDLIFE CONTROL OPERATORS PROGRAM

800:25-37-1. Purpose

(a) The purpose of this Subchapter is to establish guidelines for the permitting ~~of,~~ and certification of~~,~~ Nuisance Wildlife Control Operators (NWCO), and the procedures to be used by the NWCOs in controlling nuisance wildlife.

(b) NWCO will be defined as all individuals~~*~~ (see exemptions section) who offer their services to control nuisance wildlife.

800:25-37-2. Permit requirements

(a) The Nuisance Wildlife Control Operator's (NWCO) Permit will be issued to any person who has successfully completed the NWCO certification course to operate as a NWCO. ~~consists of the NWCO certification, which is a one time certification,~~ The NWCO permit, NWCO Complaint Report Form and a Professional Trapping License*(see exemptions section), ~~and both the certification and the Professional Trapping license*~~ must be carried at all times while conducting NWCO activities.

(b) The Nuisance Wildlife Control Operator's (NWCO) Permit authorizes an individual to capture, euthanize or relocate designated species of wildlife by safe and effective means at any time of the year and without limits which may be in force on certain species of wildlife provided the operator ~~simultaneously meets all three of the following conditions:~~is acting on a documented nuisance wildlife complaint detailing the nature of the complaint, target species, method of control, effective dates of control, location, and customer information including landowner's signature.

~~(1) satisfactory completion of NWCO certification examination as approved by Department procedures and possession of certification notification.~~

~~(2) is in possession of a valid annual Professional Trapping License*. (Note: valid hunting license or exemption documentation is required in order to purchase a Professional Trapping License).~~

~~(3) is acting on a documented nuisance wildlife complaint.~~

(c) Any person whose hunting or trapping license privileges are revoked and is not legally able to purchase a hunting or trapping license, shall not ~~be allowed to~~ possess~~,~~ or operate under the authority of a NWCO permit.

(d) NWCO Permitee must renew the NWCO permit annually. NWCOs must submit proof of:

(1) Prior year's Year End Report Summary;

(2) Current Professional Trapping License, Hunting License, Hunting and Fishing Legacy Permit or proof of exemption.

800:25-37-4. Reporting procedures

(a) Nuisance Wildlife Complaint Report Forms (available from the Department) must be kept by NWCO for a period of three (3) years. Year End Report Summary forms will detail:

~~(1) date of nuisance wildlife complaint received;~~

(1) number of each species of wildlife taken during the year.

~~(2) species of wildlife causing the complaint; and~~

~~(3) disposition of nuisance wildlife~~

(2) application for annual renewal.

(b) Such records shall be available for inspection at all reasonable times by authorized representatives of the Department.

(c) A summary of all Nuisance Wildlife Complaint Reports are to be submitted annually for each calendar year on or before January 30 of the following year and must include NWCO name or, Company name, address, and telephone number.

800:25-37-5. Procedures and guidelines

The following regulations for a NWCO permit shall be in effect to establish what species of wildlife may be taken under such a permit, the legal methods that may be used to control nuisance wildlife under such a permit, and the legal methods of disposal of nuisance wildlife under such permit.

(1) NWCO Permittees are only authorized to trap and relocate or euthanize the following wildlife species when such action is warranted by a valid nuisance wildlife complaint including, but not limited to: armadillo, badger, beaver, bobcat, coyote, jackrabbit, cottontail rabbit, fox squirrel, gray squirrel, red fox, gray fox, mink, mountain lion, muskrat, nutria, opossum, raccoon, river otter, striped skunk, and weasel.

~~(2) The following species may be controlled with or without a NWCO permit: armadillo, bats, coyote, English (house) sparrow, European starling, feral pigeon, flying squirrel, gopher, porcupine, ground squirrel, mole sp., mice sp., rats, reptiles, and woodchuck.~~

(~~3~~ 2) Problems and complaints concerning ~~certain wildlife species such as big game (~~ deer, elk, turkey, bear, ~~etc.~~alligator, antelope, big horn sheep, endangered or threatened species ~~.)~~ and game birds will only be handled when specifically authorized in writing by the Director of the ODWC ~~Department~~.

(~~4~~3) The sale, trade, barter, gifting, or retention of any wildlife, or parts thereof, except coyotes and beavers, taken under authority of a NWCO permit is prohibited, except wildlife legally taken during established trapping seasons and in accordance with all other pertinent rules and laws not associated with NWCO rules may be sold or otherwise disposed of as provided by law. ~~In addition, wildlife may be delivered to a licensed wildlife rehabilitator who must agree to the NWCO relocation restrictions.~~

(4) The sale, trade, barter, gifting or retention of beavers, coyotes, or parts thereof, taken under authority of a NWCO permitted is allowed with the proper documentation containing the taker's name and permit number.

(5) NWCO permittees must follow all state and federal laws that apply to the taking of wildlife with the exception of season dates and bag limits except as otherwise provided in this section.

(6) Only damage or nuisance complaints affecting humans and/or their property may be controlled. Complaints involving conflicts between two or more wildlife species are not valid nuisance wildlife complaints.

(7) All wildlife taken under a NWCO permit shall be taken and disposed of in a manner to ensure safe and effective handling and/or euthanasia. Euthanasia of a captured animal is to be performed under the guidelines adopted by the American Veterinary Medicine Association.

(8) Traps and other similar devices set by, or under the direction of, a NWCO shall be checked at least once every 24 hours~~*~~ and all animals removed. ~~*(Traps set underground are exempted from this provision.)~~Traps must have the Operators name and NWCO permit number attached.

(9) The following are legal methods of control under a NWCO permit:

(A) box or live trap;

(B) smooth-jawed single spring or double spring offset ~~spring or~~ steel leg-hold traps with a jaw spread of no more than eight inches;

(C) conibear style traps less than size 330, except size 330 may be used for water sets for beavers only;

(D) shooting where permitted by law or by city ordinance; and

(E) snares which shall have a locking device that prevents the loop from closing to a circumference less than ten (10) inches if the snare is set on or just above ground level. If the snare is set in an attic or similar situation there is no loop restriction.

(10) All trapping devices must be placed in a manner that will:

(A) minimize the risk of non-target animals;

(B) minimize the risk to public and pets; and

(C) be out of the view of the general public.

(D) signs must be posted in conspicuous places in order to inform the public that traps are in use.

(E) signs must have minimum dimensions of 5@ by 8" and the wording ATRAPS@ must be included and be conspicuous on the signs and printed in letters at least 2" tall.

(11) Shooting with firearms shall be subject to all state, county and municipal restrictions and ordinances. Night shooting is allowed for nuisance beavers only under the following conditions:

(A) NWCO must notify the game warden(s) in the county where activity will occur twenty-four (24) hours prior to such activity;

(B) must be conducted in a safe manner to prevent injury to people, livestock and damage to personal property.

(12) When relocation is authorized, the NWCO may have the wildlife in possession for no more than 24 hours unless specifically authorized by the Department.

(13) Wildlife that is relocated shall be released at least five(5) miles outside any city limit but not more than one county distant from the capture site and must be within the state of Oklahoma.

(14) Wildlife shall not be released on private land without written permission of the landowner or landowner designee.

(15) Wildlife shall not be released on public land without first obtaining written permission from the governmental entity owning or administering the release property.

(16) Captured wildlife that appears to be sick or diseased shall be euthanized rather than relocated. Burial or incineration of these carcasses is required.

PART 3. WILDLIFE AND FERAL HOG NUISANCE AND DEPREDATION RULES

800:25-37-11. Purpose

The purpose is to establish requirements for issuing permits to landowners, lessees or their designated agents and to any entity of state, county or local government to control nuisance or damage by any species of wildlife or feral hogs, as authorized by Title 29 O.S. 4-135A.

800:25-37-12. General Provisions

In addition to the statutory provisions of Title 29 OS 4-135, the following general provisions shall apply to the issuance of a Nuisance and Depredation Permit:

(1) The Department of Wildlife Conservation (Department) shall create a complaint/permit form, which must be completed and signed by the landowner/lessee and an authorizing Department employee before a permit can be issued.

(2) If the complaint form is approved, the Department shall issue a nuisance/depredation permit. A copy of the permit must be kept on the person of the permittee and all individuals authorized in writing to help the permittee while conducting nuisance wildlife or feral swine control. The permit will detail:

(A) date of complaint received and effective dates of control activities;

(B) location;

(C) method of control;

(D) landowner/lessee information and signature;

(E) name and address of designated agent(s);

(F) the signature of authorizing Oklahoma Department of Wildlife Conservation employee.

(3) Each permit holder shall:

(A) be in possession of a valid Hunting License or proof of exemption, and a valid Fishing & Hunting Legacy permit or proof of exemption and/or a valid Trapping License or proof of exemption. Landowners and/or lessees controlling nuisance wildlife on land owned or leased by them shall be exempt from the Hunting License, Trapping License and the Fishing & Hunting Legacy permit.

(B) be at least 16 years of age for wildlife or feral swine control at night with firearms.

(C) any person whose hunting or trapping license privileges are revoked and is not legally able to purchase a hunting or trapping license, shall not be allowed to possess, or operate under the authority of a depredation permit.

(4) Big game (deer, antelope, elk) complaints must comply with the provisions of 800:25, Subchapter 30.

800:25-37-13. Exemptions

(a) Employees of the Oklahoma Department of Wildlife Conservation and the Oklahoma Department of Agriculture Wildlife Services Division are exempt.

(b) Employees of any city, town or county government shall be exempt from purchasing or possessing the annual Hunting License and Fishing & Hunting Legacy permit while they are on duty.

(c) Certified Nuisance Wildlife Control Operators acting on a documented wildlife complaint in accordance with 800:25, Subchapter 37, Part 1.

(d) Permittees controlling feral swine only shall be exempt from possessing the hunting license and Fishing and Hunting Legacy permit.

800:25-37-14. Specific Provisions

The following provisions shall be in effect to establish the legal methods that may be used to control nuisance/depredating wildlife or feral swine under such a permit.

(1) permittees are authorized to trap, shoot or euthanize nuisance wildlife in accordance with the stipulations on the permit.

(2) The sale, trade, barter, gifting or retention of beavers and coyotes or parts thereof, including live coyotes, taken under authority of a Depredation Permit is allowed. A copy of the depredation complaint form including the permittee's name and signature must accompany the coyote, beaver or parts thereof. The provisions of Title 29 O.S. 7-503A apply to live coyotes.

(3) permitees must follow all state and federal laws that apply except as otherwise provided in this section.

(4) All wildlife and or feral swine taken under a Nuisance and Depredation Permit shall be disposed of in a proper manner to prevent harm to the public. Carcasses shall be disposed of in accordance with O.S. Title 21, Section 1223.

(5) Traps and other similar devices set shall be checked at least once every 24 hours.

(6) All traps, snares and similar devices shall have the permit holder's name attached (except landowners).

(7) Signs must be conspicuously posted to inform the public that traps are in use. Signs must have minimum dimensions of 5" by 8" and the wording "TRAPS" must be included and be conspicuous on the signs and printed in letters at least 2" tall (except landowners).

(8) The following are legal methods which may be allowed under a Nuisance and Depredation Permit:

(A) box or live traps;

(B) smooth-jawed single spring or double spring offset jawed leg-hold steel traps with a jaw spread of no more than eight inches;

(C) snares which have a locking device that prevents the loop from having a circumference less than 10 inches;

(D) conibear style traps; size 330 may be used for water sets only; and

(E) shooting where permitted by law or by city ordinance.

(9) All trapping devices must be placed in a manner that will:

(A) minimize the risk of non-target species;

(B) minimize the risk to public and pets; and

(C) be out of the view of the general public.

(10) Shooting with firearms shall be subject to all state, county and municipal restrictions and ordinances.

(11) Night shooting may be allowed under a Depredation Permit only under the following conditions:

(A) Permittee must notify the game warden(s) in the county where activity will occur twenty-four (24) hours prior to such activity;

(B) night shooting beavers shall be with shotguns with buckshot or smaller only;

(C) there are no firearm restrictions for night shooting feral swine; and

(D) must be conducted in a safe manner to prevent injury to people, livestock and damage to personal property.

800:25-37-15. Penalties

Failure to comply with the provisions of the Nuisance and Depredation Permit, Wildlife Conservation Codes of Oklahoma or providing false information to obtain a Nuisance and Depredation Permit may result in the revocation of the permit. Suspension of the Nuisance and Depredation Permit shall be for a period of not less than one (1) year.

[OAR Docket #08-940; filed 5-16-08]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION
CHAPTER 30. DEPARTMENT OF WILDLIFE LANDS MANAGEMENT

[OAR Docket #08-941]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
Subchapter 3. Mineral Exploration and Production
800:30-3-2. General provisions [AMENDED]
800:30-3-3. Site development [AMENDED]
800:30-3-4. Site preparation [AMENDED]
800:30-3-5. Regulations for producing wells [AMENDED]
800:30-3-6. Regulations for non-producing wells [AMENDED]
800:30-3-7. Damage and use charges [AMENDED]
STATUTORY AUTHORITY:
Title 29 O.S., Sections 3-103, 3-304 and 5-401; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.
DATES:
Comment period:
December 3, 2007 through January 11, 2008.
Public Hearings:
Date: January 7, 2008
Time: 7:00 p.m.
Ada - Pontotoc County Technology Center - 601 W. 33rd
Jenks - Tulsa Technology Center, 801 East 91st Street
Lawton - Lawton Public Library, 110 SW 4th
Oklahoma City - OK Dept. Of Wildlife Conservation Auditorium, 1801 N. Lincoln Blvd
Date: January 8, 2008
Time: 7:00 p.m.
Clinton - City Hall, 415 Gary Blvd
Durant - Durant Fish Hatchery Meeting Room, 2021 Caddo Hwy, Caddo, OK
Enid - Central Fire Stations, 410 W. Garriott
Date: January 9, 2008
Time: 7:00 p.m.
Miami - Miami Civic Center, 129 5th Ave NW
Date: January 10, 2008
Time: 7:00 p.m.
Guymon - OSU Extension Center, 301 N. Main
Hugo - Kiamichi Tech Center, 107 South 15th St.
Okmulgee - East Central Electric Co-op, 2001 S. Wood Drive (U.S. Hwy 75)
Adoption:
March 10, 2008
Submitted to Governor:
March 11, 2008
Submitted to House:
March 11, 2008
Submitted to Senate:
March 11, 2008
Gubernatorial approval:
April 17, 2008
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 6, 2008.
Final adoption:
May 6, 2008
Effective date:
July 1, 2008
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
These rules are to establish guidelines for oil, gas, and other mineral exploration and production on Department owned or managed lands. These rule amendments are needed to update oil and gas rules to reflect industry technology and procedure changes.
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, 2008:

SUBCHAPTER 3. MINERAL EXPLORATION AND PRODUCTION

800:30-3-2. General provisions

At least 30 days prior to entering to drill or moving any equipment onto Department property the operator will:

~~(1) Enter into a written surface agreement on forms as provided by the Commission with the Department of Wildlife, [52 O.S., Section 318.2 - 318.9].~~

~~(2) Provide the Department a copy of the approved notice of intent to drill (Corporation Commission Form 1000), an estimate of drilling time and an area plat map generally showing the proposed locations and dimension of the:~~

~~(A) Roads.~~

~~(B) Drilling Pad.~~
~~(C) Reserve Pit.~~
~~(D) Service Area (including pumps, flowlines, separator, meter house, pulsation bottle, compressor, storage tanks and water tanks).~~
~~(E) Water Source (pumping of water from Department ponds or lakes will be allowed only when a surplus is available.)~~

~~(3) Provide the Department a list of the names, addresses and telephone numbers of responsible personnel involved with the drilling, subsequent operation and restoration.~~

~~(4) Obtain approval from the Oklahoma Archeological Survey Office (OASO) and State Historic Preservation Office (SHPO). Operator must provide a copy of the approved notice of intent to drill (Corporation Commission Form 1000), and an area plat map showing the proposed locations and dimensions of all sites involved. Approval from the OASO and SHPO must be provided to the Department.~~

(1) Provide the Department a copy of the approved notice of intent to drill (Corporation Commission Form 1000), an estimate of drilling time and an area plat map generally showing the proposed locations and dimension of the:

(A) Roads.
(B) Drilling Pad.
(C) Reserve Pit.
(D) Service Area (including pumps, flowlines, separator, meter house, pulsation bottle, compressor, storage tanks and water tanks).

(2) Provide the Department a list of the names, addresses and telephone numbers of responsible personnel involved with the drilling, subsequent operation and restoration.

(3) Must obtain approval from the Oklahoma Archeological Survey Office (OASO) and State Historic Preservation Office (SHPO). Written approval from the OASO and SHPO must be provided to the Department before any type of soil disturbance is allowed.

(4) Enter into a written surface contract agreement on forms as provided by the Commission with the Department of Wildlife, [52 O.S., Section 318.2 - 318.9], sign a letter of stipulation and remit payment for damage and usage. Predetermined surface damages shall be paid to the Department under the surface contract agreement prior to beginning of any work activity. If additional damage and usage is determined by the Department after completion of proposed project, additional charges will be imposed.

(5) Each Operator will deposit with the Department, a performance surety bond of Ten Thousand Dollars ($10,000) from a surety company licensed to do business in this state. Only one bond will be required from each operator if the operator has ten or fewer wells on Department property. If the operator has more than ten wells on Department property, an additional One Thousand Dollars ($1,000) bonding per well will be required. This bond will be conditioned on the observances and compliance with the terms of the surface agreement. This bond will be maintained at Ten Thousand Dollars ($10,000) and it shall remain in effect as long as the operator is drilling or operating a well on Department lands, or until released by the Department in writing.

(6) At no time will personnel involved in oil and gas activities (except authorized security personnel) be permitted to carry firearms or other hunting or trapping equipment onto an area unless the equipment is appropriate to a season open on the area at the time and the individual(s) would otherwise be authorized to hunt.

(7) In addition to the damage costs in (a), the full value of any merchantable timber (as determined by the Department) removed from roads, drilling pads and pit sites shall also be paid by the operator.

(8) Oil and gas activities will be avoided in or near any previously identified fragile or unique areas. However, fragile or unique areas will not preclude utilization if damage to said fragile or unique areas can be prevented. Examples of fragile and unique areas include but are not limited to:

(A) Red-cockaded woodpecker colonies.
(B) Potential red-cockaded woodpecker restoration sites.
(C) Fragile environments such as natural lakes and bogs.
(D) Turkey roosts.
(E) Wetlands.
(F) Wintering bald eagle roost.
(G) Populations of endangered plants.
(H) Prairie chicken leks.

(9) Exploration may proceed if directional drilling from adjacent areas is feasible. On Department owned leases, such areas shall be identified prior to leasing and any area with substantial quantities of such habitats will not be leased for drilling.

(10) All oil and gas construction, development and/or well reworking and servicing is extremely undesirable during high public access periods, unless otherwise approved by the Department. Routine checking or trucking will be strongly discouraged during the time from two hours before sunset to two hours after sunrise.

(11) Oil and gas exploration and development activities will not prevent hunters and anglers from using wildlife resources or from freely pursuing their activities in the Wildlife Management Area.

800:30-3-3. Site development

(a) **Roads.** Existing management area roads will be used for mineral exploration and production whenever possible. If additional roads must be constructed by the operator, they shall:

(1) Follow the natural land contour if reasonable and possible.

(2) ~~Be a maximum of 24 feet wide, including shoulders and ditches.~~Be a maximum of 40' in width; dimensions and location MUST be approved by the Department prior

to construction. Operator will be charged only for width of road that is actually constructed.

(3) Possess a base sufficient to support vehicles and equipment using it. "Base" guidelines will be predetermined by the Department. In addition, road maintenance materials at the rate of 2,000 cubic yards or ton equivalent per mile, will be provided to the Department, on site, prior to road construction and will be used for annual road maintenance. Size and location of material shall be determined by the Department.

(4) Be sufficiently ditched with culverts, water bars, and turnoffs that will provide adequate drainage and prevent erosion.

(5) After completion of drilling, all roads not a part of the management area system will be gated, locked and, if necessary, bermed to exclude all unauthorized personnel. Locks and nonreproducible keys may be provided by the Department at cost. Such measures shall not be necessary when the operator's roads are secured by existing Department gates.

(6) Have cattleguards installed as determined by the Department.

(b) **Drilling pads.**

(1) Drilling pad shall not exceed 300 feet x 300 feet. Deviations are negotiable when justified by special conditions such as well depth and necessary equipment.

(2) When directed by the Department, drilling pad must be enclosed within a berm to prevent escape of any deleterious substance from the drilling operation.

(c) **Reserve pit.**

(1) Reserve pit will not exceed 160 feet x 160 feet unless justified by special conditions, such as wells over 14,000 feet deep may have a pit 200 feet x 200 feet.

(2) If drilling mud will not provide an immediate water seal, the pit must be lined with a manufactured liner not less than 30 mils thick or with soil seal not less than 12 inches thick and a coefficient of permeability not greater than 10 -7 CM/SEC.

(3) Pits must be constructed and maintained to not receive water from the surrounding watershed and the fluid level in each pit must be at least 18 vertical inches below the lowest point of the embankment.

(4) After the drilling rig is moved from the site, or during activity on areas with grazing leases, pits shall be enclosed in a woven wire perimeter fence on steel posts and no less than 4 feet high.

(5) If deleterious fluids other than fresh water drilling fluids are used in drilling or work over operations, these fluids shall be stored as required by Corporation Commission Rule 3-104 (b) in pits lined with 30 mil liner or in metal tanks.

(6) A self contained system may be required as stipulated by the Department.

800:30-3-4. Site preparation

(a) If any trees and shrubs are removed by road construction, pad preparation, pit construction or any other site preparation for mineral exploration or production, they will be piled at nearby locations for wildlife shelter as recommended by the ~~area biologist~~Department.

(b) Unless otherwise directed by the Department, a minimum of 6 inches of topsoil will be removed for road construction or any site preparation and it will be stored in topsoil stockpiles for later restoration. When topsoils are less than 6 inches, the available topsoil will be stockpiled and stabilized according to Department recommendations.

(c) ~~During site preparation, the road and site will be kept free of trash and litter. Litter blown or thrown out of the work area will be picked up and removed from the area.~~The operator will be responsible for keeping the road and site free of trash and litter at all times.

(d) Disposal of solid waste will be in accordance with provisions of the "Oklahoma Solid Waste Management Act" and "Rules and Regulations" of the State Board of Health promulgated thereto.

800:30-3-5. Regulations for producing wells

(a) Within thirty days after completion of the well, the operator will provide the Department a copy of the completion notice (Corporation Commission Form 1002A) and/or Plugging Report (Corporation Commission Form 1003).

(b) A service area of 150 feet x 150 feet will be allowed around the well head unless special conditions justify a larger area and are approved by the Department.

(1) The remainder of the area will be covered with topsoil and restored by tilling, fertilizing (at rate and formula recommended by the nearest NRCS office), and seeding with a seed mixture ~~and~~ rate, and time as recommended by the Department.

(2) Where livestock grazing occurs, the service area will be fenced with four strands of barb wire on steel posts. If the well is located within 300 feet of a residence, camping area, shooting range, or other high use area, the service area and tank batteries will be enclosed with a six foot chain link fence.

(3) All pumps, storage tanks and other containers containing potential pollutants will be surrounded by a berm of sufficient height to contain 1 2 times the entire volume of the largest container inside. These berms must be graveled or fertilized and seeded as authorized by the Department.

(4) Any valves and equipment that could cause pollution to the surrounding area will be secured to prevent discharge. All leaks from tanks, lines, pipes and stuffing boxes must be stopped immediately upon detection or notification and repaired as soon as possible.

(5) All permanent equipment must be powered electrically or equipped with "hospital zone" or buried muffler systems that are maintained in good working condition.

(6) All equipment in the service area must be kept painted and maintained regularly. An earthtone paint color as authorized by the Department must be used.

(7) Pipelines outside of the immediate service area must be buried at least 36 inches below the surface unless prohibited by rocks as authorized by the Department.

(8) The service area shall be kept clean of trash, debris, empty barrels, old pipes and any other equipment or materials not being used and shall be stabilized according to the Department recommendations. Spilled salt water and hydrocarbons shall be promptly cleaned up and removed from the areas as prescribed by the Corporation Commission and ~~Wildlife~~ the Department.

(9) Unused topsoil in stockpile shall be fertilized and seeded to preserve it.

(c) **Reserve Pits.** In no instance will pits be allowed to remain more than 12 months after completion notice date. Remaining contents of reserve pits, including liner, will be removed from the site completely. ~~will be pumped into tank trucks and hauled off.~~ In instances where test results show that the pit content is only fresh water, disposal will be as prescribed by the Corporation Commission and ~~Wildlife~~ the Department. Where pit content contains a substance deleterious to vegetation or wildlife, pit restoration must be accomplished within 60 days of completion date.

(1) Reserve pit will be backfilled with material from its embankments, and the remaining embankment may be used to elevate the service area.

(2) Pit area will be covered with topsoil from the topsoil stockpile and fertilized and revegetated as described in (b), (1) above.

(d) **Roads.** Roads constructed by the operator, including culverts ditches, turnouts, water bars, gates and cattle guards will be maintained at operators's expense.

(1) All locks and keys issued by the Department will be at cost and the operator will provide the area biologist a list of names of persons with keys.

(2) Operator will repair any excessive damage to area roads at his expense.

(3) Operators ~~will~~ may be required to, as determined by the Department, pay a portion of the annual maintenance of wildlife area roads used by the operator, his employees, or anyone working for the operator or anyone hauling oil, gas, salt water, or equipment to or from the well.

(4) Roads not needed for access to the producing well and not part of the wildlife area road system will be ~~obliterated by tilling compacted surfaces,~~ restored to approximate original contour, reterraced, covered with topsoil, and revegetated as described in (b), (1) above at operator's expense. And, when necessary, materials may be relocated as directed by the Department.

800:30-3-6. Regulations for non-producing wells

(a) If a well is declared dry or abandoned, the operator will plug the well as required by the Corporation Commission and will supply the Department a copy of the plugging record (Corporation Commission Form 1003) within 30 days from the plugging date.

(b) Restoration of the drilling area, roads and reserve pit will be accomplished within 180 days of plugging date.

(1) Drilling pad fill material will be removed within 2 feet of original contour and the area will be covered with topsoil and revegetated as described in Section 800:30-3-5 (b), (1) above.

(2) Reserve pit and roads will be restored as described in Section 800:30-3-5 (c) and (d) ~~(4)~~.

800:30-3-7. Damage and use charges

~~(a)~~ Basic damage and use charges for mineral exploration and production are as follows:

(1) Oil or gas well location and reserve pit:

(A) $7,000.00 per acre for well location site.

(B) $10,000.00 per acre for reserve pit site.

(2) Pipelines:

(A) ~~$3,000.00~~$3,500.00 per acre right-of-way for buried pipeline for gas or freshwater. No lines will be buried less than 36 inches below ground level.

(B) $85.00 per rod for right-of-way if buried gas line is to be of any Hi-Tech Poly Propylene materials. No lines will be buried less than 36 inches below ground level.

(~~B~~C) $10,000.00 per acre right-of-way for buried pipeline for oil or salt water.

(~~C~~D) Pipelines placed upon the surface will not be allowed, except temporary fresh water lines during drilling or well servicing - $500.00 per mile. Above ground Hi-Tech Poly Propylene gas lines may be temporarily used to test a well and to bring it into full production. These temporary above ground Poly Propylene lines may be used to test or flow a well for no more than 60 days. Rates for above ground lines are $500.00 per mile.

(3) Power lines:

(A) $7,000.00 per acre for above ground electric lines if approved.

(B) $3,500.00 per acre for buried electric lines.

(4) Seismograph:

(A) ~~$10.00~~$15.00 per acre for all Seismograph activity, including but not limited to the following methods: Shot Hole, Mini-Hole, Hydropulse, and Vibrosies. Charges based on quarter section legals.

(B) On lands where the Department owns mineral interest, a Mineral Bonus will be assessed. The Mineral Bonus will be based on a two year average for that county, provided by the Commissioners of the Land Office.

(5) Tank batteries, lact unit, separators:

(A) $7,000.00 per acre if location is different from well.

(B) $500.00 per acre if at same location as well.

(6) Use of water out of ponds, ~~or~~ lakes or existing wells if approved: ~~$100.00 per day or $2.00 per thousand gallons.~~$150.00 per day.

(7) Drilling water well if approved: $1,000.00.

(8) Roadways:

(A) $7,000.00 per acre if new road.

~~(B) $1,000.00 per mile per year if existing Department road~~.

(~~C~~B) Pipelines proposed in new or existing roadways will be subject to pipeline damage and use charges.

~~(9) Permit Fee: $500.00.~~

(~~10~~9) ~~Monitoring Fee: $500.00.~~Monitoring Fee: $1,000.00

(~~11~~10) If any oil or gas activity damages Department crops, wildlife or improvements, such damage will be taken into consideration and will be in addition to the minimum charges listed above in 1-~~10~~9 of this Subsection.

(~~12~~11) Crop damage: Any oil or gas activity resulting in damages to a Department agriculture or grazing lease must be negotiated separately with the lessee. All negotiations must be completed prior to beginning any work activity. The Department will provide the name and a contact number for any lessees involved.

(~~13~~12) Oil and Gas Leases: ~~$200.00 advertising fee~~. Actual cost for advertising fees will be billed to the requesting entity.

~~(b) At no time will personnel involved in oil and gas activities (except authorized security personnel) be permitted to carry firearms or other hunting or trapping equipment onto an area unless the equipment is appropriate to a season open on the area at the time and the individual(s) would otherwise be authorized to hunt.~~

~~(c) In addition to the damage costs in (a), the full value of any merchantable timber (as determined by the Department) removed from roads, drilling pads and pit sites shall also be paid by the operator.~~

~~(d) Oil and gas activities will be avoided in or near any previously identified fragile or unique areas. However, fragile or unique areas will not preclude utilization if damage to said fragile or unique areas can be prevented. Examples of fragile and unique areas include but are not limited to:~~

~~(1) Red-cockaded woodpecker colonies.~~

~~(2) Potential red-cockaded woodpecker restoration sites.~~

~~(3) Fragile environments such as natural lakes and bogs.~~

~~(4) Turkey roosts.~~

~~(5) Wetlands.~~

~~(6) Wintering bald eagle roost.~~

~~(7) Populations of endangered plants.~~

~~(e) Exploration may proceed if directional drilling from adjacent areas is feasible. On Department-owned leases, such areas shall be identified prior to leasing and any area with substantial quantities of such habitats will not be leased for drilling.~~

~~(f) All oil and gas construction, development and/or well reworking and servicing is extremely undesirable during high public access periods, unless otherwise approved by the Department. Routine checking or trucking will be strongly discouraged during the time from two hours before sunset to two hours after sunrise.~~

~~(g) Oil and gas exploration and development activities will not prevent hunters and anglers from using wildlife resources or from freely pursuing their activities in the Wildlife Management Area.~~

~~(h) Each Operator will deposit with the Department a performance surety bond of Ten Thousand Dollars ($10,000) from a surety company licensed to do business in this state. Only one bond will be required from each operator if the operator has ten or fewer wells on Department property. If the operator has more than ten wells on Department property, an additional One Thousand Dollars ($1,000) bonding per well will be required. This bond will be conditioned on the observances and compliance with the terms of the surface agreement. This bond will be maintained at Ten Thousand Dollars ($10,000) and it shall remain in effect as long as the operator is drilling or operating a well on Department lands, or until released by the Department.~~

[OAR Docket #08-941; filed 5-16-08]

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

1:2008-3b.

THIRD AMENDED EXECUTIVE ORDER 2008-3 OF JANUARY 18, 2008

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the power vested in me by Sections 1 and 2 of Article VI of the Oklahoma Constitution and 63 O.S. §§ 683.1 *et seq.*, hereby declare that because there is a state of emergency continuing in the State of Oklahoma due to catastrophic weather occurring statewide, it is necessary to assist and expedite all efforts of storm relief. In order to accommodate this need and to provide assistance to the citizens of Oklahoma in this extraordinary situation, I hereby order the temporary suspension of the following as they apply to vehicles used in the support efforts:

1. The requirements for special permits for use of oversized vehicles under Title 47;
2. The requirements for licensing/operating authority as required by the Oklahoma Corporation Commission;
3. The requirements for licensing/registration as required by the Oklahoma Tax Commission;
4. This order does not exempt operators from statutes regulating overweight loads as described in Oklahoma Statute Title 47 § 14-109; and
5. This Executive Order amends Executive Order 2008-3 because of the on-going state of emergency which has existed continually since December 8, 2007. This Executive Order shall be effective until the end of thirty (30) days after the filing of this Executive Order.

This executive order shall be forwarded to the Oklahoma Corporation Commission, the Oklahoma Tax Commission and the Commissioner of Public Safety, who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, this 16th day of May, 2008.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #08-956; filed 5-19-08]

1:2008-21.

EXECUTIVE ORDER 2008-21

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 26, 2008, 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 23rd day of May 2008.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #08-1071; filed 5-27-08]

1:2008-22.

EXECUTIVE ORDER 2008-22

I, Brad Henry, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m. on Tuesday, April 22, 2008 to honor Sergeant William E. Allmon an Oklahoma resident, who died on Saturday, April 12, 2008, at age 25 while serving in Iraq.

This executive order shall be forwarded to the Director of Central Services who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 23rd day of April, 2008.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #08-1072; filed 5-27-08]

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

RULES PROMULGATED WITHOUT PRIOR LEGISLATIVE/GUBERNATORIAL APPROVAL:

The Department of Human Services inadvertently promulgated permanent amendments to Section 340:50-15-6 in Chapter 50, Food Stamp Program, in the May 15, 2008 issue of the *Register*, with a stated effective date of June 1, 2008 [see 25 Ok Reg 1329]. However, the agency had previously withdrawn the proposed amendments to this rule from legislative and gubernatorial review on March 26, 2008, and had published a Notice of Withdrawn Rules in the April 15 issue of the *Register* [see 25 Ok Reg 795]. The rule should not, therefore, have been filed for promulgation, and the amendments will not be incorporated into the Code